



Foreign
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Council



FOREIGN INVESTORS COUNCIL BiH
WHITE BOOK 2012/13



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WHITE BOOK 2012/13



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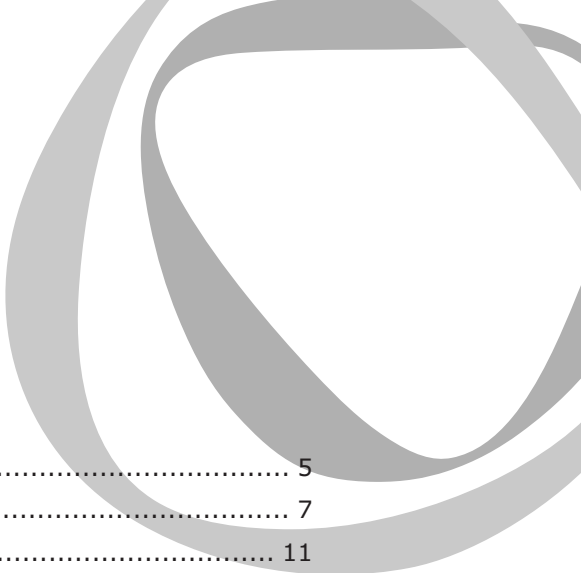
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APIF	Agency for Intermediary, IT and Financial services
BATA	Institute for Accreditation of Bosnia and Herzegovina
BD/DB	Brcko District
BiH	Bosnia and Herzegovina
BU	Business Unit
CD	Customs Declaration
CE	Manufacturer's declaration that the product meets the requirements of the applicable EC directives
CEST	Centre for Judicial and Prosecutorial Training of FBiH and RS
CMS	Case Management System
EC	European Commission
ECMT	European Conference of Ministers of Transport
ETA	European Technical Approval
ETICS	External Thermal Insulation Composite Systems
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FDI	Foreign Direct Investments
FIC	Foreign Investors Council
HJPC	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
IFC	International Finance Corporation
ILO	International Labour Organization
IPO	Internal Payment Operations
ITA BiH	Indirect Taxation Authority of Bosnia and Herzegovina
KS	Canton Sarajevo
MFI	Microfinance Institution
MFT	Ministry of Finance and Treasury of Bosnia and Herzegovina
OECD	Organization for Economic Cooperation and Development
PC	Public Company
PEEREA	Protocol on Energy Efficiency and Related Environmental Aspects
PIO/MIO	Pension and Disability Insurance Fund
PPP	Public Private Partnership
RDF	Refuse- Derived Fuel
RS	Republic of Srpska
SEE	South-East Europe
UNCTAD	United Nations Conference on Trade and Development
UNCITRAL	United Nations Commission on International Trade Law
USAID TAF	U. S. Agency for International Development/Tax and Fiscal Project
VAT	Value Added Tax
WTO	World Trade Organization

1 FOREWORD

In the previous period, the Foreign Investors Council (FIC) BiH has continued its activities aimed at promoting and positioning the "White Book" as the most important written product/document of FIC and contributed to establishing FIC as a legitimate representative of foreign investors in BiH and the main partner and interlocutor with the representatives of authority, starting with the government, through non-governmental departments responsible for the development of the economy and attracting foreign investments.

FIC members through their active participation in working groups to create the "White Book" and thanks to their consultative and working meetings with representatives of the relevant ministries, governmental and non-governmental organizations, have made it possible for problems, opinions, and recommendations of foreign investors in BiH to be re-articulated in the new edition of the White Book 2012/13. In addition to dealing with the problems of the past editions, this time FIC work groups described some new problems that greatly hamper operations of foreign investors in BiH. For the first time the White Book includes topics which tackle concessions, environmental permits, the judiciary, labour law, and energy efficiency.

In creating new topics, members were inspired by trends prevailing in the developed countries and the business environment in BiH, especially problems that companies with a majority of foreign capital are faced with every day.

Looking at the overall economic situation in BiH, we can state that the previous period was dedicated to overcoming the consequences of the recession that struck BiH economy again after the global economic crisis in 2009 which reached its peak during the 2012. The global economic crisis has caused the investors to be additionally cautious when choosing a destina-

tion for investment. Despite that BiH has managed to maintain a relatively stable, but low inflow of foreign direct investments - FDIs, as evidenced by the data from the 2011, which shows an increase compared to 2010. Also, preliminary data for 2012 are a positive sign for the expected increase of FDIs, especially if we take into account the announced investment plans for the next period.

In 2012, in BiH public investments that we have been waiting for 4 years have been launched. BiH has adopted several vital laws at the state level, among them the most important Law on State Aid and the Law on the Census, which will be of great help to the further development of the economy. It is evident that there is a huge opportunity for improvement but it is necessary to:

- encourage efficiency in adopting the budget at all levels of government;
- provide greater political and legal security - let's not forget that a number of EU packages of financial and technical assistance for the development of the economy are waiting for BiH, but only if the rule of law and political stability are present in our country. Frequent changes of government certainly do not give the impression of political and legal security, and will not attract new foreign investment;
- radical reforms in public administration and reducing the overall administration of the institutions of BiH authorities at all levels - in order for it to ultimately become more efficient and economical; and
- focus on the development of basic economics, industry and manufacturing - following the example of successful European and world countries, which suggest that the most advanced society in which citizens have good quality of life have a well-developed industry and production, which is the base for employment, economic activity, investment,

exports, budget filling, and a good standard of living.

In order to increase the scope of foreign direct investments it is necessary to establish a coordination and implementation of legal reform in this area throughout the country. Therefore through the White Book, FIC seeks to offer, in a single document, concrete solutions for the legal and procedural barriers so the relevant ministries and other relevant institutions could forward those recommendations to legislative procedure and thus jointly contribute to the overall business environment in BiH becoming friendly and suitable for business.

Branimir Muidža

FIC President

In regards to concrete implementation of the recommendations of the previous editions of the White Book, I might point out that we are satisfied with the previous year, and the success achieved in this field. Both entity governments, as well as the state government, supported the reforms proposed in the White Book of the Foreign Investors Council.

Therefore, I express the hope that this issue will result in a large number of the adopted recommendations, and thus once again confirm readiness of BH authorities to jointly create a better environment for investment, create jobs, reduce bureaucracy, and ultimately increase the standard of living of citizens.

2 ACTIVITIES AND GOALS OF FOREIGN INVESTORS COUNCIL

Vision of the Foreign Investors Council (FIC) is to act as a unified voice of the foreign investors present in BiH in an effort to improve business climate in BiH. By implementing the mission of FIC, we are trying to promote good practices of foreign companies, from their home countries, and through that prism, offer solutions to overcome obstacles faced by foreign investors - and those practices are indeed numerous. Through our activities and status of foreign, and local, investors, we are striving to bring BiH community closer to global economic trends.

Our mission is to advocate not only for foreign but also local entrepreneurs and, through our activities, improve the overall business climate in BiH, for the general prosperity of future economic development.

Numerous studies, reports of international corporations and organizations show that general legal and political image of BiH seems very unstable and affects the outflow, but also the inflow of future investments. In this regard, our activities were focussed on advocating and lobbying for better conditions for the activities of foreign and local investors.

Also, by participating in development processes together with government institutions, we advocate for entrepreneurs' relief and developing incentives for further investments.

The 2011 and 2012 were marked by intense cooperation with the representatives of BiH authorities - including the state level and services which are outside the government, which together with our work groups, made a significant effort to eliminate and identify barriers to the economic development and investment incentives. Also, promotion of investments by cooperating with our partners has been one of the main goals in the last period.

We wish to point out that starting last year the cooperation with institutions had intensified and became more open. This is supported by

the fact that in October 2011 we signed a Memorandum of Cooperation with the FBiH Government and presented our recommendations to the FBiH Parliament. Within this cooperation the FBiH Government adopted the White Book as an official document which became the basis for policy reforms. Depending on the field, the effects are satisfactory to a greater or lesser extent.

I would like to emphasize that we appreciate the activities of the FBiH Prime Minister, Mr. Nikšić, who from the beginning of his term contributed to the Government and the Parliament adopting a significant number of specific laws and measures related to adopting recommendations from foreign investors and economy in general.

Also, the cooperation with RS is continual and the RS President, Mr. Dodik has always been open for the FIC initiatives; through working groups and individual meetings with government authorities we are lobbying for amendments of certain provisions.

FIC, in cooperation with foreign embassies present in BiH and other institutions with an aim similar or identical to ours and representatives of EU Delegations in BiH makes every effort to disburden the economy and by doing so facilitate the business of other companies and strive to present BiH as a country attractive for potential investors. Through our communication with the media, Council for the cooperation with foreign embassies, workshops and educational seminars with companies and institutions, we are continuing our activities aimed at fulfilling our vision and achieving our goals. By sharing their positive stories and good results in BiH our member companies can be very successful in attracting other foreign investors.

FIC is striving to maintain a constant flow of information with the Government authorities.

Authorities have begun listening and taking into account the voice of investors by including the recommendations from the White Book in their work programs (at all levels) and by including the representatives of the investors in the institutions and work groups involved on development and amendments to the laws and regulations relevant to the economy development.

For a year now, representatives of FIC have been present, as members of the working groups for tax and fiscal policy of the Federal Ministry of Finance, which is in charge of proposing amendments to the regulations concerning taxes in the FBiH.

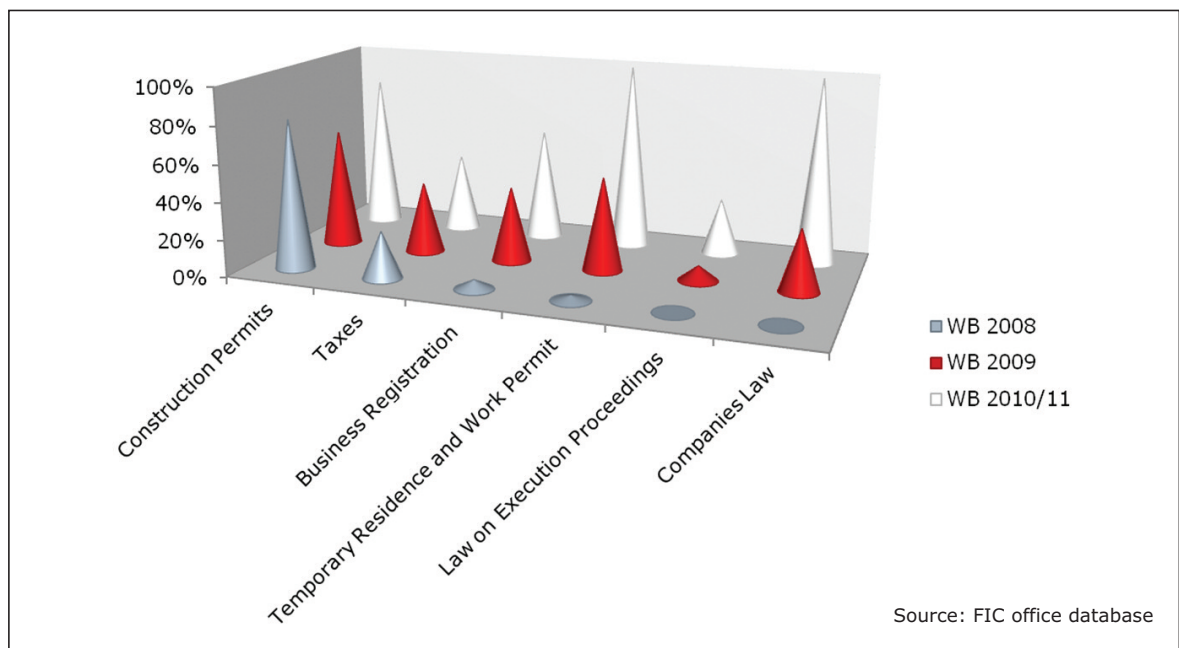
In order to channel our vision and aims we are in constant cooperation with representatives of foreign institutions and other foreign companies.

The obstacles can be eliminated by: the tax reform that should be aimed toward tax relief

and relief of other various fees, a significant shortening of deadlines and time required for obtaining different permits (environmental, construction, etc.), the adoption or harmonization of laws important for the fields of energy, agriculture, and by reducing bureaucracy and increasing its efficiency, and by facilitating the establishment and functioning of companies.

Through the implementation of the recommendations of the White Book foreign investors were given the opportunity to influence changes of vital importance for the investments, such as: the Law on Bankruptcy and Liquidation, the Law on Registration of Business Entities, as well as a multitude of regulations and other important documents in the field of tax and fiscal policy. Governments have consulted FIC while amending the issuance of temporary work and residence permits in the FBiH, where a substantial change has been made and with these changes the procedures for their issuance facilitated.

Implementation dynamic of White Book 2008, 2009 and 2010/11 recommendations by areas. Listed areas are mentioned due to fact that they been tackled in all additions of the BiH FIC's White Book.



Also, the ministries have committed to address the recommendations systematically, and each ministry regularly delivers reports on recommendations from their area. The effects are depending on the field greater or lesser, but certainly today we have the official documents of government services that deal with our recommendations. What is also important to state is that the White Book, as an official document, was twice in the parliamentary debate, both in the FBiH and RS.

For all these reasons FIC holds the White Book for its most important written product!

Past year was marked by further erosion of BiH economy, partly due to the global economic

crisis and partly due to the internal weaknesses of the system, political instability, and lack of foreign direct investment and the realization of capital investments.

Pursuant to these economic trends is evident that the real sector is faced with lower revenue, actual financial results which do not allow for new jobs, new business applications, business expansion, and new investment.

For these reasons, we expect even more effective and concrete action in 2013/14 and even better dialogue with the authorities and we hope to achieve economic prosperity, as well as to relieve entrepreneurs with the aim of securing a new investment cycle.



3 BIH BUSINESS CLIMATE OVERVIEW - 2011/12*

Bosnia and Herzegovina is closely linked with other countries of Western Balkans as well as with the European Union. As a result, its economy has been deeply affected in the last few years by the prolonged global economic crisis, both through the negative developments on its key export markets and through financial linkages. Nevertheless, the impact of the crisis is further exacerbated by the weaknesses in its business climate where it continues to lag other countries of the region.

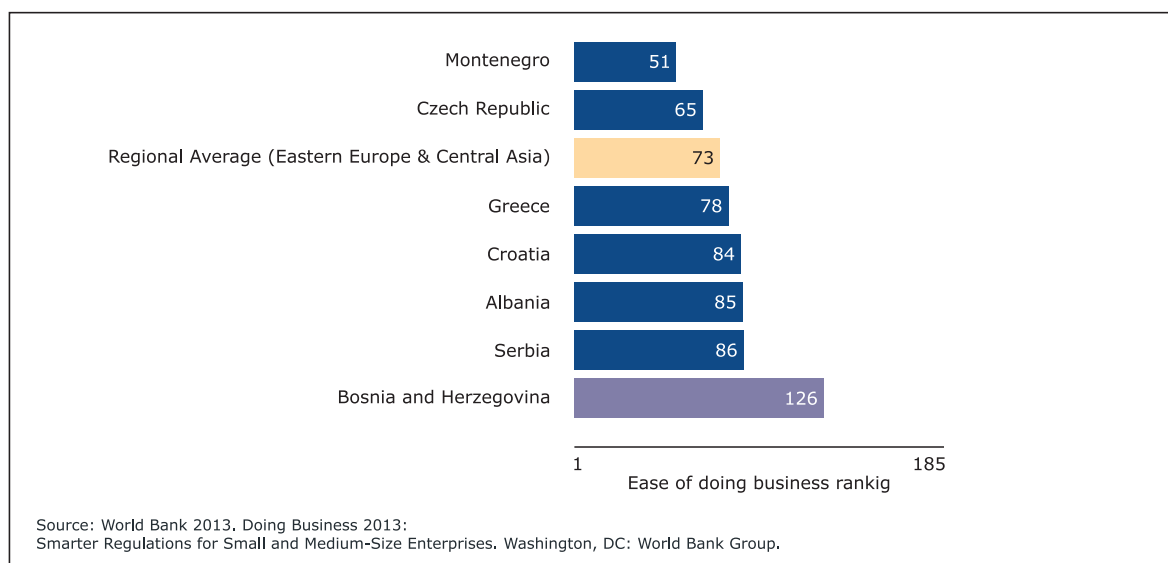
Bosnia and Herzegovina regularly comes last in the regional comparisons of investment climate and competitiveness indicators, be it Corruption Perception Index, World Economic Forum's Global Competitiveness Index, OECD Investment Reform Index, or World Bank's Doing Business reports (see Chart 1: Ease of Doing Business 2012 rank from 1 to 183, with 1 representing the best score). Bosnia and Herzegovina is ranked 125th in the Doing Business report, which is not just the lowest score in South-eastern Europe but also second lowest score among all post-communist countries in Central and Eastern Europe after Uzbekistan.

High corruption, restrictive labour markets policies, lengthy and cumbersome issuance of permits and licences, inadequate quality of infrastructure, and complex cross-border trade policies are key weaknesses regularly highlighted in various competitiveness indicators. Worryingly, there has been only a limited progress in ensuring continued access to Croatian market for agricultural producers after Croatia's EU accession in mid-2013, which requires adopting necessary unified set of rules and procedures in line with EU requirements.

The impact of weak investment climate is further exacerbated by frequent changes in governments at all levels, with adverse impact on the stability of economic policies and insufficient attention paid to economic reforms. It is thus not surprising that Bosnia and Herzegovina has also experienced credit rating downgrades by major rating agencies in the last two years. Standard & Poor's cut country's rating to B in November 2011 and Moody's cut Bosnia and Herzegovina's rating to B3 in April 2012.

Combined impact of the global economic crisis and weak business environment resulted in

Chart 1. How Bosnia and Herzegovina and comparator economies rank on the ease of doing business



* The FIC would like to acknowledge Mr. Libor Krkoska, head of EBRD office in BiH, for his special contribution for the development of this section.

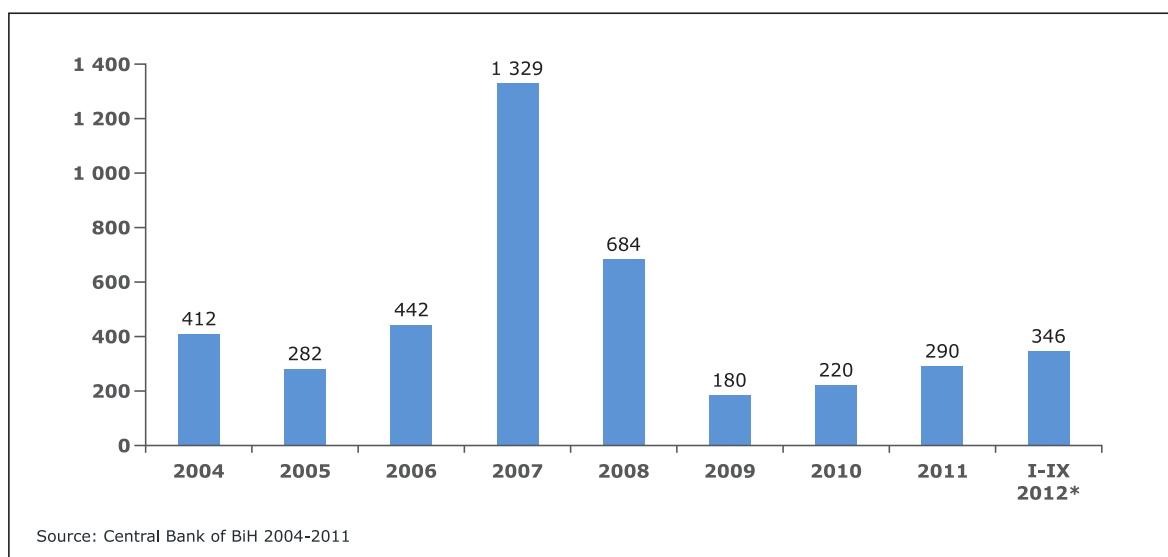
the steep decline of Foreign Direct Investment inflows, which fell from the peak of Euro 1.3 billion in 2007 to Euro 180 million in 2009, although FDI inflows have been slowly recovering during 2010-2012 (see Chart 2: FDI in BiH 2004-2012). The economic crisis has also affected access to finance as the share of non-performing loans increased quickly to over 12 per cent of total loans, compared to less than 6 per cent at the beginning of the crisis in 2009. Although credit to private sector remained stable at around 55 per cent of GDP, terms and conditions of available financing tightened considerably.

Access to finance has also worsened for the smallest enterprises served by microfinance institutions (MFIs) as gross loans by MFIs declined sharply from Euro 570 million at the end of 2008 to Euro 345 million at the end of 2011, before stabilising. The microfinance sector is now transforming into a commercially sustainable sector which is fully integrated with the rest of the financial sector, subject to proper regulation and supervision to improve transparency and corporate governance, and one microfinance institution has already been transformed into a commercial company with a full banking licence. Some progress was achieved in the introduction

of innovative ways to finance necessary infrastructure investments. RS authorities have launched a tender for PPP contract for a section of Corridor Vc based on the best international practice, resulting in two qualified expressions of interests submitted in late 2012. Should this effort be ultimately successful, it would show the way to finance quickly a number of infrastructure investments in Bosnia and Herzegovina which cannot be financed directly by the governments in the short to medium term. There has been however no progress in large scale privatisation in the telecoms and energy, and only a limited success in selling small government stakes in other companies.

Unemployment (ILO definition based on BiH labour survey) increased from around 24 per cent in 2009 to above 27 per cent in 2010 and stayed between 27 and 28 per cent in the following two years, although unemployment rate based on those registered in Unemployment Offices has been significantly higher. Unemployment is a particular problem for the young, with the unemployment rate for this category of the labour force around 50 per cent. Weak labour demand due to subdued growth as well as restrictive labour market policies have contributed

Chart 2. Flow of FDI in Bosnia and Herzegovina, by years, million €



to these high unemployment rates. The labour market is also adversely affected by the high costs of the large public sector, resulting in the high share of the grey economy.

Bosnia and Herzegovina is expected to continue reporting low growth rates, with consequent subdued job creation and pressures on the fiscal policy. However, the strong monetary anchor of the currency board combined with active IMF programme and continuous support of key International Financial Institutions should ensure maintenance of macroeconomic stability in the short to medium term. Stronger growth

performance would require a significant progress in economic reforms in a number of areas, including reform of tax administration, decisive action against corruption, improved issuance of licences and permits, and reform of the labour code. In addition, removal of non-tariff barriers to trade and facilitation of cross-border trade and investment would provide a strong impetus for Bosnia and Herzegovina to fully benefit from Croatia's EU accession which will result in the country bordering EU Single Market with more than half a billion of potential customers.

REVIEW OF ECONOMIC INDICATORS IN BIH

Bosnia and Herzegovina*	2008	2009	2010	2011	2012e	2013f	2014	2015
Nominal GDP (EUR bn)	12,7	12,4	12,7	13,1	13,2	13,4	13,9	14,8
Real GDP (% yoy)	5,6	-2,8	0,7	1,0	-1,3	0,2	1,5	3,5
GDP per capita (EUR)	3314	3222	3298	3416	3424	3476	3614	3840
GDP per capita (EUR at PPP)	7600	7400	7500	7500	7450	7550	7700	7900
Household consumption (real, % yoy)	5,5	-4,6	0,1	-0,3	-0,4	-0,5	0,1	1,5
Gross fixed capital formation (real % yoy)	14,8	-27,8	-16,1	14,6	-5,0	-2,0	12,0	15,5
Industrial output (% yoy)	7,3	-3,3	1,6	5,6	-5,2	2,5	4,0	6,0
Producer prices (avg, % yoy)	8,6	-3,2	0,9	3,7	1,9	1,0	2,3	2,4
Consumer prices (avg, % yoy)	7,4	-0,4	2,1	3,7	2,1	1,5	2,5	2,5
Average gross wages (LCY, % yoy)	15,7	9,2	2,4	6,8	2,2	0,1	3,5	4,0
Unemployment rate (avg, %)	23,4	24,1	27,2	27,6	28,0	28,3	27,9	27,3
General budget balance (% of GDP)	-2,2	-4,5	-2,5	-1,3	-2,0	-1,5	-1,0	-1,0
Public debt (% of GDP)	30,1	35,1	38,4	39,2	42,0	42,1	39,6	38,5
Trade balance (% of GDP)	-38,5	-28,2	-26,3	-28,5	-28,8	-28,7	-29,7	-28,7
Current account balance (% of GDP)	-14,1	-6,6	-5,5	-9,5	-9,7	-9,9	-10,1	-10,1
Net foreign direct investment (% of GDP)	5,3	1,4	1,5	2,1	3,5	3,9	5,0	6,1
Official FX reserves (EUR bn)	3,2	3,2	3,3	3,3	3,3	3,4	3,7	4,0
Gross foreign debt (% of GDP)	48,6	53,8	57,5	67,1	63,1	62,9	62,0	60,3
EUR/LCY (avg)	1,96	1,96	1,96	1,96	1,96	1,96	1,96	1,96
USD/LCY (avg)	1,33	1,40	1,47	1,41	1,52	1,47	1,47	1,50

* Source: Raiffeisen Research - Economic and Financial Market Outlook, 2013



4 IMPLEMENTATION OF RECOMMENDATIONS/ COOPERATION WITH THE BIH AUTHORITIES

The current image of BiH economy indicates that the accumulation of local capital is insufficient and cannot secure economic development, but the foreign investments provide solution and a way out of this situation.

Political and legal uncertainty causes the economic stagnation and unproductiveness of BiH economy. The image of BiH in the world is not at a high level and macro-economic indicators are not the best promoters for potential investors.

Aware of the fact that BiH has the potential for two or three times larger number of investments, the authorities in BiH have, in last two years, tried to show more understanding for the problems of investors. Although the effects are still slightly visible, since the implementation started a year ago, concrete progress is expected in 2013/14.

The support to previous cooperation and activities undertaken with the aim of improving the business climate, but also the implementation of the recommendations of the White Book, is visible through the statements on the realized cooperation between FIC and current representatives of the BH authorities:

Mr. Nikola Špirić, BiH Minister of Finance and Treasury

*"Without growth and development, it will be difficult for BH to meet the challenges on its path to Europe. In this regard, the BiH Ministry of Finance and Treasury is ready to implement all the recommendations of the White Book that will encourage foreign investors to boldly compete for the market of our country. In addition, we are ready to support the regional dimension of the new growth and development in which foreign investments and foreign investors must have a prominent role."*¹

Mr. Nermin Nikšić, Prime minister of the Federal Government

*"The FBiH Government has recognized the importance of this document and the importance of cooperation with associations such as the Foreign Investors Council."*²

Ms. Željka Cvijanović, the current Prime Minister of the Republic of Srpska and former Minister of Economic Affairs and Regional Cooperation of the Republic of Srpska

*"The White Book is an important document which is the basis for improving existing legislation that the RS Government, in cooperation with the entity Chamber of Commerce has already detected."*³

In addition to regular meetings with representatives of governmental and non-governmental agencies, we directly affect the change of legislation of interest to our members through working groups that we already mentioned. Also, if a specific problem occurs, on the basis of the Agreement of Cooperation between the governments of FBiH and RS we are entitled to conduct direct talks with the representatives of responsible institutions. This is how the intense cooperation with FBiH Tax Administration was developed and partner relationship established - when decisions important for investors are being made, the investors are able to influence the individual regulations. We sincerely hope that if the political situation stabilizes in the coming year and removing of administrative barriers becomes intensified, we would, in the late 2013, be able to announce that the share of direct foreign investments in GDP has increased, thanks to the removal of administrative barriers. The phase of considering decisions still lasts; the adaptation and implementation will take some time because nothing happens overnight, especially in our complex system.

¹ Statement from the business meeting between the FIC and the Ministry of Finance and Treasury held on November 6th 2012.

² Statement from the business meeting between the FIC and FBiH Government held on June 25th 2012.

³ Statement from the promotion of the White Book 2010/11, held on June 21st 2011 in Banja Luka.

BiH is potentially a very competitive country due to its geographical position, natural resources, traditions and untapped potential in the fields of construction, energy, agriculture, timber industry and industry in general.

Necessary reforms include: harmonization of regulations at the state level and reform in the fields of judiciary, economy, foreign trade operations, it is necessary to eliminate a number of

administrative barriers, since the bureaucracy which we, as investors, encounter on a daily basis simply prevents the normal flow of economic activity, investment, realization of the planned investment deadlines and income return.

Specifically, what has been achieved in cooperation with the representatives of governments of FBiH and RS is listed below:

Table 1

Review of implementation of recommendations from the White Book 2010/11⁴ (Federation of Bosnia and Herzegovina)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
TEMPORARY RESIDENCE AND WORK PERMITS		
Lack of harmonization of laws and practices relating to the procedure of issuing a work permit before approving temporary residence in the Sarajevo Canton (FBiH).	The BiH Law on Movement and Residence of Aliens and Asylum and the FBiH Law on Hiring Foreign Nationals need to be harmonized with respect to the first issuance of a work permit to foreign nationals.	Draft of the FBiH Law on Hiring Foreign Nationals which is fully compliant with the existing BiH Law on Movement and Residence of Aliens and Asylum has been adopted.
Failure to comply with applicable regulations regarding working hours of a foreign national in the Sarajevo Canton.	Practices need to be harmonized and applicable laws need to be complied with. Another option is to adopt a rule defining the lower limits of full working hours of foreign nationals.	This recommendation is accepted only in part of the harmonization of practices with the positive laws and regulations. The proposal for the adoption of special rules to determine the lower limit of working hours is unacceptable, because the provisions of the Labour Law in FBiH should apply to foreigners as well as to BiH citizens. Foreigners can also sign an employment contract and a contract for temporary service or a part-time contract.
LAW ON COMPANIES		
Establishment of branch office of a foreign legal entity.	Harmonize the FBiH Law with the RS and BD laws and provide an option for foreign legal entities to establish branch offices in FBiH.	

⁴ The table gives an overview of the recommendations from the White Book 2010/11 that the Government of FBiH agreed to consider and implement on the basis of the signed Memorandum of Understanding with the Foreign Investors Council. Table contains excerpts from the document "Information on actions taken by the FBiH Government on implementation of recommendations of the White Book 2010/11" delivered to Foreign Investors Council on June 25, 2012 by the Federal Ministry of Development, Entrepreneurship and Crafts as a coordinator of activities related to the White Book 2010/11

Review of implementation of recommendations from the White Book 2010/11 (Federation of Bosnia and Herzegovina)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
LAW ON COMPANIES		
Prohibition of share purchase financing.	The issue of financing a purchase of equity shares/stakes should be defined more specifically in the FBiH Companies Law. In addition to a clear and precise wording as to whether this prohibition also applies to limited liability companies, the Law needs to clearly specify the cases in which share purchase financing is prohibited, and also under what conditions such financing is permitted.	At the regular session held on June 3, 2013 the FBiH Government formulated a draft Law on amendments to the Law on Companies in FBiH (including the part of the accepted recommendations of the White Book 2010/11 of the Foreign Investors Council).
Convening the Shareholders Assembly and publication of notices.	Article 242 needs to be amended by expanding the above provision, specifying the minimum required circulation of a daily newspaper issued in the Federation of BiH. Such provision would ensure better informed shareholders and their active participation in the Shareholders' Assembly and the exercising of their legal rights.	
Provision of materials to shareholders for Shareholders Assembly.	In these cases, the person submitting the request and having authority to directly convene the Shareholders' Assembly should also be required to prepare draft resolutions, ensuring thereby that the right of access to these documents as defined under Article 247 of the FBiH Law may be exercised in full.	
Making copies of materials available to shareholders for Shareholders Assembly.	Article 247 of the FBiH Companies Law needs to be expanded by adding a provision according to which every shareholder who requests so, must have copies of the documents made available to him/her. This would ensure that shareholders can fully exercise this right. At the same time, this would harmonize the legal frameworks in FBiH and the RS.	

Review of implementation of recommendations from the White Book 2010/11 (Federation of Bosnia and Herzegovina)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
LAW ON SECURITIES MARKET		
Deadline for submission of applications for approval of public share offering.	The deadlines in the FBiH Companies Law and the FBiH Securities Market Law need to be harmonized such that the FBiH Companies Law refers to deadlines specified in the FBiH Securities Market Law.	Harmonization the Law on Companies with the Law on Securities Market has already been done through the mentioned draft Law on Companies of FBiH. When it comes to supervision in these cases it could be regulated through by-laws for which there is a legal basis under the Law on Commission for Securities.
TAXES		
Unclear legal provisions regarding taxation of foreign nationals who are employed in their home country and were sent on duty to BiH, and who pay their social security obligations in their home country.	Precisely define taxation of foreign individuals and their rights to a reduction in tax base, and develop a system in FBiH that will be linked with institutions authorized to carry out payment transactions.	In preparation is the new Law on Social Security Contributions which shall state the provisions about the way in which the mentioned persons shall pay their contributions in accordance with the recommendations from the White Book 2010/11.
BUSINESS REGISTRATION	In the White Book 2010/11 the Law on Registration of Business Entities in FBiH has also been listed as a law in which certain amendments should be made. The Federal Government and the competent ministry will carry out a comprehensive analysis of the mentioned law and amend it if the recommendations are considered justified.	
LAW ON LIQUIDATION AND BANKRUPTCY	Draft Law on amendments to the Law on Bankruptcy Procedure in FBiH has been drafted and it will be forwarded to the Federal Ministry of Finances and to the FBiH Office for Legislation and Harmonization with EU regulation for opinion. If the conditions are met to forward the Law on amendments to the Law on Bankruptcy Procedure in FBiH, the law will be referred to the FBiH Government for consideration.	

Table 2

Review of implementation of recommendations from the White Book 2010/11 ⁵ (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
BUSINESS REGISTRATION		
Establishing rights on pledge in shares of companies with limited liability (LLC).	Registration laws need to be amended to provide for registration courts' registering liens instituted on shares.	The proposed amendment of the Framework of Law on Registered Pledges over movable property in the sense that the Ministry of Justice delivers a decision on the registration of the pledge of movables competent to registration court for entry of goods into the General Pledge Registry.
Inadequate availability of general information on registration procedure.	Post information on the registration procedure on web pages of all institutions involved in the procedure or indicate contact details where the required information is available.	<p>Partially realized, after the reform* to start the business in the RS, this recommendation should be fully implemented. On the website of the Government of RS www.investsrpska.net steps for registration are described in detail.</p> <p>* The RS Government adopted a decision on the implementation of reforms on starting business in the RS and adopted the concept of reform with the following objectives:</p> <ul style="list-style-type: none"> - Reduce the time required to register a business from 23 to 3 days; - Reduce the number of required procedures from 11 to 5; - Reduce the cost of starting a business as much as possible (goal is to reduce it to 400 KM); - Establish a single register of all businesses (legal and natural persons) in one place; - Maintain a system of legal security and reduce the level of potential disputes; - Establish a new concept of registration. <p>The reform includes the introduction of one-stop-shop system for receipt of requests with the Intermediary Agency for IT and financial services (APIF) - this way after notary processes signatures (founder and authorized persons) or processes founding documents business entities would only address APIF which would ex officio refer requests to other relevant institutions.</p>

⁵ The table gives an overview of the recommendations from the White Book 2010/11 that the Government of RS agreed to consider and implement on the basis of the cooperation between the RS Government the Foreign Investors Council. Table contains excerpts from the document "Report on implementation of recommendations from the White Book 2010/11" delivered to Foreign Investors Council on February 21, 2013 by the RS Ministry of Economic Relation and Regional Cooperation as a coordinator of activities related to the White Book 2010/11.

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
BUSINESS REGISTRATION		
Lack of consistency in processing registration applications in courts.	Remove the unnecessary red tape from laws and practices.	After the reform, this recommendation should be implemented.
Application of the principle of public access to the court registry records.	Access to basic company information should be enabled on the website of each court that maintains a company's registry.	Technical implementation of the previously agreed projects in all five registration courts in RS is in progress.
Failure to honor legal timeframes and unnecessary delays in registration procedure.	Courts' operation needs to organize such that they provide continuous registration services.	Reform in progress.
LAW ON EXECUTION PROCEEDINGS		
Abuse of proceedings in case of objections submitted against a writ of execution.	The Law needs to preclude such stalling of collection of claims, and another possible solution would be to prevent the debtor from making arbitrary and groundless allegations in his/her objections.	Implemented by the applicable Execution Law, the objection and appeal against the decision on the execution, as a legal remedy, does not suspend the decision on execution.
The rules for preparing and managing an auction are not defined.	The Law needs to define the course of auction in detail because currently each court determines the terms and course of auction on its own.	Implemented. Auction procedure is regulated by the Law on Liquidation ("RS Official Gazette", No. 64/02), and the provisions of the bankruptcy proceedings shall be applied in the process of liquidation if the Law on Liquidation Proceedings does not state otherwise.
Different interpretation of the provision concerning sale of real property.	The Law needs to clearly define the meaning of the provisions that a real property "may be sold without restrictions on the lowest price".	Implemented. Paragraph 5, Article 89 of the draft of the amendments to the Law on Execution Procedure was removed, so the property can be sold at the price which is below one third of appraised value.
Imprecisely defined deadlines in the following areas: - Satisfaction of claims - Hearing to split the sale proceeds - Decision on satisfaction of claims.	Clearly define a deadline to satisfy petitioner's claims (within 15, 30 or 60 days), the time limit within which the court must schedule a hearing to divide the price.	It has been accepted that the decision must be published in the "Official Gazette of the Republic of Srpska" and in such cases, the courts must apply the mandatory period of 30 days.
Unclear definition of the process of appraising the value of real property.	Define more precisely the meaning of "a part of the creditor's claim", i.e. specify an exact amount/ percentage of the claim, (e.g. 1/3).	Implemented. In bankruptcy proceedings creditors shall be paid pro rata to their group claims.

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
LAW ON EXECUTION PROCEEDINGS		
Abuse of the procedure of determining the sales price.	These cases need to be defined such that a mechanism is ensured to prevent these identified abuses.	Implemented. The courts are bound to apply the regulations and prevent any abuse in the application thereof.
Incomplete information on the debtor's level of debt.	The Law needs to specify that employers are required to list all present debts of the employee.	Implemented. Regulated by the applicable regulations.
Authentic documents do not include an invoice and a statement from business books for all legal entities.	The definition of an authentic document needs to be expanded to include invoices and statements from business book for all legal entities, without exception.	Implemented. Article 29 of the Execution Law defines the concept of authentic document and the process of execution based on the authentic document.
LAW ON LIQUIDATION AND BANKRUPTCY		
Vague wording of liquidation procedure.	The Liquidation Law needs to more adequately address the course of the liquidation procedure as well as the position, rights and obligations of the liquidator; alternatively, the Law should include a provision allowing for an adequate application of provision of the Bankruptcy Proceedings Law to those aspects of the liquidation procedure that have not been defined.	Implemented! Article 16 of the Law on Liquidation Proceedings indicates that these provisions of the Law on Bankruptcy Proceedings should be applied pursuant to the liquidation process, if the law doesn't state otherwise.
Qualification and certification of bankruptcy trustees in BiH.	Specific measures needed to improve confidence in the implementation of the Bankruptcy Law should include: (i) amend the present law to set some minimum requirements regarding past experience and define a specific profession that would correspond to the nature of duties of a bankruptcy trustee.	Implemented. Law on Bankruptcy Proceedings defines conditions for the appointment of a bankruptcy trustee, and upon completion of the review process and other necessary data, a list of bankruptcy trustees, at the proposal of the Minister of Justice is determined by the RS Government.
Treatment of company's real property after the liquidation procedure is completed.	Entity level property laws should expressly provide for this option.	Implemented. Article 1 of the Law on Liquidations Proceedings states that after enforced liquidation and settlement with creditors, the rest of the property of the legal entity is divided between the members pro rata to their share in the property.

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
LAW ON LIQUIDATION AND BANKRUPTCY		
Different court practices regarding the delivery of the liquidation documentation of a liquidation procedure.	Practice in courts regarding this issue needs to be harmonized, and relevant regulations need to define that the tax administration shall have the same position as all other creditors of a company being liquidated.	Implemented. Regulated by law and regulations.
Different practices in the courts regarding the submission of a certificate of settlement of tax obligations during the opening process of liquidation.	Harmonize court practice on this issue and introduce the regulations which define that tax administration is in the same position as other creditors in the process of liquidation.	The implementation is underway. The Higher Commercial Court will make a statement about this issue and take a stand with the aim of unique application of the law.
Penalties for company managers who do not file for bankruptcy on time.	The Bankruptcy Proceedings Law should include, by way of amendments to it, a higher fine and even a criminal penalty for company managers/administrators who do not file for bankruptcy on time.	Implemented. Pursuant to the Article 236 Paragraph 1 Item 1 of the Law on Bankruptcy Procedure a responsible person (director) shall be fined with 500 to 3000 KM if they fail to file a petition for initiating bankruptcy proceedings.
Payment of a 5% lump sum to the bankruptcy estate from the sale of movables and real property.	The lump sum payment for the costs of maintenance would only be justified if the real property was in the possession of the bankruptcy debtor between the institution of bankruptcy proceedings and the sale of real property, which means that in such case all the maintenance costs would be borne by the bankruptcy debtor.	Implemented. Regulated by the Law on Bankruptcy Proceedings.
The issue of the right to dispose of real property in bankruptcy proceedings.	Specify the meaning of the right of disposal, i.e. whether it is the transfer of possession or something else. A collision between the Bankruptcy Proceedings Law and the VAT Law needs to be resolved in terms of the legal effects of such disposal.	Implemented. The Law on Real Property regulated the manner in which the mentioned right, along with the rest of property rights which are institutes of the earlier sociopolitical system, shall be turned into the right of ownership.
LAW ON SECURITIES MARKET		
Registration of securities transfers.	Transfers of securities resulting from errors in entering transfer	Law on Securities Market ("Official Gazette of the Republic of Srpska")

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
LAW ON SECURITIES MARKET		
	orders in the stock exchange system should be exempted from the mandatory clearing.	no. 92/06, 34/09 and 30/12) defines that the transfer of securities in connection with the transactions concluded on the Stock Exchange or other regulated public market cannot last more than three working days after the conclusion of the deal. In this way, the interests of the investors are protected in a sense that the purchased securities are delivered to them as soon as possible or money from the sales of securities. When it comes to possible errors that may occur when entering orders into a stock trading system, this matter in RS is governed by regulations of Banja Luka Stock Exchange and the Central registry. Specifically, the rules of the Banja Luka Stock Exchange govern the procedure and deadlines for eliminating such errors and there is also a possibility of terminating the deal which was concluded as a result of the error made by one of the members of the Stock Exchange. Bearing in mind that the Stock Exchange is required to submit a report on all concluded transactions to the Central registry for processing, the rules of Central registry prescribe the verification of the reported data on trading, as well as the procedure and deadlines for removing possible errors made by members of the Stock Exchange and Central registry. This will ensure the protection of investors and further manipulation of this matter can be made through amendments to these regulations.

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
LAW ON SECURITIES MARKET		
Inability to manage a portfolio in other markets.	The solution would read: "A stockbroker that provides securities portfolio management services shall keep its client's securities that are traded in markets outside the Republic of Srpska in a custody account – in its own name and for client's account."	Amendments to the Law on Securities Market from 2012 in accordance with the recommendations from the Foreign Investors Council made it possible for brokerage companies to purchase securities for a client in foreign markets; securities shall be kept on the custody account in his own name and on behalf of the client (Article 127, Paragraph 7).
Brokerage Services.	Allow for implementation of the principle of reciprocity to banks and professional brokers that hold brokerage licenses in BiH, provided that full control of the competent Commissions over the work of professional brokers is ensured.	Law on Securities Market provides that a stockbroker, who is licensed to conduct transactions of securities in BiH, outside RS, can also carry out those transactions in the area of RS provided the stockbroker meets the requirements for the establishment and operation prescribed by this law and with an obligation to register the business unit at the territory of RS. On the other hand, the FBiH Law on Securities also provides the possibility for the stockbroker, who is licensed to conduct transactions of securities in BiH, outside FBiH, can carry out those transactions in the area of FBiH provided the stockbroker meets the requirements for the establishment and operation prescribed by this law, but without an obligation to register the business unit at the territory of FBiH. Given that the interest is the existence of a single economic space in BiH, Ministry of Finance and the Commission for the Securities will analyse the recommendation of the Foreign Investors Council, in cooperation with relevant institutions in the FBiH, and in order to implement the principle of reciprocity.

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
LAW ON SECURITIES MARKET		
The issue of publishing a prospectus.	Introducing a "preliminary prospectus" would allow the general public to get to know the company that plans a public share issue.	Amendments to the Law on Securities Market from 2012 in accordance with the recommendations from the Foreign Investors Council made it possible for emitent to publish a preliminary prospectus to test investor interest for a given emission. Persons responsible for the truthfulness, accuracy and completeness of the information published in the preliminary prospectus are defined, and it is proposed that the content, form, and manner of publication of the preliminary prospectus to be prescribed by the Commission's bylaws (Article 11).
TAXES		
Unclear legal provisions of the personal income tax and social security contribution for individuals residing in FBiH, RS and BD and earning their income in another administrative unit.	Precisely define the obligation to pay social security contributions for individuals residing in FBiH, RS and the District and earning their income in another administrative unit, and harmonize laws.	Pursuant to the Article 11 of the Law on Social Security Contributions, ("Official Gazette of the Republic of Srpska" no. 116/12) contributions are paid according to the location of the headquarter of the person paying contributions which is located in RS, apropos the location of the headquarter of the person paying contributions which is located in FBiH or Brčko District. Applying the agreement on methods and procedures for the use of health care of insured persons on the territory of BiH, outside the territory of the entity, or Brčko District where the insured person lives ("Official Gazette of the Republic of Srpska" 9/02) and the agreement of the Federal Employment Institute, Employment Institute of the Republic of Srpska, and Employment Institute of Brčko District on the right to compensation for unemployed per-

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
TAXES		
		sons ("Official Gazette of the Republic of Srpska" no. 103/12), allows for the payment of the contributions for exercising the right to health insurance and compensation in the case of unemployment when persons earn their income in one, a resident in another administrative unit.
Lack of harmonization between Personal Income Tax Laws with respect to tax exemptions and the amount of personal deduction at entity and BD level.	Harmonize regulations at the state level.	Given that direct taxes are under the jurisdiction of the entities, harmonization of regulations is a continuous process.
Unclear legal provisions regarding taxation of foreign nationals who are employed in their home country and were sent on duty to BiH, and who pay their social security obligations in their home country.	Precisely define taxation of foreign individuals and their rights to a reduction in tax base, and develop a system in FBiH that will be linked with institutions authorized to carry out payment transactions.	Pursuant to the Article 5 Paragraph 4 of the Law on Personal Income Tax ("Official Gazette of the Republic of Srpska" 91/06, 128/06, 120/08, 71/10 and 1/11) payer of the income tax is also a non-resident of RS for the income earned in RS. Pursuant to the Article 81 of the Rulebook on the Implementation of the Law on Personal Income Tax payer on a monthly bases reduces the tax base from the personal income of non-residents who earn income based on personal earnings from the employment in RS, on the basis of the tax card kept by the Tax Administration, and the right to a reduction of the tax base is realized in pursuant to the Article 20 of the Rulebook. Foreign nationals are entitled to a reduction of the tax base if they earn income based on personal earnings from employment in the RS.
Inefficient forced collection on debtors' bank accounts (RS and FBiH).	The present entity laws governing payment transactions should be upgraded by including mechanisms whereby all bank accounts of a client would be blocked.	The National Assembly of the Republic of Srpska, in May 2012, adopted the Law on Internal Payment Operations ("RS Official Gazette", No. 52/12) and the Law on

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
TAXES		
		the Unified Register of Business Entities ("RS Official Gazette", No. 52/12), which upgraded enforced collection procedure and established a mechanism which, in the situation when debtor does not pay his obligations, freezes all funds in his account at banks, until the final settlement of the debt.
Different practices of taxation of business units which have their registered address in another entities and BD.	Harmonize legislation regarding taxation of business units in the other entity and BD.	Pursuant to the Article 3 of the RS Law on Profit Tax, income tax payer in RS is the business unit for profit realized in RS, pursuant to the Article 34 of the FBiH Law on Profit Tax, the business unit in the FBiH is not subject to Profit Tax if the company headquarters is in Bosnia and Herzegovina. FBiH Ministry of Finance will amend the Law on Profit Tax in terms of taxation of business units, such as in the RS.
Fiscal cash register software does not support any rebates or other discounts in retail sales or requires a very complex tracking of such rebates or discounts, which is quite nonsensical in a computer age.	Harmonize the Fiscalization Law and the Trade Law and their related regulations and other regulations.	Pursuant to the Article 15, Paragraph 3 of the Rulebook on the Form and Manner of Keeping Trading Books - revised version ("RS Official Gazette" No. 48/11) it is provided that the amount entered in the column number (6) of the retail trading book (TKM) shall be the calculated difference between the retail value (price per unit from the database x amount of goods) and the amount collected in cash and/or the amount which will be charged to credit card (including the amount of commission on completed transactions) or by bank transfer and the data in column (6) is not considered the approved discount, but deduction claims from the customer, in accordance with the act of merchants. It follows that the executed sales of goods are

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
		recorded by the retail prices entered into the database of the fiscal cash registry and a "discount" will be registered in the trading books as described above and it will show that a difference between the retail value and the amount collected in retail is not treated as a discount, therefore, is not shown on the retail fiscal account. It is necessary to harmonize the Law on Trade with the Law on Fiscalization.
CONSTRUCTION PERMITS		
Unclear and incomplete Spatial Planning and Construction Law.	Amend the Spatial Planning and Construction Law such that clear cause effect relationships may be established between different provisions of the Law.	In 2012 the drafting of the Law on amendments to the Law on Spatial Planning and Construction started. Given that more than 50% of the applicable provisions of the law have been amended, pursuant to normative-legal rules, it was decided to draft a new text of the law. A proposal for the Law on Spatial Planning and Construction has been drafted. The law is currently forwarded to all relevant institutions for opinion and in the program of the RS Government for the 2013 the draft Law on Spatial Planning and Construction is scheduled for March 2013. Law on Spatial Planning and Construction specifies the provisions in the construction industry. The circle of objects that do not require a building permit has been expended, the documentation submitted with the application for the issuance of construction permit has been clearly defined, and deadline for the issuance of the construction permit has been shortened from 30 to 15 days. Also, in accordance with the EU legislation and the need to harmonize regulations the provisions relating to the field of

Review of implementation of recommendations from the White Book 2010/11 (Republic of Srpska)		
PROBLEM	RECOMMENDATION	IMPLEMENTATION (explanation)
CONSTRUCTION PERMITS		
		energy efficiency in the area of building construction have been introduced.
Law does not define treatment of telecommunications sector.	The RS Spatial Planning Law needs to incorporate more detailed telecommunications infrastructure provisions. In FBiH, laws need to be further harmonized within the Federation framework (FBiH and cantons).	The Law on Spatial Planning and Construction contains provisions relating to the construction of facilities in the area of communication systems. In the Law on Spatial Planning and Construction there is a clear difference between the objects of international and local capacities in the field of communication systems including the international automatic headquarters for which construction permit is issued by the Ministry, whereas for the other objects in the field of communication systems, construction permits are issued by the local government units.
Inefficient processing of applications.	It is important to have professional, trained and responsible staff, capable of managing all the changes made. Improvements would also require setting up networked databases.	Law on Spatial Planning and Construction specifies the provisions in the field of establishing a unique spatial information system of the Republic of Srpska. The proposed legal provisions clearly stipulate that the unique spatial information system includes data and information with electronic support throughout the Republic and indicated data are contained in this system. Also, the manner of controlling the unique information system has been defined and the Rulebook will further elaborate on content, holders of spatial information systems, methodologies, data collection and processing and unique forms used to keep records.

FIC representatives will continue:

- Continue to educate its members in cooperation with the institutions - the organization of seminars and training - continuation of activities from 2012
- Promotion of the White Book with the governments in BiH
- Establish permanent working groups in the fields of: industry, taxation, labour law, financial services, and energy efficiency
- Attracting new members
- Influence the harmonization of tax legislation
- Work on projects of strengthening the position of foreign investors through the actions of BiH authorities
- Hold regular internal meetings of the Board of directors and advisory meetings with members of the FIC and FIC office
- Hold regular meetings with BiH institutions regarding the implementation of the recommendations from the White Book
- Conduct field visits to our members
- Develop an action plan to implement the recommendations and solve problems mentioned in the White Book 2012/13

5 EXECUTIVE SUMMARY

BUSINESS REGISTRATION

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>BiH</p> <ul style="list-style-type: none"> Removing the obstacles for foreign investments in companies dealing with public information. 	<p>BiH</p> <ul style="list-style-type: none"> It is necessary to amend the Law on Policies of Foreign Direct Investments of BiH, in a way to eliminate the provisions which restrict foreign investment in companies engaged in public information. 	<ul style="list-style-type: none"> Ministry of Foreign Trade and Economic Relations of BiH
<p>FBiH and RS</p> <ul style="list-style-type: none"> Establishment of pledge on shares in limited liability companies (LLC) and information transparency about pledges on stock shares. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> It is necessary to amend the entity laws on business registration in a way which would directly prescribe the registration procedure for share pledges, led by registration courts. It is also necessary for adequate entity regulations dealing with security registers to anticipate the possibility of access to information about stock pledges to all third persons. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH and RS
<ul style="list-style-type: none"> The role of public notaries in the process of status changes of companies. 	<ul style="list-style-type: none"> Amend the notary laws in a way which would either exclude the obligatory notary processing of company's acts or put notaries in charge of examining all criteria and the documentation necessary for the decisions they're processing and their registration in the competent registration court. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH and RS Registry courts Competent cantonal authorities
<ul style="list-style-type: none"> Enabling the registration court to access the Registry of Fines. 	<ul style="list-style-type: none"> The registration court should be able to access the Registry of Fines electronically. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH and RS Competent registry courts
<ul style="list-style-type: none"> Applying the transparency principle for the Court Register. 	<ul style="list-style-type: none"> It is necessary to perform the entire data search on business entities electronically and allow everyone access and copy of files from the registration cases without restrictions. 	<ul style="list-style-type: none"> Competent registry courts
<ul style="list-style-type: none"> Activities that cannot be registered by companies with foreign capital involvement. 	<ul style="list-style-type: none"> It is necessary to make a final list of business activities which cannot be registered by companies with foreign capital involvement, as well as a list of business activities which can be registered only with approval obtained in advance (specifying the type of approval and the competent authority issuing it). 	<ul style="list-style-type: none"> Ministry of Foreign Trade and Economic Relations of BiH

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<ul style="list-style-type: none"> Failure to comply with legal timeframes and unnecessary delays in registration procedure. 	<ul style="list-style-type: none"> It is necessary to organize operations of the registry courts so they continuously provide registration services. 	<ul style="list-style-type: none"> Competent registry courts
<ul style="list-style-type: none"> Consultation appointments with registration judges. 	<ul style="list-style-type: none"> Since regular consultation hours are a common practice in most courts, it is necessary to implement the same practice in all registration courts in BiH. 	<ul style="list-style-type: none"> Competent registry courts
<p>FBiH</p> <ul style="list-style-type: none"> Unclear definition of the cases that may result in a suspension of registration procedure. 	<p>FBiH</p> <ul style="list-style-type: none"> It is necessary to more specifically define the Law on Business Registration of FBiH and facts that may lead to the termination of the registration process. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH
<ul style="list-style-type: none"> Registering statutory amendments important for legal transactions. 	<ul style="list-style-type: none"> To enable business subjects to register changes significant for legal transactions only in the statute and to harmonize the practices of the registration courts. 	<ul style="list-style-type: none"> Competent registry courts

TAXES

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>FBiH</p> <ul style="list-style-type: none"> Complicated application of interstate Double Taxation Avoidance Agreements in BiH. 	<p>FBiH</p> <ul style="list-style-type: none"> All information about agreements should be stored in a single database and publicly available. Instruction of the FBiH Tax Administration should be discontinued according to which taxpayers are required to seek approval from Ministry of Finance and Treasury of BiH for every business situation in which a certain tax relief may apply as provided for under an interstate Double Taxation Avoidance Agreement. 	<ul style="list-style-type: none"> Ministry of Finance and Treasury of BiH Tax Administration of FBiH Ministry of Finance of FBiH Ministry of Finance of RS
<ul style="list-style-type: none"> An unclear legal definition of "profit", and "services" performed in the territory of the Federation, as basis on which the withholding tax is calculated. 	<ul style="list-style-type: none"> Clearly define the subject of withholding taxation when other services are in question, i.e. what the term "service in the Federation" means. 	<ul style="list-style-type: none"> Ministry of Finance of FBiH
<ul style="list-style-type: none"> Complicated POD form submission procedure for income payments to non-resident companies. 	<ul style="list-style-type: none"> Prescribe submitting the POD form in an Annual report of complete payments to non-residents, based on services, calculated and paid withholding tax. 	<ul style="list-style-type: none"> Ministry of Finance of FBiH

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
PERSONAL INCOME TAX LAW		
<p>FBiH and RS</p> <ul style="list-style-type: none"> o Unclear Law Provisions on Personal Income Tax and Social Security Contributions. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> o Specify the obligation to pay social security contributions for individuals residing in the territory of FBiH, RS and BD, and earning their income in another administrative unit. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH o Ministry of Finance of RS o Directorate of Finance BD
<p>RS</p> <ul style="list-style-type: none"> o Complicated procedures for filing tax returns for personal income tax and social security contributions in RS. 	<p>RS</p> <ul style="list-style-type: none"> o To simplify the procedure of filing tax returns in RS by submitting a single form for the personal income tax and social security contributions. 	<ul style="list-style-type: none"> o Tax Administration of RS
<p>FBiH</p> <ul style="list-style-type: none"> o The complicated procedure of paying taxes and social security contributions and an unjustifiably large number of payment orders. 	<p>FBiH</p> <ul style="list-style-type: none"> o Simplify the process of paying public revenues, because the current way of paying contributions, income taxes, and fees for employees to various bank accounts is time consuming and costs a lot. 	<ul style="list-style-type: none"> o Tax administration of FBiH
<p>FBiH, RS and BD</p> <ul style="list-style-type: none"> o Unclear taxation procedures for foreign citizens who have resident status in BiH. 	<p>FBiH, RS and BD</p> <ul style="list-style-type: none"> o To harmonize and formulate more detailed regulations on the taxation of foreign citizens. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH o Ministry of Finance of RS o Directorate of Finance BD
VALUE ADDED TAX		
<p>FBiH and RS</p> <ul style="list-style-type: none"> o VAT refund to persons who do not have registered business in BiH. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> o The Law on VAT should define all possible restrictions regarding VAT refunds to foreign legal entities. In Rulebook on the Application of the VAT Law should also clearly identify "similar" foreign legal entities that are entitled to a VAT refund. 	<ul style="list-style-type: none"> o Ministry of Finance and Treasury of BiH o Indirect Taxation Authority of BiH (BiH ITA)
<ul style="list-style-type: none"> o Issuance of opinions by Indirect Taxation Authority. 	<ul style="list-style-type: none"> o Providing expert opinions should be altered in a way that the opinion can be sought in all cases from the moment the control process starts and it should be published on the ITA official website. 	<ul style="list-style-type: none"> o Indirect Taxation Authority of BiH (BiH ITA)
PROFIT TAX LAW		
<p>FBiH and RS</p> <ul style="list-style-type: none"> o Different taxation practices for business units with seats in the other entity and BD. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> o Add a new article in Law on Profit Tax of FBiH which would, like in the laws in RS and DB, provide a basis for agree- 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH o Tax Administration of FBiH o Ministry of Finance of RS

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
PROFIT TAX LAW		
	<p>ments between the relevant ministries on the possibility of filing of single tax balance sheet. In RS, abolish taxation of business units whose principal place of business is in another entity or BD.</p>	<ul style="list-style-type: none"> o Tax Administration of RS
<ul style="list-style-type: none"> o The entities regulate tax deductible expenses differently based on general and special provisions for potential loan losses in banks. 	<ul style="list-style-type: none"> o Harmonization of entity and DB regulations on the taxation of general and special provisions for potential loan losses in banks. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH o Ministry of Finance of RS
<p>FBiH</p> <ul style="list-style-type: none"> o The unclear definition of export as a basis for profit tax payment exemption. 	<p>FBiH</p> <ul style="list-style-type: none"> o To define export as a basis for tax exemption in a legally precise manner, define whether it also applies to profits generated by providing services. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH
<p>RS</p> <ul style="list-style-type: none"> o The Law does not clearly define the meaning of unrealized gains/losses, income/expenses which are not included in the tax base. 	<p>RS</p> <ul style="list-style-type: none"> o Amend the law so that it specifies all unrealized income/expenses and gains/losses that are not included in the tax base. 	<ul style="list-style-type: none"> o Ministry of Finance of RS o Tax administration of RS
<p>FBiH</p> <ul style="list-style-type: none"> • Transfer prices o Based on the Federal Law on Profit Tax one can conclude that all legal entities, regardless of their primary place of business are considered to be related, which entails the analysis of the compatibility of transfer prices and potential double taxation within the territory of FBiH. 	<p>FBiH</p> <ul style="list-style-type: none"> o Legally clearly define the criteria by which legal entities are considered as related legal entities. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH
<ul style="list-style-type: none"> o Two existing methods in Profit Tax Law are not enough to determine the proper range of transfer prices. 	<ul style="list-style-type: none"> o The law needs to enable the application of all the methods defined by the OECD model and define which documentation is necessary for proving the company's transfer prices. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
LAW ON EXCISE DUTIES		
<p>BiH</p> <ul style="list-style-type: none"> o Paying excises in advance – (Article 23 of the Law on Excise Duties). o Retroactive excise payment, on January 1st - (Article 45 of the Law on Excise Duties). 	<p>BiH</p> <ul style="list-style-type: none"> o Initiate procedures for the adoption of amendments to the law according to which the deadline for deferred payment of excise taxes on tobacco products will be specified. o Initiate procedures for the suspension of Article 45 of the Law on Excise Duties and the obligation of paying the excise difference for existing goods in stock on January 1st. The new, raised taxes/excises should be applied to goods traded for the first time by companies or importers in BiH. 	<ul style="list-style-type: none"> o Governing Board of ITA o Ministry of Finance and Treasury of BiH o Ministry of Finances of RS o Ministry of Finances of FBiH o Governing Board of ITA o Ministry of Finance and Treasury of BiH o Ministry of Finances of RS o Ministry of Finance of FBiH

LABOUR LAW

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>FBiH, RS and BD</p> <ul style="list-style-type: none"> • Compensations for employees on sick leave and refund of those compensations to employers by the Health Insurance Funds. 	<p>FBiH, RS and BD</p> <ul style="list-style-type: none"> • Harmonize the laws in the cantons of FBiH, as well as the entities and BD in this area. 	<ul style="list-style-type: none"> • Parliament of FBiH • National Assembly of the Republic of Srpska • Assembly of Brčko District • Relevant Entity Ministries • Health Insurance Institutes
<ul style="list-style-type: none"> • Salary refund to female employees on maternity leave and refunds to employers. 	<ul style="list-style-type: none"> • It is necessary to harmonize regulations in all cantons in FBiH, RS and Brčko Distrikt, in a way which would determine an equal maternity leave refund in all parts of BiH. 	<ul style="list-style-type: none"> • Parliament of FBiH • National Assembly of the Republic of Srpska • Assembly of Brčko District • Cantonal Assemblies (in FBiH) • Relevant Entity Ministries • Social Work Centres
<p>FBiH</p> <ul style="list-style-type: none"> • Collision of collective agreements in FBiH with the Law on Personal Income Tax of FBiH and the Law on Social security Contributions of FBiH. 	<p>FBiH</p> <ul style="list-style-type: none"> • Provide simpler and more accessible mechanisms and procedures for amendments to collective agreements, as well as for their termination, through amendments to the Labour Law that is in parliamentary procedure. Also, to harmonize the General Collective Agreement with the Personal Income 	<ul style="list-style-type: none"> • Parliament of FBiH • Government of FBiH • Entity Ministries of Labour • Association of Employers in FBiH • Alliance of Independent Unions in FBiH

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
	Tax Law and the Salary Contribution Law, so that they would not be interpreted and applied differently.	
<ul style="list-style-type: none"> Lack of managerial contract institute in the Labour Law of the FBiH. 	<ul style="list-style-type: none"> It is necessary to introduce the possibility of concluding a managerial contract without establishing an employment relationship. 	<ul style="list-style-type: none"> Parliament of FBiH Government of FBiH Ministry of Labour and Social Policy of FBiH
<p>FBiH and RS</p> <ul style="list-style-type: none"> Regulating the legislation in FBiH and RS regarding occasional and temporary employment through private employment agencies. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> It is necessary to make a legal framework which will define the founding and work of private hiring agencies. 	<ul style="list-style-type: none"> Parliament of FBiH Government of FBiH Ministry of Labour and Social Policy of FBiH
SUGGESTIONS FOR AMENDMANS TO THE DRAFT OF THE NEW LABOR LAW OF FBiH		
<p>FBiH</p> <ul style="list-style-type: none"> Defining the institute of discrimination as a wider and more comprehensive legal term. 	<p>FBiH</p> <ul style="list-style-type: none"> Articles 8 and 9 of the Draft need to be revised. Article 9 should be amended as well, in Paragraph 2, so that the provisions of the Employment Contract and the individual provisions by the employer are both void if they are determined to be discriminating. 	<ul style="list-style-type: none"> Parliament of FBiH Ministry of Labour and Social Policy of FBiH
<ul style="list-style-type: none"> Limiting the abuse of breaking two employment contracts for a definite period of time as to avoid hiring employee for an indefinite period of time. Special defining of the directors' employment duration – in accordance with the mandate if it is longer than 2 years. 	<ul style="list-style-type: none"> It is necessary to revise the Article 22, Paragraph 3 of the Draft. 	<ul style="list-style-type: none"> Parliament of FBiH Ministry of Labour and Social Policy of FBiH
<ul style="list-style-type: none"> Harmonize the legal regultions concerning the counting/non-counting of recess during work hours into the employees full-time work day. 	<ul style="list-style-type: none"> The provision of Article 44, Paragraph 3 of the Draft of the Labor Law needs to be revised and harmonized with the Labor Law of RS. 	<ul style="list-style-type: none"> Parliament of FBiH Ministry of Labour and Social Policy of FBiH
<ul style="list-style-type: none"> It is necessary to ensure the harmonization of collective agreements with the new Labor Law. 	<ul style="list-style-type: none"> Amend Article 182. of the Draft of the Labour Law in a way that all applicable collective agreements must comply with this law within six months. 	<ul style="list-style-type: none"> Parliament of FBiH Government of FBiH Ministry of Labour and Social Policy of FBiH Association of Employers in FBiH Alliance of Independent Unions in FBiH

CONSTRUCTION PERMITS

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>FBiH and RS</p> <ul style="list-style-type: none"> • Inefficient application processing <p>o Inefficient application processing is reflected in the decisions and actions that are dependent on the entity territorial organization.</p>	<p>FBiH and RS</p> <p>o Define the unique form for the lower levels, municipalities and cantons, which will be used to provide opinion in terms of giving a positive or negative estimation on the construction of the subject facility.</p>	<p>o Municipalities in FBiH and RS</p>
<p>o The problem of slow application processing in FBiH and RS still remain present. The treatment of the investors varies from municipality to municipality.</p>	<p>o Set up and link electronic databases that will allow for faster and easier processing of all necessary documentation.</p>	<p>o Municipalities in FBiH and RS</p>
<ul style="list-style-type: none"> • The required documentation for obtaining urban and construction consents is excessive. 	<ul style="list-style-type: none"> • A unique consent for the supporting infrastructure to be requested at least on the annual basis, which would include the industrial area site where the construction is being carried out and obligate the authorities to issue the consent no later than 7 days from the date the application submission. 	<ul style="list-style-type: none"> • Ministry of Physical Planning of FBiH
<ul style="list-style-type: none"> • Incoherence and the lack of cooperation between the state /federal administrative authority and the state/public companies whose consents are required for obtaining construction permits. 	<ul style="list-style-type: none"> • The solution to this problem lies in the activities of the competent authority level which has the jurisdiction over these state-owned companies. It is necessary to establish a common database which would allow the mutual cooperation between these state owned companies. 	<ul style="list-style-type: none"> • Relevant state and federal administrative authorities • Public companies in FBiH and RS
<ul style="list-style-type: none"> • The law is not clear enough in regards to regulating the payment of fees for the usage of construction land (the rent). 	<ul style="list-style-type: none"> • Harmonize the provisions of relevant laws at all levels; RS, FBiH, cantons and municipalities, in formal, substantive, and terminological sense. 	<ul style="list-style-type: none"> • Ministry of Physical Planning of FBiH
<ul style="list-style-type: none"> • Legislation vagueness. 	<ul style="list-style-type: none"> • The law should more clearly define the term linear infrastructure and include the telecommunication sector. 	<ul style="list-style-type: none"> • Legislative and executive authorities of FBiH and RS

ENVIRONMENTAL PERMITS

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>FBiH</p> <ul style="list-style-type: none"> Inefficient transparency of public discussions, which is reflected in the slow processing of applications for environmental management. 	<p>FBiH</p> <ul style="list-style-type: none"> Call for a public discussion on the plan of activities and deadlines for sending comments on already made action plan should be reduced. Ministry should enable download of documents electronically and amend the Ordinance for the issuance of environmental permits. 	<ul style="list-style-type: none"> Government of FBiH Ministry of Environment and Tourism of FBiH
<ul style="list-style-type: none"> The lack of necessary data and difficulties that arise when analysing the zero state for the certain areas. 	<ul style="list-style-type: none"> Since provider's activity plan cannot be submitted without this Study of pollution in the zero state, the recommendation would go in the direction that the Ministry of Environment and Tourism through competent cantonal and local authorities should take the necessary measures to eliminate these obstacles. 	<ul style="list-style-type: none"> Ministry of Environment and Tourism of FBiH
<ul style="list-style-type: none"> An applicant who applied to the public tender published by the Environmental Fund of the FBiH can only submit one project per program. 	<ul style="list-style-type: none"> Applicants who invest greater resources in the Fund should be allowed to submit multiple projects per program. 	<ul style="list-style-type: none"> Environmental Fund of FBiH
<ul style="list-style-type: none"> Compensation for air pollutants to be paid irrespective of the fact whether they are inside or outside the emission marginal values. 	<ul style="list-style-type: none"> Operators should be free of charge when it is determined that the emissions within the marginal limits. 	<ul style="list-style-type: none"> Government of FBiH
<ul style="list-style-type: none"> Permitted values for existing plants or for plants that are in phase of adjustment to the best available techniques and emission marginal values are not defined in relevant regulations. 	<ul style="list-style-type: none"> Relevant regulations should define marginal values for the existing plants. Environmental permits should also define marginal values for the period of adjustment that must be a bit milder than values defined in the Regulations that apply to new plants or plants that are harmonized with the best available techniques. It is necessary to define realistic deadlines for the implementation of projects in the field of environmental protection. 	<ul style="list-style-type: none"> Ministry of Environment and Tourism of FBiH
<ul style="list-style-type: none"> The level of oxygen in the waste gases, which is used for the reduction of parameters in Nm3 	<ul style="list-style-type: none"> Clearly define the level of oxygen in the waste gases in the relevant Regulations. 	<ul style="list-style-type: none"> Ministry of Environment and Tourism of FBiH

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>is not defined - due to lack of this data, it is impossible unambiguously determine the concentration of pollutants in the flue gases.</p>		
<ul style="list-style-type: none"> The Regulation defines the basic parameters of wastewater quality, but not the specific parameters of wastewater quality, for example, in case of iron and steel production. The Regulation does not clearly define who will carry out the Program of waste water monitoring. The regulation does not define the items of the Monitoring Program, which would also identify the entity authorised to perform the Monitoring Plan. 	<ul style="list-style-type: none"> It is necessary to clearly define whose responsibility it is to create a Program for waste water monitoring (whether authorized laboratories, operators, or both together). Clearly define the items of the Program for waste water monitoring. 	<ul style="list-style-type: none"> Government of FBiH
<ul style="list-style-type: none"> Uncoordinated work between relevant government institutions. 	<ul style="list-style-type: none"> Increase the cooperation of relevant governmental institutions and introduce a system of delivery of permits and decisions, ex officio, to other government institutions. 	<ul style="list-style-type: none"> Ministry of Environment and Tourism of FBiH

CONCESSIONS

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>BiH, FBiH and RS</p> <ul style="list-style-type: none"> Vaguely defined term "concessionaires" at the state and entity levels. 	<p>BiH, FBiH and RS</p> <ul style="list-style-type: none"> Precisely define the time period in which the (foreign) legal entity, after the granting of the concession, should establish a domestic legal entity that will perform concessional activity and precisely define the term "concessionaire". 	<ul style="list-style-type: none"> Parliament of FBiH National Assembly of RS Commission for concession of BiH Commission for Concession of FBiH and RS
<ul style="list-style-type: none"> The procedures for granting concessions are imprecisely defined (especially the part related to the public tender) in the three existing laws on concessions. 	<ul style="list-style-type: none"> Define the precise deadlines for each step and responsibilities of all parties in the process of granting concessions. 	<ul style="list-style-type: none"> Parliament of FBiH National Assembly of RS Commission for Concession of BiH Commission for Concession of FBiH and RS

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>FBiH and RS</p> <ul style="list-style-type: none"> • Unsolicited offers are differently regulated by entity laws. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> • Ensure a harmonization of regulations through the adoption of entity Draft Law on Concessions that are currently referred to parliamentary procedure. Draft an independent proposal in accordance with generally accepted solutions. 	<ul style="list-style-type: none"> • Parliament of FBiH • National Assembly of RS • Government of FBiH and RS • Responsible Entity Ministries of FBiH and RS • Competent Commission for Concessions
<ul style="list-style-type: none"> • Impossibility of taking over projects by financial institutions under the existing laws. 	<ul style="list-style-type: none"> • It is necessary to precisely regulate the transmission concession contracts to financial institutions/creditors but also from creditor to a third party. 	<ul style="list-style-type: none"> • Parliamentary Assembly of BiH • Parliament of FBiH • National Assembly of RS • Commissions for Concession of BiH, RS and FBiH
<p>RS</p> <ul style="list-style-type: none"> • Discretion ability of the relevant institutions in the process of choosing a strategic partner in the Republic of Srpska. 	<p>RS</p> <ul style="list-style-type: none"> • More precisely define the conditions under which a particular business entity may be granted the status of a strategic partner. 	<ul style="list-style-type: none"> • National Assembly of RS • Commission for Concession of RS • Relevant Ministries of RS for approval strategic partners
LEGISLATION IN THE PROCEDURE OF OBTAINING CONCESSIONS IN BiH		
<p>BiH, FBiH and Cantons</p> <ul style="list-style-type: none"> o Inconsistent application of the principle of timeliness and transparency in the process of granting concessions. 	<p>BiH, FBiH and Cantons</p> <ul style="list-style-type: none"> o Determine the exact deadlines for the implementation of procedures for granting concession. All processes involving concessions must be transparent in a way that all parties concerned have an insight into the operation and decision making of Commission for Concessions. 	<ul style="list-style-type: none"> o Competent Commissions for Concessions
<ul style="list-style-type: none"> o An appeal cannot be filed against the decision of the Commission for Concessions except in two cases. 	<ul style="list-style-type: none"> o Second instance jurisdiction should be introduced in a way that Commission at the state level functions as an appellate authority for the Commission at the Federal level, and the Commission at the Federal level would function as an appellate authority for the cantonal Commissions for Concessions. 	<ul style="list-style-type: none"> o Parliamentary Assembly of BiH o Parliament of FBiH o Competent Commissions for Concessions
<ul style="list-style-type: none"> o The large number of laws on concessions in BiH which complicates the procedure of granting concessions. 	<ul style="list-style-type: none"> o It is necessary to perform the harmonization of policies, practices and procedures at all levels for the purpose of securing the efficient work of the Commission. 	<ul style="list-style-type: none"> o Parliamentary Assembly of BiH o Parliament of FBiH o Competent Commissions for Concessions

ENERGY EFFICIENCY AND RENEWABLE ENERGY SOURCES

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>BiH and FBiH</p> <ul style="list-style-type: none"> The lack of legal framework for the implementation of measures in order to increase the energy efficiency in accordance to EU standards. 	<p>BiH and FBiH</p> <ul style="list-style-type: none"> Adopt a national plan to formulate goals and strategies for policy at the state and entity levels and define the implementing measures to increase energy efficiency. 	<ul style="list-style-type: none"> Ministry of Foreign Trade and Economic Relations of BiH Ministry of Energy, Mining and Industry of FBiH Ministry of Industry, Energy and Mining of RS
<p>FBiH and RS</p> <ul style="list-style-type: none"> Government incentives for the development of projects in field of renewable energy sources. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> Consider additional measures of incentives for investments in renewable energy sources, which would prevent the total freezing of activities in this field. 	<ul style="list-style-type: none"> Government of FBiH and RS
<ul style="list-style-type: none"> The amount of concession fees for the area of renewable energy sources. 	<ul style="list-style-type: none"> The introduction of variable values of concession fees in accordance with prescribed financial flow of the realization of specific project. 	<ul style="list-style-type: none"> Commission for Concession of BiH Commission for Concession of FBiH and RS
<p>FBiH</p> <ul style="list-style-type: none"> Ordinance on Technical Requirements for Thermal Protection of Buildings and Rational Use of Energy does not contain a provision on the use of Multipor mineral insulation boards approved on the basis of the European Technical Approval. 	<p>FBiH</p> <ul style="list-style-type: none"> It is necessary to include Multipor in the Ordinance on Technical Requirements for Thermal Protection of Buildings and Rational Use of Energy. 	<ul style="list-style-type: none"> Ministry of Physical Planning of FBiH
<ul style="list-style-type: none"> Inability to use alternative sources of energy in the cement industry. 	<ul style="list-style-type: none"> The authorities competent to tackle this problem should get involved in the process of solving it and at the same time launch a campaign to raise awareness and engage the general public through education and the media. 	<ul style="list-style-type: none"> Ministry of Environment and Tourism of FBiH

JUDICIARY

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>BiH</p> <ul style="list-style-type: none"> The lack of regulation on international legal assistance in civil and commercial matters. 	<p>BiH</p> <ul style="list-style-type: none"> In order to conduct a successful implementation of international conventions and agreements it is necessary 	<ul style="list-style-type: none"> Ministries of Justice of BiH, FBiH, RS

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
	<p>to adopt a specific legal framework which would provide general and specific forms of international legal assistance in civil and commercial matters, it would allow judges to improve their mutual judicial cooperation, and facilitate addressing and execution of requests.</p>	<ul style="list-style-type: none"> Legislative Authorities of BiH, FBiH and RS
<p>FBiH and RS</p> <ul style="list-style-type: none"> Specialization of courts and judges (for the commercial court cases). 	<p>FBiH and RS</p> <ul style="list-style-type: none"> It is recommended to increase the number of judges in municipal courts with commercial departments. It is necessary to establish a higher degree of specialization of judges which would enable them to adequately understand the market in BiH. 	<ul style="list-style-type: none"> High Judicial and Prosecutorial Council of BiH– HJPC Centre for Judicial and Prosecutorial Training of FBiH and RS - CJPT
<ul style="list-style-type: none"> Trial within a reasonable time. 	<ul style="list-style-type: none"> In order to accelerate court proceedings it is necessary to adopt a concrete package of measures, such as measures for sanctioning the infringement of trial within a reasonable time; establish the institute of protection of the right to trial within a reasonable time; establish a judicial inspection which would monitor the legality and efficiency of judges, technical court operations should be transferred to administrative staff; hire more judges. 	<ul style="list-style-type: none"> High Judicial and Prosecutorial Council of BiH– HJPC Competent judicial authorities of BiH, FBiH and RS
<ul style="list-style-type: none"> The linkage between the companies’ registry and court departments. 	<ul style="list-style-type: none"> By consolidating the companies' registries and the court offence department in a way to facilitate the access to the companies' registries and the fine registries, with minor cost and technical improvements, the procedure would be significantly accelerated and the cost of registering a business or data change would be significantly reduced. It is also necessary for the registration courts to introduce a practice of entering annotations when companies enter into liquidation process. 	<ul style="list-style-type: none"> Courts in FBiH and RS

EXPORT

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>FBiH and RS</p> <ul style="list-style-type: none"> • Issuing and recognition of certificates in countries in the region and EU. 	<p>FBiH and RS</p> <ul style="list-style-type: none"> • In this respect, additional efforts should be made to ensure that at least the neighbouring countries (Croatia, Serbia, Montenegro) start mutually recognizing certificates issued by competent national institutions. 	<ul style="list-style-type: none"> • Ministry of Foreign Trade and Economic Relations of BiH • Institute for Accreditation of BiH - BATA
<ul style="list-style-type: none"> • Automation of the Process of awarding ECMT licenses. 	<ul style="list-style-type: none"> • The Ministry of Transport and Communications should amend rules to formulate the complete process of issuing ECMT licenses through the use of algorithmic software. 	<ul style="list-style-type: none"> • Ministry of Transport and Communications of BiH
CUSTOMS AND SPECIFIC ISSUES EXPORTERS FACE DURING CLEARANCE		
<ul style="list-style-type: none"> o Too high price for correcting a CD (very often due to a trivial technical error). 	<ul style="list-style-type: none"> o Reduce the price to a reasonable level (2,00-5,00 BAM). 	<ul style="list-style-type: none"> o Indirect Taxation Authority of BiH – ITA
<ul style="list-style-type: none"> o Individual payment of duty for each export generates additional bank charges. 	<ul style="list-style-type: none"> o Allow collective complete monthly declaration for those who have the status of an approved exporter or at least collective payment of all duties on a single payment slip when submitting documents for the complete declaration. 	<ul style="list-style-type: none"> o Indirect Taxation Authority of BiH - ITA
<ul style="list-style-type: none"> o Collecting a copy of 3 EX declarations stamped by competent authority at a border crossing and submitting it to the competent institution is a complicated procedure, especially for large exporters. 	<ul style="list-style-type: none"> o Placing mailboxes at all border crossings for forwarders to put certified copies of EX declarations in addressed envelopes supplied by exporters would significantly facilitate this important and complex operation. This practice has been used in EU countries for a long time. Liberalization of deadlines for submitting the documents would also be very beneficial to exporters. 	<ul style="list-style-type: none"> o Indirect Taxation Authority of BiH - ITA
<ul style="list-style-type: none"> o The customs authorities of some countries, at the entrance, insist on retaining one copy of the invoice with the stamp of the BiH customs authorities. This may result in the inability to submit customs declarations for definitive export, which is a 	<ul style="list-style-type: none"> o Since we are not able to influence the customs regulations of other countries we suggest that the ITA – regional centre Banja Luka modifies the "Instructions on simplified customs procedures based on the invoice"- referring to the part containing the number of approved invoices that are re- 	<ul style="list-style-type: none"> o Indirect Taxation Authority of BiH - ITA

OPEN ISSUES	RECOMMENDATIONS	INSTITUTION
<p>customs offense that may result in withdrawing the approval for simplifying the procedure.</p>	<p>turned to a exporter (three certified copies instead of two). Our suggestion is that the customs officer does not have obligation to inscribe tally number on third copy, in which he noted the invoices – the stamp of the customs office would be enough.</p>	
<p>o Collecting invoices in the simplified procedure by invoice represents a complex process, and by not collecting all the invoices, problems arise with the additional registration which then calls the approval into question.</p>	<p>o Provide an opportunity and simple procedure for subsequent endorsement of invoices by the customs office at the border based on which the goods enter into a simplified customs procedure, since there is a hard copy in the official records and the records in the electronic tally.</p>	<p>o Indirect Taxation Authority of BiH - ITA</p>
<p>o Insufficient number of ECMT licenses for the BiH and the carriers.</p>	<p>o State action to obtain a larger number of ECMT licenses, particularly for Austria and Italy. There is an insufficient number of these licenses in relation to the demands and it represents a barrier to export.</p>	<p>o Ministry of Transport and Communications of BiH</p>
<p>o Low speed of commercial rail and lack of cargo wagons.</p>	<p>o It is necessary to repair railroads, build a new infrastructure and purchase cargo wagons Uacs and Habis.</p>	<p>o Ministry of Transport and Communications of BiH</p>

6 PILLARS

6.1. BUSINESS REGISTRATION

INTRODUCTION

During this year, there has been a certain progress in the work of most registration courts in BiH, so the registration process of new companies is accelerated and is completed in most courts within five days if all legal requirements are met. On the other hand, the procedure for registering more complex changes (e.g. statutory changes) in existing companies is still very expensive, complicated, and long.

Decisions made by the competent authorities of the business subjects must also be processed by the notary, which only lengthens the process of registration and makes it more expensive. Members of the Council feel that the procedure would be significantly accelerated and simplified if the notary processing of the founding acts of the company and the changes to them were to be suspended. On the other hand, this suspension would not have negative effects whatsoever, because it is implied that companies approach legal affairs with enhanced attention so the legal assumption is that they are capable of preparing relatively simple founding acts themselves.

The process of registration itself varies from court to court in BiH, both in respect to the duration of the procedure, and the essence of the procedure (e.g. the documentation necessary for certain changes), which creates legal insecurity. Even in the Federation, where the procedure is defined by the same law, different courts demand different documentation (as will be seen in the recommendation below, when registering status changes to limited liability companies, some courts demand changes in the founding documents, whereas others demand a change in the company's statute).

Even though in simpler procedures (e.g. founding a company and changing the director) there has been an increase in the judges'

promptness, in more complex procedures (e.g. increasing capital in assets and rights, or status changes), the courts are a lot slower and reaching decisions take months. Although it is clear that founding companies and changes in their administration should be a priority in the court's work, it is intolerable that it takes months for decisions on status changes and capital increase to come through after a complete application was filed, because these changes are usually very important for the normal work and planned development of a company, so such long procedures block its work and planned transformation.

In this issue of the White Book we suggest several concrete ideas that might be implemented relatively quickly and easily, and would contribute to the acceleration of the registration process (e.g. enabling registration judges to get an insight in the registry of fines, to eliminate the need for providing a certificate proving that there are no law violation sentences) or open additional foreign investment opportunities (abolishing unnecessary restrictions regarding the share amounts that foreign companies can have in the capital of BiH companies dealing with public information). Year after year, the recommendation to change entity laws on business registration is repeated, which would enable the registration of pledge of shares in registries of companies. The existing situation in which the registers don't contain this information creates a significant legal risk and in practice, there are already completely unnecessary disputes when it comes to purchases of burdened shares, where the burden was not documented in the registry. This amendment would be minimal (if it's even necessary) and there is no reason to wait for years for its implementation.

It is commendable that, since the last issue of the White Book, activities for electronic signature have been initiated in the competent ministry.

The Register of business subjects would, through an electronic signature online during a registration application, facilitate the registration process and save time for business subjects, and make work easier and less hectic for itself as well.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Removing the obstacles for foreign investments in companies dealing with public information

BiH: OPEN ISSUE

The Law on Policies of Foreign Direct Investments of BiH anticipates investments by foreign investors into companies dealing with public information and weapons manufacture to be limited to 49% of those companies. The restriction to weapon manufacturers could be interpreted as making sense, but the one to the media is obviously the result of an outdated way of thinking in which information is equal to weapon, and thus we should prohibit foreign investors from influencing companies dealing with public information. The members of the Council feel that this restriction is discriminatory and unnecessary, especially when bearing in mind that in this day and age information is versatile and comes from local as well as foreign sources. Besides, this restriction has been easily circumvented numerous times in practice through indirect foreign investments into media, and it is clear there is no rational excuse for it.

BiH: RECOMMENDATION

While preparing the White Book, the Council had informal consultations with the Ministry of Foreign Trade and Economic Relations of BiH, during which attention was drawn to this unnecessary restriction. Activities in the field of amending the Law on Policies of Foreign Direct Investments are expected, and they should lead to the annulment of the legal regulations barring foreign investments into companies

dealing with public information. The Council will provide any support necessary in the implementation of these activities.

Establishment of pledge on shares in limited liability companies (LLC) and information transparency about pledges on stock shares

FBiH and RS: OPEN ISSUE

Registration courts are the only ones documenting shares in LLC, and it would be logical for them to register pledges to those shares as well. There have been several attempts to register such pledges in court, but courts rejected them because there is no explicit legal regulation enabling that (however, there isn't one prohibiting it either). Rights to pledges are thus documented in the Pledge Registry, which was primarily created for movables and claims, and allows search only by tax number or the pledge registration number. Thus, the Pledge Registry system practically does not allow the search for pledges on shares made by foreign investors in a BH company (since they don't have the 13-digit tax number from BiH necessary for searching the Pledge Registry). This also decreases the legal security, because potential buyers of shares cannot, through public records, be informed about possible rights to pledges unlike e.g. stock buyers, since entity registries for securities successfully perform the task of registering pledges on stocks. On the other hand, when it comes to pledges on stocks, third persons cannot get that information (only the pledge debtor can), which also contradicts the principle of the pledge transparency.

FBiH and RS: RECOMMENDATION

It is necessary to amend the entity laws on business registration in a way which would directly prescribe the registration procedure for share pledges, led by registration courts. The amendments should anticipate the obligation of the pledge debtor whose share is obliged to

register the pledge in the registration court, and penalties for failing to do so.

It is also necessary for adequate entity regulations dealing with security registers to anticipate the possibility of access to information about stock pledges to all third persons, without any of the currently existing limitations (at this time, only the pledge debtor can access the information).

The role of public notaries in the process of status changes of companies

FBiH and RS: OPEN ISSUE

The notary laws in both entities prescribe a mandatory participation of a notary in the decision-making of companies which will later be a basis for the registration of new companies or the registration of status changes of existing companies in the registration court. Considering the relatively high cost of notary fees paid by companies, we feel that the procedures of amending the founding acts should be simplified through excluding the obligatory notary processing of companies' internal acts from the corresponding notary laws. If the Government sees some benefits from notary involvement, an alternative is to anticipate the involvement of notaries as "preventive judges" who would, in the procedure of notary processing of the companies' decisions, also examine the fulfilment of other criteria by checking documentation necessary for the amendments in the competent registration court, all within their existing charges. This way, the decision processed by the notary would have more importance and would testify to the fulfilment of all the criteria necessary for the mentioned amendments. The court's work would be significantly facilitated and would be reduced only to the registration of the decision processed by the notary (which would come with all the other necessary documentation), and that should also lead to reducing court fees and registration time, which should

finally lead to less expenses for the founding of new companies and registration of status changes for existing companies.

FBiH and RS: RECOMMENDATION

Amend the notary laws in a way which would either exclude the obligatory notary processing of company documents or put notaries in charge of examining all criteria and the documentation necessary for the decisions they're processing and their registration in the competent registration court. In the second case, it would be necessary to amend entity business registration laws in the sense of limiting the function of the registration court to the registering of decisions processed by the notary and, according to the reduced functions and responsibilities of the registration courts, also amend laws on court fees in order to reduce court fees paid for registering the decisions authorized by the notary.

Unclear definition of the cases that may result in a suspension of registration procedure*

FBiH: OPEN ISSUE

The FBiH Business Registration Law (Article 55 ph. 2 and 3) provides that if a competent registration court suspects the existence of a fact that may decide whether the registration application is in line with this or other laws, and if other court of law is competent to determine such fact, the registration procedure will be suspended until the other competent court brings a final decision. There were situations when this article was interpreted in very broad terms and the registration procedure was suspended even in cases when the company was involved in a parallel litigation that was unrelated to the status change being registered. Due to the length of time required to end litigation proceedings, such groundless suspension of the registration procedure results in irreparable losses and creates difficulties in company everyday operations.

FBiH: RECOMMENDATION

Since the Law does not specify which facts are decisive for registration with a court registry, there should be a more detailed definition of the facts that may lead to a suspension of registration procedure.

In RS there are no prescribed cases which can lead to suspend registration proceedings, except for withdrawal of the application for entry into the register by the applicant (Article 62 Law on Business Registration of RS).

Solving the practical issues of significant importance for improving business registration

Enabling the registration court to access the Registry of Fines

FBiH and RS: OPEN ISSUE

One of the steps necessary for founding a company is providing proof that there are no debts in the Registry of Fines (to the municipal/basic court). The request for this certificate costs 15 KM, and it takes 7 days for it to be issued, which points to a waste of time and money. Relevant regulations are no obstacle to a simpler solution to this problem, as suggested in the recommendation.

FBiH and RS: RECOMMENDATION

In order to respect the Law on Misdemeanours which bans persons with unpaid fines from registering as directors of companies, the registration court should be able to access the registry of fines electronically. This way, with minimal costs and technical advancements, registration courts could access the database within minutes and check whether the founder or director has any unpaid fines, which would significantly save costs and time in the registration procedure and data changes important for legal transactions. Business entities would have no problem paying the 15 KM fee, so that the

budget doesn't lose the income from these certificates, if that saved them the 7-8 days they lose at present while getting the certificate, going to court, waiting in lines, paying fees...

Applying the transparency principle for the Court Register

This year has seen significant progress in the field of register data accessibility. A long-prepared website has started working and it was supposed to collect data about all companies at all levels of BiH. Unfortunately, the system still isn't completely updated and reliable, and because of political reasons it is clear that it will not be updated with the complete data any time soon.

FBiH and RS: OPEN ISSUE

According to the principle of public access to the court register, which is also applied in BiH, the data from the court register is public and everyone has the right to examine it, without proving legal interest. A significant progress has been made in this field through the electronic court register of business entities registered in the territory of FBiH and BD BiH. Searching this database is free of charge and is done by name of business entity or ID number of business entity.

However, the electronic registry has not yet been completely harmonized with the court registry, so the reliable data on business entities still has to be obtained from the competent courts. Also, there is a noticeable absence of business entities from RS in the electronic registry.

Some courts (e.g. the Municipal Court in Sarajevo) demand proving legal interest for viewing hard copy files of cases, which there is no legal basis for, since these are documents that should be available to the public.

FBiH and RS: RECOMMENDATION

The improvement of the electronic registry would aim to help perform the entire data search

on business entities electronically, which would save time and money one wastes while searching for data in court registries. The website could be updated with all the important data for the registration procedure, including documentation necessary for certain procedures, the court fees, and so on. In the future, it would be ideal to enable applications on that website, once the technical requirements for that are met. It is important for the data in this register to be updated regularly and harmonized with the court database, as well as to make the data of the business entities registered in RS available in this electronic database.

Additionally, courts need to harmonize their practices and allow copying of all files from registration cases with no limitations.

Registering statutory amendments important for legal transactions

FBiH: OPEN ISSUE

The statute, as an obligatory document of every company, contains all the data that's important for legal transactions and regulates in detail the work and operations of every company. All the changes in the company have to be listed in the statute. However, most registration courts in FBiH, for registration of statutory amendments significant for legal transactions, require amendments of the founding acts, not the statute.

The problem is that the members/ founders of a company often predict a necessary majority for certain decisions in the statute, whereas in the founding contract they define that amendments to the founding contract can be adopted exclusively in the same way the contract was adopted – through unanimous agreement of all the members. This registration court practice leads to unnecessary expenses for the business subjects since they need to have both the statute and the founding contract processed by a notary.

FBiH: RECOMMENDATION

To enable business subjects to register changes significant for legal transactions only in the statute and to harmonize the practices of the registration courts.

Activities that cannot be registered by companies with foreign capital involvement

FBiH and RS: OPEN ISSUE

During the process of harmonizing activities or the registration of amendments significant for legal transactions of companies with foreign capital involvement, courts often order the removal of certain activities due to the prohibitions in the Law on Policies of Foreign Direct Investments of BiH or special regulations. In that process, sometimes the names of the activities in those special regulations do not match their official names according to business activity classification, so it is at the court discussion to assess which of the business activities, according to qualifications, fall under which restriction that needs certain consent or the registration will not be possible at all. Since there is no accurate and final list of activities that cannot be registered, the registration procedures are unnecessarily stalled. Also, certain business activities can only be registered with approval obtained in advance.

FBiH and RS: RECOMMENDATION

The Ministry of Foreign Trade and Economic Relations of BiH and the Ministry of Justice of BiH should make a final list of business activities which cannot be registered by companies with foreign capital involvement, as well as a list of activities which can be registered only with approval obtained in advance (specifying the type of approval and the competent authority issuing it), and deliver those lists to the Notary Chamber of FBiH for further distribution to notaries, which are competent authorities for making and processing founding acts of companies.

Additionally, in order to enable the acquisition of a controlling share in companies dealing with public information, in Article 4, Paragraph a), the words “and public information” need to be removed. Through this, new doors for foreign investors in this sector would open, and the ones already there would be able to operate in a simpler way, with full respect and compliance to domestic laws.

Failure to comply with legal timeframes and unnecessary delays in registration procedure*

FBiH and RS: OPEN ISSUE

Under the law, the procedure of company registration is an urgent and uniform procedure applicable to all companies established in Bosnia and Herzegovina both by domestic and international legal entities or individuals. Accordingly, the Business Registration Law in the Federation of Bosnia and Herzegovina and the Business Registration Law in the RS stipulate that competent registration courts are required to issue a registration decision within five days of an application being duly filed. Unfortunately, this statutory timeframe is not honoured in practice, with registration procedures taking months in most of the courts.

Besides a number of other factors that affect the disregard for legal deadlines, unnecessary delays are possible due to the fact that cases assigned to one registration judge during his vacation, sick leave, study tour, training, seminars are not reassigned to another judge, which leads to unnecessary delays in the registration process, even in some urgent cases, such as the establishment of companies. Also, in practice, judges often have different views and reach different conclusions, which leads to insecurity and uncertainty in each procedure.

Although the Business Registration Law is clear and specifies the documents required to register a company, it is often the case that additional documents not required by law, are requested

by courts. There are also frequent cases that a judge will make several requests for different alterations in a single case, in spite of the fact that all the shortcomings could have been noted in just one conclusion. This artificially extends the legal deadlines to complete the registration procedure, which starts at the moment all the relevant documents have been submitted.

FBiH and RS: RECOMMENDATION

Courts’ operation needs to be organized in a way that would provide continuous registration services. In case of judge’s absence of more than a few days, registration cases need to be reassigned to other judges in order to honour legal deadlines. Laws on business registration need to be consistently applied and only the documents required under the law should be requested. If a party has failed to provide full documentation with its application the first time, a judge should issue a single conclusion listing all the shortcomings in the submitted documentation. This would avoid unnecessary delays in the procedure.

Consultation appointments with registration judges

FBiH and RS: OPEN ISSUE

All registration courts should have an everyday consultation appointments which are very valuable to entrepreneurs in cases where the decisions or conclusions of the court regarding amendments or corrections to the filed applications or the documentation are not entirely clear to them, or when the general attitude of the registration court on issues not clearly defined by the law, or those without significant court practice, need to be examined.

FBiH and RS: RECOMMENDATION

Since regular consultation hours are a common practice in most courts, it is necessary to implement the same practice in all registration courts in BiH.

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> Removing the obstacles for foreign investments in companies dealing with public information. 	<ul style="list-style-type: none"> It is necessary to amend the Law on Policies of Foreign Direct Investments of BiH, in a way to eliminate the provisions which restrict foreign investment in companies engaged in public information. 	<ul style="list-style-type: none"> Ministry of Foreign Trade and Economic Relations of BiH
<ul style="list-style-type: none"> Establishment of pledge on shares in limited liability companies (LLC) and information transparency about pledges on stock shares. 	<ul style="list-style-type: none"> It is necessary to amend the entity laws on business registration in a way which would directly prescribe the registration procedure for share pledges, led by registration courts. It is also necessary for adequate entity regulations dealing with security registers to anticipate the possibility of access to information about stock pledges to all third persons. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH and RS
<ul style="list-style-type: none"> The role of public notaries in the process of status changes of companies. 	<ul style="list-style-type: none"> Amend the notary laws in a way which would either exclude the obligatory notary processing of company's acts or put notaries in charge of examining all criteria and the documentation necessary for the decisions they're processing and their registration in the competent registration court. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH and RS Registry courts Competent cantonal authorities
<ul style="list-style-type: none"> Unclear definition of the cases that may result in a suspension of registration procedure. 	<ul style="list-style-type: none"> It is necessary to more specifically define the Law on Business Registration of FBiH and facts that may lead to the termination of the registration process. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH
SOLVING THE PRACTICAL ISSUES OF SIGNIFICANT IMPORTANCE FOR IMPROVING BUSINESS REGISTRATION		
<ul style="list-style-type: none"> Enabling the registration court to access the Registry of Fines. 	<ul style="list-style-type: none"> The registration court should be able to access the Registry of Fines electronically. 	<ul style="list-style-type: none"> Ministry of Justice of FBiH and RS Competent registry courts
<ul style="list-style-type: none"> Applying the transparency principle for the Court Register. 	<ul style="list-style-type: none"> Acquiring data about business registration should be performed electronically by improvement in aligning electronic and court register. It is necessary to ensure the availability of data of business enterprises registered in RS and allow everyone to access and copy the files from the registration cases without restrictions. 	<ul style="list-style-type: none"> Competent registry courts

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> • Registering statutory amendments important for legal transactions. 	<ul style="list-style-type: none"> • To enable business subjects to register changes significant for legal transactions only in the statute and to harmonize the practices of the registration courts. 	<ul style="list-style-type: none"> • Competent registry courts
<ul style="list-style-type: none"> • Activities that cannot be registered by companies with foreign capital involvement. 	<ul style="list-style-type: none"> • It is necessary to make a final list of business activities which cannot be registered by companies with foreign capital involvement, as well as a list of business activities which can be registered only with approval obtained in advance (specifying the type of approval and the competent authority issuing it). 	<ul style="list-style-type: none"> • Ministry of Foreign Trade and Economic Relations of BiH
<ul style="list-style-type: none"> • Failure to comply with legal timeframes and unnecessary delays in registration procedure. 	<ul style="list-style-type: none"> • Courts' operation needs to be organized in a way that would provide continuous registration services. In case of judge's absence of more than a few days, registration cases need to be reassigned to other judges in order to honour legal deadlines. Laws on business registration need to be consistently applied and only the documents required under the law should be requested. 	<ul style="list-style-type: none"> • Competent registry courts
<ul style="list-style-type: none"> • Consultation appointments with registration judges. 	<ul style="list-style-type: none"> • Since regular consultation hours are a common practice in most courts, it is necessary to implement the same practice in all registration courts in BiH. 	<ul style="list-style-type: none"> • Competent registry courts

6.2. TAXES

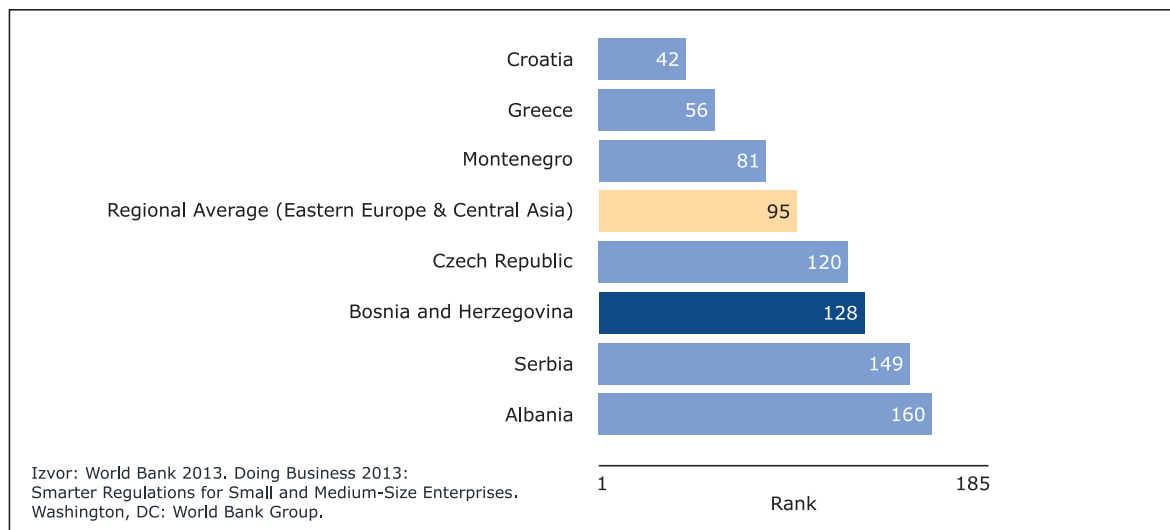
INTRODUCTION

The inconsistency and complexity of the taxation system are still the main problems that the foreign investors face during investing capital in BiH. The investors who are doing business in all parts of BiH have special insight into the inconsistency of taxation regulations on different levels. In the ranking by ease of paying taxes, BiH ranked 128 out of 185 countries.

These amendments state that a non-resident who wants to be exempt from tax or wants tax cuts, instead of the earlier complicated procedure, now only has to provide confirmation from the taxation authority from the country he/she is a resident of that he/she is the beneficial owner of the income, when such a confirmation is required by the Agreement.

During 2012 amendments to Profit Tax Law of Republic of Srpska were adopted, prescribing that the taxpayer who, in the territory of Re-

Chart 3. How Bosnia and Herzegovina and comparator economies rank on the ease of paying taxes



Unfortunately, since last year, there hasn't been much improvement in the area of taxes.

There has been improvement in the Republic of Srpska concerning the interstate Double Taxation Avoidance Agreements, through changing the Rulebook on the Implementation of the Profit Tax Law in a way that simplifies the procedure of proving the right to be exempt from paying the tax, or the application of reduced tax rates.

Ministry of Finance and Treasury of BiH made available information on the signed agreements through the official website of the Ministry, but still all the integrated texts of the agreements are not available.

public of Srpska, invests in equipment, facilities, and real estate for performing his own registered production activities, has the right to tax cuts in the amount of the realized investment, and the taxpayer who hires at least 30 new workers for an indefinite period in one calendar year has the right to a tax cut in the amount of the paid personal income tax and social security contributions for those workers.

These amendments represent an improvement, and harmonization of tax laws for legal entities in BiH. Partly it solves the problem of amortization for newly acquired buildings.

Solving the inefficient forced collections through bank accounts in Republic of Srpska

began by adopting a completely new Law on the Internal Payment Operations (hereinafter: Law on IPO) by the National Assembly of RS at a session which was held on May 17, 2012 (Official gazette of the Republic of Srpska, no. 52/12). This law prescribes that all orders for forced collections must be made out to the main bank account of the business entity and submitted to the authorized organization which manages main account for execution. In case of lack of funds in the main account, this authorized organization (which manages the main account) sends request to other authorized organizations to freeze all the debtor's accounts in KM and foreign currencies until the debt is settled at the main account. When the debt is entirely settled, all the debtor's accounts are unfrozen.

In order to execute an order for forced collection, when accounts are frozen, the business entity is prohibited from all other payments, including accrual payments (cession, assignment and others) and cash payments, as well as opening new accounts by authorized organizations. Data about existing accounts, account types, and the main account, as well as data about the business entity's frozen and unfrozen accounts is kept and updated in the Single Registry of business entities' accounts.

This solution for forced collections, included in the new Law on IPO of RS, is established within the existing payment operations system and is placed in business banks which already deal with these tasks, and thus does not require the formation of a new institution which would be in charge of forced collections.

Bearing in mind that BiH is a unique economic area and the need for unobstructed payment operations by business entities in both entities, the Federation of BiH adopted the same legal solutions and drafted a completely new Federal Law on IPO, which was referred into parliamentary procedure. The goal is to en-

able unobstructed functioning of payment operations and a more efficient forced collection system in both entities.

When mentioning improvements, we want to point out that the Foreign Investors Council has become a direct participant in the changes of the tax and fiscal policies of FBiH, due to having been invited as a member of a working group in the Federal Ministry of Finance, which is in charge of changing the tax regulations important for entrepreneurs.

For a year now, the members of the FIC have been working on the improvement of the tax policy in FBiH and are directly contributing to the amendments of the following regulations:

- the Profit Tax Law
- the Personal Income Tax Law
- the Law on Social Security Contributions, and many other regulations such as para fiscal levies, taxes regulations etc.

In order to facilitate business for companies who operate in all parts of BiH, it is necessary to harmonize tax regulations on the state level, and to reduce the number of administrative procedures for tax payment.

Besides taxes, foreign investors' business in BiH is additionally complicated and burdened by the numerous different cantonal and municipal fees. Namely, there are numerous individual fees to be paid on a municipal and cantonal level, and the regulations on the payment of those fees are different in some municipalities and cantons; all of this causes problems and big expenses for foreign investors who are doing business in all parts of BiH.

This fees regulations need to be harmonized and the number and amount of fees need to be revised and reduced.

Now we will look at specific tax problems facing members of the FIC, as well as recommendations.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Application of Interstate Double Taxation Avoidance Agreements in BiH*

FBiH: OPEN ISSUE

The Profit Tax Law in the Federation of BiH provides for application of interstate agreements on avoidance of double taxation which have priority over the provisions of that Law. However, according to instructions of the FBiH Tax Administration, in order to exercise a tax relief provided for under an Interstate Double Taxation Avoidance Agreement, taxpayers are required to seek approval of the Ministry of Finance and Treasury of BiH for every business situation in which a certain tax relief may apply. This has resulted in a large number of requests being sent to the Ministry of Finance and Treasury of BiH seeking approval for the application of these agreements and the long taxpayer waiting lists to be issued such approval.

FBiH: RECOMMENDATION

The Ministry of Finance and Treasury of BiH needs to publish all applicable Interstate Double Taxation Avoidance Agreements, also agreements with other countries signed but not yet ratified as well as agreements that are in the process of closing. All the bilateral agreements should be stored in a single register/central database and should be publicly available to all taxpayers.

Discontinue the application of the FBiH Tax Administration Instruction according to which the BiH Ministry of Finance and Treasury is obliged to provide an official interpretation for implementation of the provisions of the Double Taxation Avoidance Agreement, since the mentioned instruction is illegal.

Unclear legal definition of “profit” and “services” performed in the territory of the Federa-

tion, as basis on which the withholding tax is calculated

FBiH: OPEN ISSUE

Article 41, Paragraph 1 of the Law on Profit Tax of FBiH states that the: “Withholding tax represents a tax that is calculated on income that non-resident generates in the Federation”.

In paragraph 3 of the same article it is stated that the withholding tax base is calculated on the gross amount paid by the resident of the Federation to non-resident based on:

- dividends, interest, royalties and other intellectual property rights,
- compensations for market research, tax advice, auditors’ services,
- entertainment and sports events,
- insurance premiums, risk insurance or re-insurance in the Federation,
- telecommunications services between the Federation and abroad as well as all other services made in the Federation.

In the Tax Administration check-ups, there is a tendency to calculate the withholding tax on all corporate income payments by resident legal entities to non-residents, regardless of whether they were performed in the Federation or abroad.

FBiH: RECOMMENDATION

Harmonize Paragraph 1 and Paragraph 3 of Article 41 of the Profit Tax Law of FBiH, in a way that clearly defines the subject of withholding tax when other services are in question, i.e. what the term “service in the Federation” means.

Complicated POD form submission procedure for income payments to non-resident companies

FBiH: OPEN ISSUE

According to Article 41, Paragraph 2 of the Profit Tax Law of FBiH, withholding tax is calcu-

lated and paid on income that a non-resident generates in the Federation, and the payer is obliged to file the report to the Tax Administration within 10 days upon the day of the payment on calculated and paid withholding tax.

In case of application of the Interstate Double Taxation Avoidance Agreement which provides tax exemption or tax cuts, the taxpayer needs to provide proof/confirmation that the legal entity getting paid is resident of a country with which BiH has signed a Double Taxation Avoidance Agreement and a statement by the non-resident – recipient of income. Such a legal regulation leads to unnecessary accumulation of tax returns and additional documentation filed to the Tax Administration, which additionally increases the number of administrative procedures and further burden taxpayers.

FBiH: RECOMMENDATION

Pursuant to Paragraph 2 of Article 41 it is necessary to keep the obligation of calculating and paying the withholding tax in a moment of payment, and prescribe submitting the POD forms in a Annual report of complete payments to non-residents based on services, calculated and paid withholding tax, with the obligation of providing residency confirmation and the income recipient's statement, in case of the application of Interstate Double Taxation Avoidance Agreements.

PERSONAL INCOME TAX LAW

Unclear Law Provisions on Personal Income Tax and Social Security Contributions*

FBiH and RS: OPEN ISSUE

The major issues in the implementation of the FBiH and RS Contributions laws are in cases where the employer headquartered in one entity employs an individual with residence in the other entity.

The Law on Social Security Contributions of RS stipulates that the payer of contributions is

an individual– RS resident who is employed by a legal or natural person who is an RS resident, or by a legal or natural person headquartered in the other entity, Brčko District or country. If payment of personal income leads to the obligation to pay contributions, the contributions are reported and paid according to the place where the personal income was earned, which leads to issues in exercising certain rights that payers of social security contributions are entitled to.

This is particularly pronounced among persons whose place of work is in one entity and whose residence is in the other entity. The personal income tax is paid according to the place of residence in case of a resident taxpayer, or according to the place where the personal income was earned in case of a non-resident taxpayer.

Federation regulations define that payers of contributions include an individual who is a non-resident in FBiH and employed in the territory of FBiH by a legal entity or an individual who is a FBiH resident. If contributions are calculated according to FBiH regulations, employees residing in the RS are unable to exercise their right to health insurance and unemployment insurance. If the calculation and payment of social security contributions is done partially according to FBiH regulations and partially according to RS regulations, this effectively violates FBiH regulations.

The Federal Ministry of Finance has issued an Interpretation according to which an employer with headquarter in FBiH should pay contributions for its employees residing in the RS in the following way:

- Contributions for pension and disability insurance need to be paid to the FBiH Pension and Disability Insurance Fund;
- Contributions for health insurance need to be paid as follows: 9% to the FBiH Solidar-

ity Fund, and 91% to the RS Health Insurance Fund;

- Contributions for unemployment insurance need to be paid as follows: 30% to the FBiH Employment Institute and 70% to the RS Employment Institute.

However, this method of paying social security contributions is not in line with the Law on Social Security Contributions of RS, and employees residing in this entity cannot exercise their insurance - related rights. The Republic of Srpska Employment Institute has sent an official letter to the FBiH Employment Institute stating that the Institute would not acknowledge the right to the payment of unemployment allowance to persons who were employed with employers in the Federation of BiH and were residing in the Republic of Srpska, in spite of the fact that the employer had paid the contribution for unemployment insurance to the account of the RS Employment Institute. The RS Institute will acknowledge the right to the unemployment allowance only in cases where the employer has paid all the contributions (such as the case of employed officials in BiH common institutions)

FBiH and RS: RECOMMENDATION

The social security contribution system needs to be defined in such a way that it primarily ensures that employees are able to exercise their insurance-related rights, which can be achieved by directing the contributions according to the employee's place of residence. FBiH, RS and BD laws on Social Security Contributions need to precisely define the obligation to pay social security contributions for individuals residing in FBiH, RS and the BD and earning their income in one of the other two administrative units, as well as the place and mode of exercising their social rights (health care, retirement benefits, child allowance, unemployment allowance).

Complicated procedures for filing tax returns for personal income tax and social security contributions in RS

RS: OPEN ISSUE

Paying personal income tax is done in the tax payer's municipality, through the unique bank account for public incomes, with the same labelling of the payment, the same period of time the payment is for – the only difference is the municipality code.

According to the amendments to the Law on Social Security Contributions of RS, which entered into force on February 1, 2011, contributions for the previous month need to be registered by the end of the current month, and that the payment for contributions needs to be made at the same time as the personal income. In case that the personal income hasn't been paid, the employer has to pay the contributions, at the latest, two months after the end of the month for which contributions are being calculated.

The tax return form for social security contributions, Form 1002, has to be filed, at the latest, by the end of the month, for the previous month, and the payer has to indicate whether the personal income was paid or not.

This way of payment and filing tax returns burdens tax payers with keeping extensive parallel records, leads to additional costs, slows down efficiency and makes room for mistakes, on both sides (for tax payers and banks).

RS: RECOMMENDATION

It is necessary to simplify the procedure of filing tax returns in RS. There is one form for the personal income tax, and another one for social security contributions (Form 1002). The difference between these two forms is that for contributions tax payer does not enter data about tax cuts based on the tax card, and for personal income tax, taxpayer does not enter data about individual contributions – everything else is identical in both forms.

The complicated procedure of paying taxes and social security contributions and an unjustifiably large number of payment orders⁶

FBiH: OPEN ISSUE

The procedure of paying public revenues which an employer, i.e. a natural person, has to pay when paying salaries is very complex. There are many kinds of public revenues on different government levels. Employers have to pay mandatory social security contributions, income taxes, and fees for their employees onto different bank accounts, depending on the type of income, the employer's seat, or the employee's place of residence. This payment method is time-consuming and costs very much.

FBiH: RECOMMENDATION

Implement a simpler way of transferring revenues paid by the employer together with the pay checks, in a way that would reduce the number of payment orders without in any way violating constitutional and legal provisions which determine the affiliation of public revenues and the criteria of their distribution. This activity is compatible with the Government of FBiH commitment to generating a more favourable climate for local and foreign investments. The Federal Ministry of Finance in cooperation with USAID has designed a project for simplifying the payment of public revenues with the goal of continuing the activities conducted during the previous USAID programs. Considering the fastest way of implementation, without amending laws, the deficiencies and risks of other options, as well as the time the USAID took to provide technical assistance to the Federal Ministry of Finance, the best solution would be to reduce the average number of payment orders from ten to five. This option is the initial, transitional phase, and in the end there would be only one payment order left for all kinds of

payments. The cantonal treasuries will divide the funds between cantons and municipalities. This way, the employers' overall bank provision costs and the time necessary to fill out all the payment orders will be reduced by 44%, and the number of payment orders will be reduced by half (from ten to five, on average). The ranking of BiH in the World Bank study "Doing Business" will be also significantly improved.

The Federal Ministry of Finance needs to amend bylaws which will create a legal framework for the accomplishment of these goals as well as continue to work on improving promptness and accuracy of the database which will be a platform for software. USAID designed and developed the software for the distribution of revenues from collective accounts to the accounts of end users, which would be implemented when database reaches sufficient level of promptness and accuracy.

Unclear taxation procedures for foreign citizens who have resident status in BiH

FBiH, RS and DB: OPEN ISSUE

In FBiH, RS, and DB, the legal regulations are unclear for the taxation of foreign citizens who have resident status based on their work engagement with an employer in BiH, and who retain a mandatory social security in their home country. Due to different social security systems in the employee's home country, it is not clear if and which of the social security contributions paid by the employee in the home country can be recognized as base for tax cuts in FBiH or RS. According to the Personal Income Tax laws of FBiH, RS, and DB, foreigners who have resident status pay taxes on the total earned income, meaning the income from the local employer and the income from the mother company. In that respect, they need to have the right to tax cuts like other tax payers residing in FBiH, RS, or DB.

⁶ This recommendation comes from USAID TAF project, which is currently being partly implemented. Members of the FIC are also consistent with this issue being published in 2012/13 edition of the White Book.

FBiH, RS, AND BD: RECOMMENDATION

Harmonize and formulate more detailed regulations on the taxation of foreign citizens, who retain a mandatory social security in their home country and have resident status in BiH.

VALUE ADDED TAX**VAT refund to persons who do not have a registered business in BiH*****FBiH and RS: OPEN ISSUE**

Article 53 of the VAT Law of BiH provides an option for a refund of the input tax calculated on sale of goods and provision of services by BiH taxpayer or tax calculated on goods imported into BiH for foreign legal entities that do not have a registered business in BiH. Article 93 of the Rulebook on the Application of the VAT Law further provides that foreign legal entities who do not have a registered business in BiH (freight companies, participants on trade fairs, airlines etc.), and who buy goods or receive services from taxpayers in BiH, related to business transaction abroad, are entitled to VAT refunding to be exercised by submitting a request to the BiH Indirect Taxation Authority (hereinafter: BiH ITA).

As this Rulebook only covers freight companies, participants on trade fairs, airlines or similar, there have been cases that the BiH ITA refused VAT refund requests submitted by foreign legal entities on the grounds that such legal entities were not specifically listed in the Rulebook. This gives precedence to the Rulebook, as an implementing piece of legislation, over the VAT Law, which carries greater legal force. By doing so, the Indirect Taxation Authority does not consider what these "similar" legal entities are, to which this Rulebook applies to. Furthermore, there is no publicly available list of countries or procedure according to which domestic legal entities, VAT payers, may receive VAT refunds.

FBiH and RS: RECOMMENDATION

The Indirect Taxation Authority should act in accordance with the VAT Law and approve VAT refund to all entities that do not have a registered business in BiH and that meet requirements defined under the Law. All possible restrictions regarding VAT refunds to foreign legal entities should be defined under the VAT Law and only further developed and clarified under the Rulebook on the Application of the VAT Law. The BiH ITA should also clearly identify "similar" foreign legal entities that are entitled to a VAT refund in Bosnia and Herzegovina. The clarification should be in line with EU directives on indirect taxation and with the method of VAT refunding used in EU countries that apply these directives. Publish a list of countries from which VAT refund is possible for domestic legal entities – VAT payers.

Issuance of opinions by Indirect Taxation Authority (BiH ITA)***FBiH and RS: OPEN ISSUE**

Article 50 of the Law on Indirect Taxation Procedure and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions define a timeframe for submitting an application for issuance of an opinion. According to this timeframe, such application cannot be filed once a particular action has already been taken, or when the VAT return has already been filed in relation to a particular action. This deprives the taxpayers to obtain needed opinion from BiH ITA regarding resolution of certain dilemmas at the moment they occur, since certain actions have already been taken. ITA opinions and attitudes are not published on the BiH ITA website, which makes implementation of the law more difficult; in addition, opinions issued by different ITA departments (sectors) frequently are dissimilar, causing dilemmas and misleading taxpayers.

FBiH and RS: RECOMMENDATION

Article 50 of the Law on Indirect Taxation Procedure and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions should be amended in such a way that an opinion may be sought in all cases up to the moment when an inspection control procedure begins, whether complete or partial. Issued opinions, including a summary of the questions, should be published on the ITA website, provided that the ITA does not have to identify the taxpayer who received the opinion. This would help achieve one of the functions of the ITA, which is that its work should be transparent, and it would also result in better informed taxpayers and more consistent application of tax laws.

PROFIT TAX LAW

The Law does not clearly define the meaning of unrealized gains/losses, income/expenses which are not included in the tax base*

RS: OPEN ISSUE

The Profit Tax Law of RS refers to an accounting method in determining taxable income and expenses, which is in accordance with accounting regulations. However, Article 6 of the Law defines that for the purposes of determining the tax base, all incomes from any sources are to be included except for incomes defined under Article 7, and no difference was made between realized and unrealized income.

It is only income/expenses arising from accounting for foreign exchange gains and losses (as one type of unrealized income/expense) that are exempt from inclusion in taxable income or expenses (Article 14 of the Law), citing "actually received income or paid costs of exchange rate expenses". The issue here is the inconsistency between Article 14 and Article 6 of the Law. Other unrealized income/expenses or gains/losses are not clearly defined under the Law, albeit they are clarified through the Rule-

book on the Implementation of the RS Profit Tax Law.

RS: RECOMMENDATION

Harmonize provisions of the Law (Article 6 with Article 14) and amend the Law by specifying all unrealized income/expenses or gains/losses that are not included in the tax base.

Different taxation practices for business units with seats in the other entity and BD*

FBiH: OPEN ISSUE

Pursuant to Article 35 of the Law on Profit Tax of FBiH, the taxpayer – resident is able to reduce calculated and paid profit tax when his non-resident business unit paid profit tax outside the Federation, but within Bosnia and Herzegovina, included in the gain of taxpayer.

The different treatment of certain expenses (bank reserves, suspicious and disputable debts, and so on) according to the Law on Profit Tax of FBiH, RS, and DB, as well as the different definitions of the taxpayer lead to a situation where one pays a higher tax in RS and DB for the same amount of profit generated, which is in the end deducted from the tax obligation of a company whose seat is in the Federation.

The Profit Tax Law of RS and DB, Articles 48 and 37, authorizes the Ministers of Finance of RS and BD that can in consultation with the federal Minister of Finance approve submission of a single tax return, to the competent tax authority according to the taxpayer principal place of business and that the payment of profit taxes to the other entity or BD is done in accordance with the gross income that the taxpayer generates in business units.

FBiH: RECOMMENDATION

Harmonize regulations concerning the taxation of business units. Suggest a new article for the Law on Profit Tax of FBiH, which would, like in the laws of RS and DB, provide a basis for

possible agreements between the ministries on the possibility of filing a single tax return in accordance with the main place of business of a legal entity and paying profit tax to other entity or DB, in accordance with the gross income that taxpayer generates in business units.

RS: OPEN ISSUE

According to Article 34 of the Profit Tax Law of FBiH, a taxpayer – business units of a non-resident, whose principal place of business is outside of the Federation, but within Bosnia and Herzegovina, shall be exempt from profit tax payment for profits realized in the Federation, but must file tax return.

According to the Profit Tax Law of BD, the profit generated in BD is taxed at a rate of 10%. According to the provisions of the Profit Tax Law and the Rulebook on the Application of the Profit Tax Law in FBiH, legal entities in the territories of RS and BD which have multiple business establishments registered in FBiH (store, office, etc.), must make a tax return and a tax balance for each of those locations and file them with the competent tax authority, which complicates the business operations of taxpayers.

This regulations needs to be harmonized with RS. In cases where a legal entity from the FBiH and BD operates in multiple locations in the territory of RS, it only has to file one tax return according to the place of business which is designated as a principal place of business in RS.

RS: RECOMMENDATION

In the Profit Tax Law of RS, abolish the taxation of business units whose legal entity's seat is in the other entity or BD, or ensure the application of Article 48 of the Profit Tax Law, i.e. the filing of a single tax return in accordance with the principal place of business of a taxpayer and that profit taxes are paid in accordance with the gross income that the taxpayer generates in the other entity or BD.

The entities regulate tax deductible expenses differently based on general and special provisions for potential loan losses in banks

FBiH and RS: OPEN ISSUE

Entities' laws on Profit Tax regulate differently the taxation of general and specific provisions for potential loan losses of the banks. Also, the bases of taxation are different as well as the amounts of tax burden, as evidenced by the following:

- general provisions are recognized in the Federation with the tax balance up to 20% (accounting) profit as reported in the income statement, while these provisions in RS are also recognized by 20% but with (different) tax base which implies a difference between harmonized income and expenditures;
- special provisions are fully recognized in the Federation in the tax balance as a tax deductible expense, while in the RS (as with the general provisions) only up to 20% of the (different) tax base is recognized, which is the difference between harmonized income and expenditures.

Different entity regulation of tax deductible expenses on the basis of general and specific provisions for potential loan losses at banks is reflected in the different assessment of the tax liability in the entity tax forms. This reflects negatively on financial business of banking groups that operate in the whole territory of Bosnia and Herzegovina as in a single economic space. All BiH banks mainly operate in both entities therefore we believe that the described differences should be eliminated by harmonizing the entities' profit tax laws in a way to uniformly treat deductible for tax purposes on the basis of both provisions.

This problem affects the whole irrational and unreasonably "spill over" of profit tax from one entity to another, due to the fact that the pro-

visions with banks are the largest balance sheet item that is subject to tax treatment. This occurs when applying the provisions of the law which prescribes the elimination of double taxation of profits earned in other BiH entity (or BD) through the use of so-called tax credit.

FBiH and RS: RECOMMENDATION

Harmonization of entity and DB regulations on the taxation of general and special provisions for potential loan losses in banks.

The unclear definition of export as a basis for profit tax payment exemption

FBiH: OPEN ISSUE

According to Article 31 of the Profit Tax Law of FBiH, a taxpayer who realizes exports exceeding 30% of total income, within the tax year shall be exempt from profit tax for that year. Article 25 of the Rulebook on the Application of the Profit Tax Law states that: "For export-based profit tax exemption, the taxpayer has to submit, together with the tax balance sheet, a copy of the Statistical annex of the annual accounting report, as proof of the achieved census".

The Statistical annex of the annual accounting report separates the entire profit onto profit generated in the local market and profit generated abroad.

In the opinion of the Ministry of Finance and the Tax Administration of FBiH, profits generated based on service export are interpreted differently, and they contest the right to use those tax breaks for companies that generate profit based on providing services for foreign companies, mother companies or other related legal entities, even though the profits were directly generated abroad.

FBiH: RECOMMENDATION

To define export as a basis for tax exemption in a legally precise manner, whether it also ap-

plies to profits generated based on services, and the Rulebook needs to specify what the necessary proof for achieved census is, e.g. the total export value according to customs declarations.

Transfer prices

FBiH: OPEN ISSUE

Pursuant to Article 45 of the Profit Tax Law of FBiH, which regulates transfer prices, it is stated that a related legal entities with the taxpayer shall be considered the physical person or legal entity whose relationship with the taxpayer creates the possibility of control or significant influence on business decisions. Then significant influence is described as large volume of sales and purchases, technological dependence or in other manner obtained managing control.

Based on this definition, one can conclude that all legal entities, regardless of their primary place of business are considered to be related, which entails the analysis of the compatibility of transfer prices and potential double taxation within the territory of FBiH, which is not the goal of transfer prices regulation, which were introduced in the world to prevent unwarranted outflow of tax money outside of a country's territory.

Such defining of relatedness leaves a lot of room for subjective inference, both to taxpayers who might avoid reporting transactions with related legal entities, and to the Tax Administration, which is supposed to determine whether there really was dependence.

The economic essence of transactions between related legal entities operating in the territory of the Federation is showing profits of one related legal entities with the same amount of expenses of the other related legal entities. In a situation where both legal entities operate positively and do not have profit tax cuts on one of the bases, the effect of the transaction between related legal entities is neutral.

FBiH: RECOMMENDATION

Legally clearly define the criteria by which legal entities are considered as related legal entities (take the definition from OECD guidelines). Legally regulate that the transfer prices between related legal entities should not be determined if both operate in the Federation and both generate profit.

FBiH: OPEN ISSUE

Article 47 of the Profit Tax Law of FBiH, which is related to methods of determining transfer prices, defines that when applying the principle 'out of reach' comparative market prices shall be used, and when not possible, the method of costing enlarged for the usual profits shall be implemented.

These two methods are not enough to determine the proper range of transfer prices. The Profit Tax Law in FBiH does not define the documentation necessary and sufficient to prove whether the prices in the transactions with the related legal entities are in accordance to the "out of reach" principle.

FBiH: RECOMMENDATION

The law needs to enable the application of all the methods defined by the OECD model and define which documentation is necessary for proving the company's transfer prices.

THE LAW ON EXCISE DUTIES**Paying excises in advance (Article 23 of the Law)****BiH: OPEN ISSUE**

According to the Law on Excise Duties, Article 23, for tobacco products the taxpayer must pay the excise when taking the excise stamps. Paying excise in advance hinders the business of tobacco companies in BiH and negatively affects their liquidity. The situation is going to grow even more complex through raising the excise duties in the following years, as BiH harmonizes its taxes with the EU recommendations. When taking the excise stamps, tobacco

companies need to pay the full excise price, and by doing that they freeze their working capital and have to wait for the refund of the invested money for up to two months after they pay the excise to the state. This policy of collecting excise in advance has not contributed to market improvement, and is disadvantageous to tobacco companies. Producers of other excise goods do not have to pay in advance, but just before consumption. There is no clear or stated reason for the special treatment of tobacco products.

Excise is, in its essence, a consumption tax and, in that sense, cannot be charged prior to the sale/consumption.

BiH: RECOMMENDATION

ITA should initiate procedures for making amendments to the Law on Excise Duties, according to which excise on tobacco products will be paid through delayed payment with a deadline. With an approximate average of two months from the moment the excise stamps are taken to the moment of circulation of the tobacco products, we suggest that the deadline for paying excise duties for tobacco products be a period of 60 days after the day the excise stamps were taken.

Amending Article 23 of the Law on Excise Duties would not endanger the budget in any way, and the collection of excises would be guaranteed by a mechanism of bank warranties suggested by the companies to the Indirect Taxation Authority.

The proposed amendments would contribute to a more effective operating of tobacco companies in BiH which, as big taxpayers, significantly contribute to the long-term stability of the state budget.

Retroactive excise payment, on January 1st - (Article 45 of the Law)**BiH: OPEN ISSUE**

The Law on Excise Duties clearly defines (Article 4) that the "subject of taxation shall be the

trade in excise products produced in BiH when the producer trades them for the first time and/or imports of the excised products into BiH". However, Article 45 of the Law on Excise Duties completely contradicts Article 4 because, according to it, the taxpayer has to pay the excise difference for goods found in stock on January 1.

We feel that Article 45 is discriminatory against tobacco producers, because retroactive payment for something that was already paid for is a harmful item in this Law and a legally unfounded category.

This kind of additional taxation of the same product is unheard of in the positive European practice. In most European countries, cigarettes are sold at the price listed on the pack until the supplies are exhausted. In the region, it is common practice to make an inventory list of the goods in stock as a control mechanism during

excise changes, but without the obligation of paying the excise difference for existing goods in stock.

BIH: RECOMMENDATION

ITA should initiate procedures for the suspension of article 45 of the Law on Excise Duties and the obligation of paying the excise difference for existing goods in stock on January 1st. The new, raised taxes/excises should be applied to goods traded for the first time by companies or importers in BiH.

This amendment to the Law, together with just taxation, would ensure the sale of old goods at the old prices, which would contribute to regulating the market based on stable demand and supply. That would simultaneously create an encouraging environment and harmonization with EU countries in the field of taxation and legislation.

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> Application of interstate Double Taxation Avoidance Agreements in BiH. 	<ul style="list-style-type: none"> All information about agreements should be stored in a single database and publicly available. Instruction of the FBiH Tax Administration should be discontinued according to which taxpayers are required to seek approval from Ministry of Finance and Treasury of BiH for every business situation in which a certain tax relief may apply as provided for under an interstate Double Taxation Avoidance Agreement. 	<ul style="list-style-type: none"> Ministry of Finance and Treasury of BiH Tax Administration of FBiH Ministry of Finance of FBiH Ministry of Finance of RS
<ul style="list-style-type: none"> An unclear legal definition of "profit", and "services" performed in the territory of the Federation, as basis on which the withholding tax is calculated. 	<ul style="list-style-type: none"> Harmonize Paragraph 1 and Paragraph 3 of Article 41 of the Federal Profit Tax Law, in a way that clearly defines the subject of withholding tax when other services are in question, i.e. what the term "service in the Federation" means? 	<ul style="list-style-type: none"> Ministry of Finance of FBiH
<ul style="list-style-type: none"> Complicated POD form submission procedure for income payments to non-resident companies. 	<ul style="list-style-type: none"> Prescribe submitting the POD form in an Annual report of complete payments to non-residents, based on services, calculated and paid withholding tax with the obligation of providing re- 	<ul style="list-style-type: none"> Ministry of Finance of FBiH

OPEN ISSUE	RECOMMENDATION	INSTITUTION
	sidency confirmation and the income recipient's statement, in case of the application of interstate double taxation avoidance agreements.	
PERSONAL INCOME TAX LAW		
o Unclear Law Provisions on Personal Income Tax and Social Security Contributions.	o Specify the obligation to pay social security contributions for individuals residing in the territory of FBiH, RS and BD, and earning their income in another administrative unit, as well as the place and mode of exercising their social rights.	o Ministry of Finance of FBiH o Ministry of Finance of RS o Directorate of Finance BD
o Complicated procedures for filing tax returns for personal income tax and social security contributions in RS.	o Simplify the procedure of filing tax returns in RS. There is one form for the personal income tax, and another one for social security contributions (Form 1002). The difference between these two forms is that for contributions tax payer does not enter data about tax cuts based on the tax card, and for personal income tax, taxpayer does not enter data about individual contributions – everything else is identical in both forms.	o Tax Administration of RS
o The complicated procedure of paying taxes and social security contributions and an unjustifiably large number of payment orders.	o Simplify the process of paying public revenues, because the current way of paying contributions, income taxes, and fees for employees to various bank accounts is time consuming and costs a lot.	o Tax Administration of FBiH
o Unclear taxation procedures for foreign citizens who have resident status in BiH.	o Harmonize and formulate more detailed regulations on the taxation of foreign citizens, who retain a mandatory social security in their home country and have resident status in BiH.	o Ministry of Finance of FBiH o Ministry of Finance of RS o Directorate of Finance BD
VALUE ADDED TAX		
o VAT refund to persons who do not have registered business in BiH.	o The Law on VAT should define all possible restrictions regarding VAT refunds to foreign legal entities. The Rulebook on the Application of the VAT Law should also clearly identify "similar" foreign legal entities that are entitled to a VAT refund.	o Ministry of Finance and Treasury of BiH o Indirect Taxation Authority of BiH (BiH ITA)

OPEN ISSUE	RECOMMENDATION	INSTITUTION
VALUE ADDED TAX		
<ul style="list-style-type: none"> o Issuance of opinions by Indirect Taxation Authority. 	<ul style="list-style-type: none"> o Providing expert opinions should be altered in a way that the opinion can be sought in all cases from the moment the control process starts and it should be published on the ITA official website. 	<ul style="list-style-type: none"> o Indirect Taxation Authority of BiH (BiH ITA)
PROFIT TAX LAW		
<ul style="list-style-type: none"> o The Law does not clearly define the meaning of unrealized gains/losses, income/expenses which are not included in the tax base. 	<ul style="list-style-type: none"> o Harmonize provisions of the Law (Article 6 with Article 14) and amend the Law by specifying all unrealized income/expenses or gains/ losses that are not included in the tax base. 	<ul style="list-style-type: none"> o Ministry of Finance of RS o Tax Administration of RS
<ul style="list-style-type: none"> o Different taxation practices for business units with seats in the other entity and BD. 	<ul style="list-style-type: none"> o Harmonize legislation that applies to the taxation of business units. Add a new article in Law on Profit Tax of FBiH which would, like in the laws in RS and DB, provide a basis for agreements between the relevant ministries on the possibility of filing of single tax balance sheet in accordance with the principal place of business of legal entity and paying the Profit tax to the other entity or DB. In RS, abolish taxation of business units whose principal place of business is in another entity/BD or ensure the application of Article 48 of the RS Profit Tax Law. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH o Tax Administration of FBiH o Ministry of Finance of RS o Tax Administration of RS
<ul style="list-style-type: none"> o The entities regulate tax deductible expenses differently based on general and special provisions for potential loan losses in banks. 	<ul style="list-style-type: none"> o Harmonization of entity and DB regulations on the taxation of general and special provisions for potential loan losses in banks. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH o Ministry of Finance of RS
<ul style="list-style-type: none"> o The unclear definition of export as a basis for profit tax payment exemption. 	<ul style="list-style-type: none"> o Define export as a basis for tax exemption in a legally precise manner, whether it also applies to profits generated by providing services, and the Rulebook needs to specify what the necessary proof for achieved census is, e.g. the total export value according to customs declarations. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> • Transfer prices o Based on the Federal Law on Profit Tax one can conclude that all legal entities, regardless of their primary place of business are considered to be related, which entails the analysis of the compatibility of transfer prices and potential double taxation within the territory of FBiH, which is not the goal of transfer prices regulation, which were introduced to prevent unwarranted outflow of tax money outside of a country's territory. 	<ul style="list-style-type: none"> o Legally clearly define the criteria by which legal entities are considered related legal entities (take the definition from OECD guidelines). Legally regulate that the transfer prices between related legal entities should not be determined if both operate in the Federation and both generate profit. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH
<ul style="list-style-type: none"> o Two existing methods in Profit Tax Law are not enough to determine the proper range of transfer prices. 	<ul style="list-style-type: none"> o The law needs to enable the application of all the methods defined by the OECD model and define which documentation is necessary for proving the company's transfer prices. 	<ul style="list-style-type: none"> o Ministry of Finance of FBiH
LAW ON EXCISE DUTIES		
<ul style="list-style-type: none"> o Paying excises in advance – (article 23 of the Law on Excise Duties). 	<ul style="list-style-type: none"> o Initiate procedures for the adoption of amendments to the law according to which the deadline for deferred payment of excise taxes on tobacco products will be specified. 	<ul style="list-style-type: none"> o Governing Board of ITA o Ministry of Finance and Treasury of BiH o Ministry of Finances of RS o Ministry of Finances of FBiH
<ul style="list-style-type: none"> o Retroactive excise payment, on January 1st - (Article 45 of the Law on Excise Duties). 	<ul style="list-style-type: none"> o Initiate procedures for the suspension of Article 45 of the Law on Excise Duties and the obligation of paying the excise difference for existing goods in stock on January 1st . The new, raised taxes/excises should be applied to goods traded for the first time by companies or importers in BiH. 	<ul style="list-style-type: none"> o Governing Board of ITA o Ministry of Finance and Treasury of BiH o Ministry of Finances of RS o Ministry of Finance of FBiH

6.3. LABOUR LAW

INTRODUCTION

In 2012, we have a very alarming situation regarding the regulation framework of the labour market in BiH. As was previously pointed out in the White Book for 2009, a big problem and obstacle for foreign investors is the incompatibility of labour laws in Bosnia and Herzegovina.

This situation is a big challenge for companies that operate in all parts of the country, and in practice, as a result of applying different laws and regulation, there is an unequal treatment of a company's employees.

Most commonly, problems arise when it comes to calculating past service, the calculation and compensation for sick leave, maternity leave, but also many other issues related to labour laws.

A special problem are different interpretations of already complicated and different legal solutions of certain issues in labour relations by the competent courts, which results in a high degree of uncertainty for both employers and employees when it comes to court protection in the field of labour laws.

There is a large number of cases in legal practice where, in situations with the same factual and legal grounds (e.g. labour disputes with accusations of multiple employees against one employer, or by employees against different employers but on the same legal and factual grounds), the courts have completely different attitudes and have contradicting rulings, through which they discriminate – on one hand the employer, on the other hand the employee. Such situations mainly occur due to different interpretations of the legal regulations, and collective agreements, which are not clear enough in their definition and regulation of rights and obligations stemming from the labour relations.

With the aim of eliminating the above mentioned uncertainty, we feel that, apart from har-

monizing the legal solutions in the field of Labour Law in BiH, a crucial issue is the adequate interpretation of legal solutions. We feel that the employer should, after the law is passed, with the goal of a better understanding and application of mentioned law, acquire a more detailed explanation and interpretation of the regulations prescribed by that law. This is necessary in order to avoid completely opposite interpretations of certain legal regulations, and it would help the courts which have to interpret these regulations and rule in individual cases which cannot differ in the same legal matter from court to court, whether they are municipal or cantonal, etc.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Compensations for employees on sick leave and refund of those compensations to employers by the Health Insurance Funds

FBiH, RS and BD: OPEN ISSUE

Health Insurance laws in the entities and the District differ in the amount of the compensation the employer needs to pay employees who are on sick leave, as well as on the periods during which those compensations are the employer's burden. The application of mentioned law is also different between the entities and the District, as well as between different cantons within the Federation. As far as the refund of the paid compensations during sick leave is concerned, the applications differ in terms of which compensations are refunded by the Health Insurance Funds.

In FBiH (in most cantons) and the District, the employer is obliged to pay compensations to the employees on sick leave during the whole period of sick leave; up to 42 days, the compensations are his burden, whereas over 42 days he can get refund from the relevant Health Insurance Fund. The minimal amount of that

compensation is 80% of that particular employee's salary. For sick leave longer than 42 days, the employer also pays the minimal amount of the compensation; however, the Fund can never refund the entire compensation, but only for 70-80% of the average net wage in FBiH. In the District, those amounts are determined by the Health Insurance Institute according to the average gross hourly payment, and the maximum refund is 1000KM, and the lowest by the minimal gross hourly payment in the District.

In RS the employers are also obligated to pay compensations to employees on sick leave which have to be at least 70% of their monthly net pay for the entire duration of the sick leave, whereas they can get refunded for a sick leave longer than 30 days by the competent Fund, and the gross hourly wage is determined by the Health Insurance Institute according to the average gross hourly wage. The maximum refund is 1000KM, and the lowest by the minimal gross hourly payment in RS.

Through this, employers are at loss because they mostly pay higher compensations than the refunds they get.

FBiH, RS and BD: RECOMMENDATION

Harmonize the laws in the cantons of FBiH, as well as the entities and BD in this area, and also concerning the amount the employer is obliged to pay employees on sick leave, the periods in which there is no refund for the employer and the amount of the refund by the Health Insurance Funds.

Salary refund to female employees on maternity leave and refund to employers

FBiH, RS and BD: OPEN ISSUE

The incompatibility of regulations in FBiH, RS, and the Brčko District on the amount of maternity compensations, and the obligation of the employer to pay compensations to employees

on maternity leave. The incompatibility also exists between cantons in the FBiH, since every canton has significantly different regulations on this matter.

In FBiH, the Labor Law defines only the right of the employee to compensations during maternity leave, while the compensation itself is determined by cantonal regulations. In practice, the employers in almost all cantons pay no compensations to the female employees on maternity leave, and the compensations that are paid by the cantons differ a lot. So, in the Sarajevo Canton, women on maternity leave get approximately 40-50% of the average net salary in canton, paid by the canton. In the Tuzla Canton, the employer is obligated to pay at least 90% of the employee's salary prior to the maternity leave, and he gets reimbursed by the Canton; on the other hand, in the Hercegovinačko-Neretvanski Canton, women on maternity leave have no right to compensation whatsoever, they only get a single financial aid for baby equipment, in the amount of 400 KM.

In Brčko District, female employees on maternity leave get 100% of their salary, and the employer also pays all the taxes and social security contributions, and he gets reimbursed by the relevant Labour Centre according to the calculated hourly wage in the District.

In RS, female employees on maternity leave are paid their average wage, taxes and social security contributions by their employer, whereas the right to refund is only possible for the employers from the Fund for Child protection who have been paying contributions for child protection in the name of all their employees at least 12 months prior to the maternity leave in question.

FBiH, RS and BD: RECOMMENDATION

It is necessary to harmonize regulations and practices related to determining the amount and payment of maternity leave salary refund

in all cantons in FBiH, and then harmonize those regulations with the ones in RS and Brčko Distrikt, in a way which would determine an equal maternity leave refund in all parts of BiH, and who will be burdened by it and for what period of time.

Collision of collective agreements in FBiH with the Law on Personal Income Tax of FBiH and the Law on Social Security Contributions of FBiH

FBiH: OPEN ISSUE

The current General Collective Agreement for the territory of FBiH, and thus also the branch collective agreements are in collision with:

The Law on Social Security Contributions of FBiH, the Personal Income Tax Law of FBiH, and the Labour Law of FBiH.

The incompatibility of the General Collective Agreement for the FBiH with the legislation refers, among other things, to:

The inconsistency in defining the gross hourly wage, which prevents a consistent implementation of collective agreements.

Not defining the gross hourly wage and gross wage in the General Collective Agreement has led to differences in the interpretation of Article 12 of the General Collective Agreement which regulates increase in salaries for overtime, night shifts, and other work, in a way that, in practice, courts determine the right of the employee to referenced salary increases, whereas the employers in BiH stick to the regulations of the Personal Income Tax Law, and the Salary Contribution Law, and then calculate legally determined social security contributions and taxes onto those increased wages and pay employees the net amount of those compensations.

The imprecise and unclear regulation in Article 13 of the General Collective Agreement has led to the different interpretations concerning the calculation of past service. Article 13 of the

General Collective Agreement for FBiH states that the basic wage is increased with every year of registered work experience by 0.6%, and the overall increase cannot exceed 20%; and that the registered work experience in the sense of Paragraph 1 of this Article also includes the registered work experience with the employer in case of employer change or the change of his legal status (e.g. due to sale, inheritance, merger, acquisition, change of the company's legal form, etc.). Courts in FBiH have taken different opinions on which situations of employer change of legal form can be treated as continuity of the legal subject in terms of calculating his employees' past registered work experience. For example, in the case of a joint venture by foreign investors and a local legal entity in form of establishing a new company in FBiH, in which the local investor provides equipment and space, some courts in FBiH treat it as legal continuity between the local investor and the new legal entity in regards to registered work experience of the employees who have worked for the local investor and now have come to work in the newly formed legal entity. These attitudes have caused numerous court disputes, and a significant financial burden for employers/foreign investors in FBiH, who were obligated to pay for their employees' past service spent with an earlier employer/local investor.

The application of Articles 12 and 13 of the General Collective Agreement for the territory of FBiH is a big problem for employers all around the Federation.

FBiH: RECOMMENDATION

To provide simpler and more accessible mechanisms and procedures for amendments to collective agreements, as well as for their termination, through amendments to the Labour Law that is in parliamentary procedure.

Also, to harmonize the General Collective Agreement with the Personal Income Tax Law

and the Salary Contribution Law, so that they would not be interpreted and applied differently, and especially to avoid the current legal system situation in which the General Collective Agreement has greater legal force than the Law.

Managerial contracts

FBiH: OPEN ISSUE

The lack of a managerial contract institute in the Labor Law of FBiH complicates the functioning and work of foreign investors (multinational companies) who want to put their employees/foreigners on managerial positions without establishing an employment relationship with them or double-paying them, since those persons are already employed in another position within the same company outside of BiH, and they especially do not want to sign contracts for an indefinite period of time with managers, given the existence of a precisely timed mandate.

FBiH: RECOMMENDATION

First of all, it is necessary to introduce the possibility of concluding a managerial contract without establishing an employment relationship, as it is anticipated in the Labour Law of RS. Apart from that, it is necessary to enable signing a managerial contract for a definite period of time with managers hired for a mandate longer than two years, and than after that period the employer does not have the obligation to keep that person as an employee or offer them another workplace.

Regulating the legislation in FBiH and RS regarding occasional and temporary employment

FBiH and RS: OPEN ISSUE

In recent years there is a rapid growth of need for the latest form of hire – temporary agency work through a growing number of private hiring agencies which offer such jobs. These jobs are considered to be extremely important for those entering the labour market

and they contribute to the growing demand for labour flexibility. According to the data of the International Association - CIETT, which represents the interests of these agencies, 59% of all those employed through this type of hiring are under 30, and 24% of them do not have a high school degree. It is considered that hiring through job agencies furthers the labour market qualifications, which is very important for young people and unqualified labour force.

FBiH and RS: RECOMMENDATION

Classification of business activities in FBiH and RS has affirmed the existence of the activities of these agencies and has “introduced” them into the legal and economic sphere of BiH. It is necessary to draft a legal framework which will define the founding and work of such agencies, whose existence will undoubtedly help raise the employment rate in BiH and fight grey economy.

SUGGESTIONS FOR AMENDMANS TO THE DRAFT OF THE NEW LABOR LAW OF FBiH

Defining the institute of discrimination as a wider and more comprehensive legal term which extends into all the actions and behaviours of an employer in regards to the employee, and to all the employer’s decisions regarding the employees’ rights and obligations

Article 9, Paragraph 1 of the Draft of the Labour Law of FBiH

(1) Discrimination from Article 8 of this law is prohibited in regards to:

- a. hiring conditions and the choice of the candidate for a certain position
- b. work conditions and all rights stemming from an employment relationship
- c. education, training, and specialization
- d. job promotions and
- e. labour contract termination

RECOMMENDATION

Articles 8 and 9 of the Draft need to be revised in a way which would prohibit discrimination of employees in all hiring relationships, the choice of candidates, and all relations at work and about work. If this is not done, then that would mean that discrimination is possible in cases which cannot be categorized in the ones listed in Article 9, Paragraph 1.

Article 9, Paragraph 2 of the Draft of the Labour Law of FBiH

(2) The provisions of the Employment Contract which are determined to be discriminating on one of the grounds listed in Article 8 of this law are void.

RECOMMENDATION

Having in mind that certain employee rights are established through special employer decisions, and not only through the Employment Contract (e.g. vacation days, paid/unpaid leave etc.) the issue of voiding such acts by the employer arises, if they are determined to be discriminating on one of the legal grounds in Article 8. In accordance with that, Article 9 should be amended as well, in Paragraph 2, so that the provisions of the employment contract and the individual provisions by the employer are both void if they are determined to be discriminating on one of the legal grounds in Article 8.

Limiting the abuse of breaking two employment contracts for a definite period of time as to avoid hiring employee for an indefinite period of time/Special defining of the directors' employment duration – in accordance with the mandate if it is longer than 2 years.

Article 22, Paragraph 3 of the Draft of the Labour Law of FBiH

Currently Article 22, Paragraph 3 of the Draft of the Labour Law of FBiH states:

“If a worker expressly or implicitly renews a contract on a definite period of time with the same employer, or expressly or implicitly signs successive contracts of employment for a definite time period longer than two years without interruption with the same employer, this contract shall be deemed to be a contract of indefinite time, unless the Collective Agreement determines otherwise.”

RECOMMENDATION

It is necessary to revise the quoted Article 22 Paragraph 3 of the Draft of the Labour Law, as follows:

“If a worker expressly or implicitly renews a contract on a definite period of time with the same employer, or expressly or implicitly signs successive contracts of employment for a definite time and thus achieves 24 months of labour during the last three years, it will be considered that his or her employment is for an indefinite period of time, unless the Collective Agreement determines otherwise.”

This would help in preventing employer from making “intentional” breaks between two contracts (Article 23, point g of the Draft of the Labour Law), which is pretty common practice, and it would at the same time enable an equal position for employees working for employers in FBiH and in RS.

Harmonize the legal regulations concerning the counting/non-counting of recess during work hours into the employees full-time work day

The current Labour Law of RS counts the recess during work hours into the full-time work day, whereas in the Labour Law of FBiH that is not the case.

RECOMMENDATION

The provision of Article 44, Paragraph 3 of the Draft of the Labour Law needs to be revised

and harmonized with the Labour Law of RS, in which Paragraph 3 of Article 45 states:

“The recess during working hours shall be counted in full-time working hours.”

In order to provide legal security and hierarchy in the application of regulations it is necessary to ensure the harmonization of collective agreements with the new Labour Law.

Ensure the harmonization of collective agreements with the new Labour Law and other laws in the field of labour relations in the specified time limits, where, otherwise, should en-

sure identification invalid provisions of collective agreements that are in conflict with the law.

RECOMMENDATION

Amend article 182. of the Draft of the Labour Law so that it reads:

(1) All collective agreements (general, branch, and individual) need to be harmonized with this law at the latest 6 months after this law has entered into force.

(2) If collective agreements are not harmonized by the deadline established in Paragraph 1 of this Article, their application is terminated.

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> • Compensations for employees on sick leave and refund of those compensations to employers by the Health Insurance Funds. 	<ul style="list-style-type: none"> • Harmonize the laws in the cantons of FBiH, as well as the entities and BD in this area, and also concerning the amount the employer is obliged to pay employees on sick leave, the periods in which there is no refund for the employer and the amount of the refund by the Health Insurance Funds. 	<ul style="list-style-type: none"> • Parliament of FBiH • National Assembly of the Republic of Srpska • Assembly of Brčko District • Relevant Entity Ministries • Health Insurance Institutes
<ul style="list-style-type: none"> • Salary refund to female employees on maternity leave and refunds to employers. 	<ul style="list-style-type: none"> • It is necessary to harmonize regulations in all cantons in FBiH, RS and Brčko Distrikt, in a way which would determine an equal maternity leave refund in all parts of BiH, and who will be burdened by it and for what period of time. 	<ul style="list-style-type: none"> • Parliament of FBiH • National Assembly of the Republic of Srpska • Assembly of Brčko District • Cantonal Assemblies (in FBiH) • Relevant Entity Ministries • Social Work Centres
<ul style="list-style-type: none"> • Collision of collective agreements in FBiH with the Law on Personal Income Tax of FBiH and the Law on Social security Contributions of FBiH. 	<ul style="list-style-type: none"> • Provide simpler and more accessible mechanisms and procedures for amendments to collective agreements, as well as for their termination, through amendments to the Labour Law that is in parliamentary procedure. Also, harmonize the General Collective Agreement with the Personal Income Tax Law and the Salary Contribution Law, so that they would not be interpreted and applied differently. 	<ul style="list-style-type: none"> • Parliament of FBiH • Government of FBiH • Entity Ministries of Labour • Association of Employers in FBiH • Alliance of Independent Unions in FBiH

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> Lack of managerial contract institute in the Labour Law of the FBiH. 	<ul style="list-style-type: none"> It is necessary to introduce the possibility of concluding a managerial contract without establishing an employment relationship. Apart from that, it is necessary to enable signing a managerial contract for a definite period of time with managers hired for a mandate longer than two years, and that after that period the employer does not have the obligation to keep that person as an employee or offer them another workplace. 	<ul style="list-style-type: none"> Parliament of FBiH Government of FBiH Ministry of Labour and Social Policy of FBiH
<ul style="list-style-type: none"> Regulating the legislation in FBiH and RS regarding occasional and temporary employment through private employment agencies. 	<ul style="list-style-type: none"> It is necessary to make a legal framework which will define the founding and work of private hiring agencies, whose existence will undoubtedly help raise the employment rate in BiH and fight grey economy. 	<ul style="list-style-type: none"> Parliament of FBiH Government of FBiH Ministry of Labour and Social Policy of FBiH
SUGGESTIONS FOR AMENDMANS TO THE DRAFT OF THE NEW LABOR LAW OF FBiH		
<ul style="list-style-type: none"> Defining the institute of discrimination as a wider and more comprehensive legal term. 	<ul style="list-style-type: none"> Articles 8 and 9 of the Draft need to be revised in a way which would prohibit discrimination of employees in all hiring relationships, the choice of candidates, and all relations at work and about work. Article 9 should be amended as well, in Paragraph 2, so that the provisions of the Employment Contract and the individual provisions by the employer are both void if they are determined to be discriminating. 	<ul style="list-style-type: none"> Parliament of FBiH Ministry of Labour and Social Policy of FBiH
<ul style="list-style-type: none"> Limiting the abuse of breaking two employment contracts for a definite period of time as to avoid hiring employee for an indefinite period of time/ Special defining of the directors' employment duration – in accordance with the mandate if it is longer than 2 years. 	<ul style="list-style-type: none"> It is necessary to revise the Article 22. If a worker expressly or implicitly renews a contract on a definite period of time with the same employer, or expressly or implicitly signs successive employment contracts for a definite time and thus achieves 24 months of labour during the last three years, it will be considered that his or her employment is for an indefinite period of time, unless the Collective Agreement determines otherwise. 	<ul style="list-style-type: none"> Parliament of FBiH Ministry of Labour and Social Policy of FBiH

OPEN ISSUE	RECOMMENDATION	INSTITUTION
SUGGESTIONS FOR AMENDMANS TO THE DRAFT OF THE NEW LABOR LAW OF FBiH		
<ul style="list-style-type: none"> o Harmonize the legal regulations concerning the counting/ non-counting of recess during work hours into the employees full-time work day. 	<ul style="list-style-type: none"> o The provision of Article 44, Paragraph 3 of the Draft of the Labour Law needs to be revised and harmonized with the Labour Law of RS, in which Paragraph 3 of Article 45 states: "The recess during working hours shall be counted in full-time working hours." 	<ul style="list-style-type: none"> o Parliament of FBiH o Ministry of Labour and Social Policy of FBiH
<ul style="list-style-type: none"> o In order to provide legal security and hierarchy in the application of regulations it is necessary to ensure the harmonization of collective agreements with the new Labour Law. 	<ul style="list-style-type: none"> o Amend Article 182. of the Draft of the Labour Law in a way that all applicable collective agreements must comply with this law within six months, and if at that time they do not comply their applications will cease. 	<ul style="list-style-type: none"> o Parliament of FBiH o Government of FBiH o Ministry of Labour and Social Policy of FBiH o Association of Employers in FBiH o Alliance of Independent Unions in FBiH

6.4 CONSTRUCTION PERMITS

INTRODUCTION

According to the World Bank's Doing Business Report for 2013, Bosnia and Herzegovina ranks 163 according to the ease and time required to obtain a construction permit, while last year it ranked 173. Therefore, in the area of construction permits, BiH has made an improvement by 10 positions. This is mostly due to changes made in law which regulates procedures for issuing construction permits in both entities, but in practice improvements have not been made especially related to the efficiency and promptness of issuing construction permits.

In addition to entity laws in FBiH, there are also cantonal laws governing the issue of permits and approvals, which further complicate the process for the investor because experience gained in one municipality, cannot be relied on when obtaining permits in another municipality. It should be noted that the currently applicable Law on Spatial Planning and Land Utilization on the level of the Federation of Bosnia and Herzegovina, which abrogated the previous Law on Spatial Planning and Land Utilization of FBiH from 2002, has been adopted in 2006. Since then it has been amended on five occasions, but not in compliance with regulations from the same area on the cantonal levels, and the consolidated text of the Law has never been made. Accordingly, in formal terms, it is necessary, among other things, to adopt a new Law on Spatial Planning and Land Utilization in the FBiH which would be consistent with the legal solutions at lower, cantonal, levels and would regulate this area in a better, more systematic manner.

RS hasn't made any significant progress. The Law on Spatial Planning and Construction has not made any substantial changes compared to the previous one. Essentially, the prob-

lem is that these plans are often non-existent or are incomplete and/or not harmonized, yet it is only based on these plans that investors may be issued location requirements within an optimum timeframe.

Comparing the previous recommendations from the White Book it can be concluded that regardless of the changes in the law there is still a problem of incomplete and mismatched procedures, non-transparent procedures and inefficient administrative staff that would provide an adequate and timely support to investors. Compared to the previous edition of the White Book, the significant progress has not been made in this area.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Inefficient processing of application*

FBiH and RS: OPEN ISSUE

Inefficient processing of application is reflected in the decisions and actions that are dependent on the Federation territorial organization. Particularly this problem is being manifested with large investors, i.e. companies of federal importance. Application for the construction permit is submitted to the Federal Ministry of Physical Planning which forwards the application to cantonal and municipal level with the purpose of obtaining opinions and approvals therefore making the procedure, if there are no differences in opinion on lower levels (cantonal and municipal), last for several months. This makes the process of obtaining the construction permit highly inefficient and slow.

The process of obtaining permits in RS is very similar to the one in FBiH, resulting in very similar issues, but with one big difference: the interaction takes place at the municipal level only. In other words, when the application for the permit or consent is submitted, the municipality will determine whether the issuing of

that permit or consent is in their jurisdiction or not. If not, the municipality will formally submit the application to the entity ministry.

FBiH and RS: RECOMMENDATION

Define the unique form for the lower levels, municipalities and cantons, which will be used to provide opinion in terms of giving a positive or negative estimation on the construction of the subject facility in order to avoid the ambiguity of interpretation of their opinions on the RS and FBiH level in terms of seeking additional approvals or amendments to the request for the applicant. Thus, to establish a form which a municipality or canton would use to provide or deny an opinion without offering further explanations, except when the application is being denied.

FBiH and RS: OPEN ISSUE

The problem of slow application processing in FBiH and RS still remains present. The treatment of the investors varies from municipality to municipality. In smaller municipalities, where the application influx is lower, the officials are more willing to support the investors, while in more developed municipalities, due to an overload, obtaining permits takes more time.

Inefficient application processing is reflected in the decisions and actions that are dependent on the Federation territorial organization. Thus, if the company applies for the construction permit the Ministry of Physical Planning does not act on that request but refers the company to the cantonal or municipal level in terms of obtaining opinions, consents etc making the procedure last for a few months and the process of obtaining construction permit highly inefficient and slow.

FBiH and RS: RECOMMENDATION

To achieve optimum efficiency in application processing, it is equally important to have pro-

fessional, trained and responsible staff, capable of managing all the changes made. It would be advisable to set up and link electronic databases that would allow for faster and easier processing of all necessary documentation.

The required documentation for obtaining urban and construction consents is excessive

FBiH and RS: OPEN ISSUE

While applying for the construction permit, the applicant is required to submit various consents related to the location and infrastructure – utility services, consent of the local telecom operators, consent from the Institute for Protection of Monuments and consent from the local electricity provider. Once obtained consent e.g. from the local telecom operator stating that the telecommunication infrastructure is not found at the property, where the construction will be carried out, is valid for one year from the date of issuance. For each facility that is being built within the industrial circle the same consent must be provided even though it has already been stated that e.g. there are no facilities which are under the protection of the Institute for Protection of Monuments, nor transmission lines or telecommunication infrastructure on the construction site.

FBiH and RS: RECOMMENDATION

Introduce a clear and strict obligation for public utility companies that own the infrastructure to keep updated records and timely inform competent cantonal or entity Ministry of Physical Planning about any changes on the given infrastructure. Given this commitment it would not be necessary to submit the new consent from the utility companies each time the company applies for the construction permit, but the already existing consent would be compared to the recent changes in installation cadastre of the competent ministry. A new consent would have to be issued only if changes

occurred in the installation cadastre of specific utility company.

Could a single consent for the supporting infrastructure be requested at least on the annual basis, which would include the industrial area site where the construction is being carried out and obligate the authorities to issue the consent no later than 7 days from the date the application submission, in order for our requests to be processed more quickly?

Incoherence and the lack of cooperation between the state/federal administrative authority and the state/public companies whose consents are required for obtaining construction permits

FBiH and RS: OPEN ISSUE

Frequent problems arise in cases when the utility companies (electrical utility, utility service company, telecom operators, mines, railways) do not have a blueprint of their installations (the duty of municipal and cantonal authorities should be to impose this obligation to the utility companies through the regulations which are adopted on those levels) and are not able to issue necessary certificates or opinions. There is also a case when the electrical utility company issues its approval, but later realizes that the powering is not possible due to the collision with the telecom operator installations or vice versa. It is essential that the relevant state authorities have all the necessary information concerning the installations that the state-owned companies possess and to be familiarized with their capacities and the impact of constructing the required facility.

FBiH and RS: RECOMMENDATION

The solution to this problem lies in the activities of the competent authority level which has the jurisdiction over these state-owned companies. It is necessary to establish a common database, which could be done by amend-

ing the existing Law on Public Companies and by providing a transitional solution which would allow the mutual cooperation between these state owned companies.

The best solution would be for the entity governments to be responsible for the central database and for the lower levels to be required to submit and update the data in accordance with the changes occurring in the field. Lower levels would also be entitled to seek information from the entity levels in order to resolve applications at the lower level of the government.

The law is not clear enough in regards to regulating the payment of fees for the usage of construction land (the rent)

FBiH and RS: OPEN ISSUE

The Law on Spatial Planning and Land Utilization at the level of the Federation of Bosnia and Herzegovina regulates the payment for the usage of the of the construction land as a general obligation of all users of the land, even though the title of the law and the nature of its provisions clearly state that the intention of the legislator was to prescribe such commitments only for people who intend to build on such land. However, the vague provisions of Articles 73, 74 and 75 of the law have resulted in inconsistent interpretation of these provisions in different municipalities as well as inconsistency of cantonal regulations on construction throughout the Federation. It is an inherent incompatibility of legal terms in different laws that should mean the same legal terms.

Furthermore, the legislation in RS and FBiH does not define the exact construction site fee payers, in terms of distinguishing persons who intend to build on the state-owned land from persons who build on privately owned land.

Also, the existing legislation is not clear whether this fee is paid only once, during the initial construction, or during each construction. At the same time it is not clear how and under

what conditions the investor is entitled to deduction of the specified rent in the amount paid before the construction of the previous facility on the site where the new facility is being built.

Direct consequences of these inconsistencies and inadequacies of existing legislations are completely contradictory views and interpretations of the laws at different levels of government, and between multiple municipalities. As an example we point out the provisions of Law on Spatial Planning of Canton Sarajevo, which is not aligned with the Law on Spatial Planning and Land Utilization in the Federation, particularly the part that defines the obligations of investors in the process of issuing construction permits in terms of payment of rent.

FBiH and RS: RECOMMENDATION

Harmonize the provisions of relevant laws at all levels; RS, FBiH, cantons and municipalities, in formal, substantive, and terminological sense. It is necessary to clearly stipulate when, how and who is obliged to pay the rent, as well as the cases of exemption from these fees.

Legislation vagueness

RS and FBiH: OPEN ISSUE

The situation on the RS territory remains unchanged. The Law on Spatial Planning and Con-

struction does not recognize the term linear infrastructure (telecommunication, water, electrical wiring, gas lines, etc.) in other words it does not extend to telecommunication sector and it does not clearly define the linear infrastructure and mobile network. The same applies for the FBiH laws.

As the field of telecommunication infrastructure is not defined in the RS and FBiH law the municipalities don't have clearly defined procedure for obtaining permits in this area and there is still a problem that in some municipalities it takes about 30 days and others up to a year for processing all documents required to obtain a permit for construction of facilities.

Also the law should further regulate the part that refers to facilities that do not require construction permits, especially the part regarding awnings.

In the process of issuing the construction permits for the facilities of public interest the Government's decision based on the Expropriation Law should be considered as an evidence of land ownership.

RS and FBiH: RECOMMENDATION

The law should more clearly define the term linear infrastructure and include the telecommunication sector.

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> • Inefficient application processing o Inefficient application processing is reflected in the decisions and actions that are dependent on the entity territorial organization. 	<ul style="list-style-type: none"> o Define the unique form for the lower levels, municipalities and cantons, which will be used to provide opinion in terms of giving a positive or negative estimation on the construction of the subject facility in order to avoid the ambiguity of interpretation of their opinions on entity levels. 	<ul style="list-style-type: none"> o Municipalities in FBiH and RS
<ul style="list-style-type: none"> o The problem of slow application processing in FBiH and RS 	<ul style="list-style-type: none"> o It is important to have a skilled, knowledgeable staff. It would be advisable 	<ul style="list-style-type: none"> o Municipalities in FBiH and RS

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<p>still remain present. The treatment of the investors varies from municipality to municipality.</p>	<p>to set up and link electronic databases that will allow for faster and easier processing of all necessary documentation.</p>	
<ul style="list-style-type: none"> The required documentation for obtaining urban and construction consents is excessive. 	<ul style="list-style-type: none"> A unique consent for the supporting infrastructure to be requested at least on the annual basis, which would include the industrial area site where the construction is being carried out and obligate the authorities to issue the consent no later than 7 days from the date of the application submission. 	<ul style="list-style-type: none"> Ministry of Physical Planning of FBiH
<ul style="list-style-type: none"> Incoherence and the lack of cooperation between the state/federal administrative authority and the state/public companies whose consents are required for obtaining construction permits. 	<ul style="list-style-type: none"> The solution to this problem lies in the activities of the competent authority level which has the jurisdiction over these state-owned companies. It is necessary to establish a common database, which could be done by amending the existing Law on Public Companies and by providing a transitional solution which would allow the mutual cooperation between these state owned companies. 	<ul style="list-style-type: none"> Relevant state and federal administrative authorities Public companies in FBiH and RS
<ul style="list-style-type: none"> The law is not clear enough in regards to regulating the payment of fees for the usage of construction land (the rent). 	<ul style="list-style-type: none"> Harmonize the provisions of relevant laws at all levels; RS, FBiH, cantons and municipalities, in formal, substantive, and terminological sense. 	<ul style="list-style-type: none"> Ministry of Physical Planning of FBiH
<ul style="list-style-type: none"> Legislation vagueness. 	<ul style="list-style-type: none"> The law should more clearly define the term linear infrastructure and include the telecommunication sector. 	<ul style="list-style-type: none"> Legislative and executive authorities of FBiH and RS

6.5. ENVIRONMENTAL PERMITS

INTRODUCTION

Environmental permits regulate the measures and actions that can be applied in the manufacturing process and are focused on the prevention of pollution at the source, and better management of natural resources.

When it comes to the practical aspects of issuing environmental permits, in BiH situation is very complex, even more so;

- Legal provisions and standards prescribed by law are very often not applied in practice
- Federal Law on Environmental Protection and cantonal laws are not harmonized
- The procedure for renewing environmental permits upon their expiration is not developed (not required by any environmental law or the additional regulations)
- An application for issuance of the environmental permit is submitted by the investor who very often is not aware of the jurisdiction (canton/Federal) and his legal obligations. It is very frequently the case that the investor submits an application for the issuance of the environmental permit at the cantonal level and is kept waiting for the entire year, just to be informed that the jurisdiction for issuing his permit falls under the Federal level
- The system for issuing environmental permits is not harmonized on the FBiH level
- There is also the problem of multiple levels of competence and discrepancies between Federal and cantonal ministries as well as the inconsistency of inspections
- Environmental permits vary from canton to canton

Also, initiating the administrative procedure for issuing environmental permits in the Federation BiH, starting with the application for is-

suance of the environmental permits at the Federal level is a very complex process.

Through the continuous improvements and investments made by foreign investors, modernization and automating of the processes, new plants are being built; changes are being introduced to the operations of the existing plants with the aim of reducing the negative impact on the environment while respecting the principles of sustainable development.

In accordance with the above, it is necessary to involve authorities at the cantonal and Federal level in the process of evaluating the impact on the environment, improve the system of applying and obtaining an environmental permit, improve the efficiency of processing individual requests through incentives to investors to inform themselves of all permits necessary for the realization of investments, in order to have information on best available techniques that are environmentally acceptable and economically viable.

It is important to assess the priorities that will bring environmental policy and legislation for the improvement of obtaining environmental permits closer, because environmental policy is an essential element in the creation of the internal market.

With this aim, the experiences in the process of obtaining environmental permits at the Federal level shall be processed below - including the specific problems the applicants faced, proposed measures for improvement, and recommendations for solving those problems in order to create a more effective system of obtaining environmental permits and more advanced process for implementing recommendations and realization programs determined by specific environmental permit.

Integrated approach supports a sustainable, social, and economic development, improves the quality of life of residents in the municipalities, raises awareness of understanding and respect

for nature, which is of vital importance for the environment, but also for long-term success of the internal market.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Transparency of public discussions

FBiH: OPEN ISSUE

Inefficient transparency of public discussions, which is reflected in the slow processing of applications for environmental management are subject to the territorial organization of Bosnia and Herzegovina. For example Factory Sisecam Soda Lukavac the object of Federal importance, and as such is under the jurisdiction of the Federal Ministry of Environment and Tourism. Cycle of evaluating the activity plan from the moment of its submitting to obtaining environmental permits ultimately last a very long time (several months). All stated above has a negative impact on investors in technical and financial terms.

FBiH: RECOMMENDATION

In order to solve this type of problem it is necessary to enable the following:

- Call for a public discussion on the plan of activities reduce to a maximum of 10-15 days (see new RS law);
- Deadlines for sending comments on already made action plan (which has already been read by the competent employees of the Ministry) should be 7 days from the date of its publication on the Ministry website;
- For the purpose of transparency and the possibility of shortening the above mentioned deadlines, Ministry should enable download of documents electronically, as

well as send comments and suggestions to authorized persons via email;

- Government should, as soon as possible, amend the Ordinance for the issuance of environmental permits, which should clearly define the scope of the integrated environmental permit, as well as the possibility of e-permits (electronic permit).⁷

Difficulties in analysing zero state

FBiH: OPEN ISSUE

Basis for any environmental research in a particular area must be a detailed analysis of the current situation. Only a detailed knowledge of the zero state of the environment can serve as the basis on which realistically all future dealings could be based, correct conclusions regarding the negative consequences made, and necessary measures of protection taken. Therefore it is necessary to carry out a study on pollution in the zero state which determines the state of the environment on the given location, a list of places of the origin, and quantitative and qualitative characteristics of waste streams (waste, noise, air emissions, waste water), showing the emission sites on the map of the location.

However, difficulties that arise when analysing the zero state for the certain areas are as follows:

- Lack of data on emissions at certain areas (municipalities, cantons);
- The problem of multiple emitters (legal entities) and the lack of data on their impact on the location,
- Lack of data on the proportion of single emitters to the overall emissions on the site,
- Lack of emissions stations for analysing air quality in populated areas.

⁷ The Republic of Croatia has adopted a regulation, as of July 1st 2013, which provides a program that will facilitate the issuance of the electronic construction permits (some cantons have already began issuing these permits). There is also a plan for issuing all other permits which would save a lot of time for investors.

FBiH: RECOMMENDATION

Since provider's activity plan cannot be submitted without this Study of pollution in the zero state, the recommendation would go in the direction that the competent Ministry of Environment and Tourism, through competent cantonal and local authorities, should take the necessary measures to eliminate these obstacles.

Applying for public tender of the Fund for Environmental Protection**FBiH: OPEN ISSUE**

An applicant who applied to the public tender published by the Environmental Fund of the Federation BiH can only submit one project per program.

FBiH: RECOMMENDATION

Applicants who invest greater resources in the Fund should be allowed to submit multiple projects per program.

Abolish fees for operators whose emissions are within marginal values**FBiH: OPEN ISSUE**

Compensation for air pollutants to be paid regardless of the fact whether they are inside or outside the emission marginal values.

FBiH: RECOMMENDATION

Amend the Regulation on the types of fees and criteria for calculating fees for air pollutants (Official Gazette FBiH, br.66/11) so that the operators are free of charge when it is determined that the emissions are within the marginal values.

Define marginal values for existing plants**FBiH: OPEN ISSUE**

Permitted values for existing plants or for plants that are in phase of adjustment to the best available techniques and emission marginal values are not defined in relevant regulations, i.e. marginal values are defined only for new plants and the same applies to existing plants.

Also, the deadline for the gradual reduction of emissions and for compliance of existing plants with the best available techniques is very short.

FBiH: RECOMMENDATION

Regulations on marginal values of air emissions from combustion installations (Official Gazette FBiH, no. 12/05), Regulations on the limitation of emissions of pollutants into the air (Official Gazette FBiH, no. 12/05) should define marginal values for the existing plants.

Environmental permits should also define marginal values for the period of adjustment that must be a bit milder than values defined in the Regulations that apply to new plants or plants that are harmonized with the best available techniques. It is necessary to define realistic deadlines for the implementation of projects in the field of environmental protection.

Clearly define the level of oxygen in the waste gases**FBiH: OPEN ISSUE**

The level of oxygen in the waste gases, which is used for the reduction of parameters in Nm3 is not defined in the relevant regulation - due to lack of this data, it is impossible unambiguously determine the concentration of pollutants in the flue gases.

FBiH: RECOMMENDATION

Regulations on limit values of air emissions from combustion installations (Official Gazette FBiH, no. 12/05), and Regulations on the marginal values of emissions of pollutants into the air (Official Gazette FBiH, no. 12/05) should clearly define the level of oxygen in the waste gases.

Clearly define who is doing the monitoring program of waste water**FBiH: OPEN ISSUE**

Regulation on conditions for discharging waste water into natural recipients and public sewer

systems ("Official Gazette" FBiH no. 4/12) defines the basic parameters of waste water quality, but not the specific parameters of waste water quality, for example, in the case of iron and steel production. The regulation does not clearly define who will carry out the Program of waste water monitoring. The regulation does not define the items of the Monitoring Program, which would also identify the entity authorized to perform the Monitoring Plan.

FBiH: RECOMMENDATION

It is necessary to clearly define whose responsibility it is to create a Program for waste water monitoring (whether authorized laboratories, operators, or both together). Clearly define the items of the program for monitoring waste waters.

Uncoordinated work between relevant government institutions

FBiH: OPEN ISSUE

Uncoordinated work of the government institutions is a big problem - a document issued by a Federal Ministry e.g. environmental permit - is not delivered ex officio to the other government institutions such as the Agency for Water and Fund for Environmental Protection, but the operator is required to submit this document.

FBiH: RECOMMENDATION

Increase the cooperation of relevant governmental institutions and introduce a system of delivery of permits and decisions, ex officio, to other government institutions.

OPEN ISSUE	RECOMMENDATIONS	INSTITUTION
<ul style="list-style-type: none"> Inefficient transparency of public discussions, which is reflected in the slow processing of applications for environmental management. Cycle for considering activity plan (from submitting till obtaining environmental permit) lasts a very long time which in general has a negative impact in technical and financial terms to investors. 	<ul style="list-style-type: none"> Call for a public discussion on the plan of activities should be reduced. Also deadlines for sending comments on already made action plan. Ministry should enable download of documents electronically, as well as send comments and suggestions to authorized persons via email; Government should, as soon as possible, amend the Ordinance for the issuance of environmental permits, which should clearly define the scope of the integrated environmental permit, as well as the possibility of e-permits (electronic permit). 	<ul style="list-style-type: none"> Government of FBiH Ministry of Environment and Tourism of FBiH
<ul style="list-style-type: none"> Difficulties that arise when analysing the zero state for the certain areas are as follows: <ul style="list-style-type: none"> - Lack of data on emissions at certain areas; - The problem of multiple emitters (legal entities) and the lack of data on their impact on the location; - Lack of data on the proportion of single emitters to the overall emissions on the site; 	<ul style="list-style-type: none"> Since provider's activity plan cannot be submitted without this Study of pollution in the zero state, the recommendation would go in the direction that the Ministry of Environment and Tourism through competent cantonal and local authorities should take the necessary measures to eliminate these obstacles. 	<ul style="list-style-type: none"> Ministry of Environment and Tourism of FBiH

OPEN ISSUE	RECOMMENDATIONS	INSTITUTION
<ul style="list-style-type: none"> - Lack of emissions stations for analysing air quality in populated areas. 		
<ul style="list-style-type: none"> • An applicant who applied to the public tender published by the Environmental Fund of the FBiH can only submit one project per program. 	<ul style="list-style-type: none"> • Applicants who invest greater resources in the Fund should be allowed to submit multiple projects per program. 	<ul style="list-style-type: none"> • Environmental Fund of FBiH
<ul style="list-style-type: none"> • Compensation for air pollutants to be paid irrespective of the fact whether they are inside or outside the emission marginal values. 	<ul style="list-style-type: none"> • Amend the Regulation on the types of benefits and criteria for calculating compensation for air pollutants (Official Gazette FBiH, br.66/11) so that the operators are free of charge when it is determined that the emissions are within the marginal limits. 	<ul style="list-style-type: none"> • Government of FBiH
<ul style="list-style-type: none"> • Permitted values for existing plants or for plants that are in phase of adjustment to the best available techniques and emission marginal values are not defined in relevant regulations, i.e. marginal values are defined only for new plants and the same applies to existing plants. Also, the deadline for the gradual reduction of emissions and for compliance of existing plants with the best available techniques is very short. 	<ul style="list-style-type: none"> • Relevant regulations should define marginal values for the existing plants. Environmental permits should also define marginal values for the period of adjustment that must be a bit milder than values defined in the Regulations that apply to new plants or plants that are harmonized with the best available techniques. It is necessary to define realistic deadlines for the implementation of projects in the field of environmental protection. 	<ul style="list-style-type: none"> • Ministry of Environment and Tourism of FBiH
<ul style="list-style-type: none"> • The level of oxygen in the waste gases, which is used for the reduction of parameters in Nm3 is not defined - due to lack of this data, it is impossible unambiguously determine the concentration of pollutants in the flue gases. 	<ul style="list-style-type: none"> • Clearly define the level of oxygen in the waste gases in the relevant Regulations. 	<ul style="list-style-type: none"> • Ministry of Environment and Tourism of FBiH
<ul style="list-style-type: none"> • The relevant Regulation defines the basic parameters of wastewater quality, but not the specific parameters of wastewater quality, for example, in 	<ul style="list-style-type: none"> • It is necessary to clearly define whose responsibility it is to create a Program for waste water monitoring (whether authorized laboratories, operators, or both together). Clearly define the 	<ul style="list-style-type: none"> • Government of FBiH

OPEN ISSUE	RECOMMENDATIONS	INSTITUTION
<p>case of iron and steel production. The Regulation does not clearly define who will carry out the Program of waste water monitoring. The regulation does not define the items of the Monitoring Program, which would also identify the entity authorized to perform the monitoring plan.</p>	<p>items of the Program for waste water monitoring.</p>	
<ul style="list-style-type: none"> • Uncoordinated work of the relevant government institutions is a big problem - a document issued by a Federal Ministry e.g. environmental permit - is not delivered ex officio to the other government institutions such as the Agency for Water and Environmental Protection, but the operator is required to submit this document. 	<ul style="list-style-type: none"> • Increase the cooperation of relevant governmental institutions and introduce a system of delivery of permits and decisions, ex officio, to other government institutions. 	<ul style="list-style-type: none"> • Ministry of Environment and Tourism of FBiH

6.6. CONCESSIONS

INTRODUCTION

Investing capital in infrastructure, particularly in the areas of transport, energy, communication, and water economy is one of the basic preconditions for strengthening the position of BiH in connection to its EU integration. It is undisputed that the process of attracting foreign investors requires an efficient legal system. However, the complexity of BiH political and territorial organization often results in unevenly regulated legal areas which are important for the implementation the above mention projects and achieving the goals of successful integration. The example of this is the concession system in BiH.

Discussing the foreign investments and country's efforts to ensure the inflow of a foreign capital, concessions appear as a particularly convenient form of realising complex infrastructure projects since they can satisfy the interests of both the government and the investors. In this regard, in 2002 BiH adopted a set of laws governing the matter of concessions at the state and entity levels. The mentioned set of laws includes the following regulations:

- Law on Concessions of BiH ("Official Gazette of BiH", no. 32/02 and 56/04);
- Law on Concessions of FBiH ("Official Gazette of FBiH", no. 40/02 and 61/06);
- Law on Concessions of RS ("Official Gazette of RS", no. 25/02, 91/06 and 92/09) and
- Cantonal laws on concessions adopted in some cantons of FBiH.

Generally, the legal framework has been complemented with documentation on concession granting policy which provided an insight into the dynamics of concession granting in entities. Originally, the regulations at state and entity level predicted almost identical solutions resulting in a harmonised concession system in

the BiH, in spite of its organizational, legal, and political complexity. However, both entities' laws have undergone several amendments which undermined the originally harmonised system. Nevertheless it is important to emphasize that the new Draft of the Law on Concessions in RS has been adopted and forwarded to parliamentary procedure and the draft of the Law on Concessions in FBiH is currently in the parliamentary procedure. In any case, it is evident that the set of rules that regulate the area of concession does not fully comply with the EU regulations and directives.

Furthermore, there is an unclear relationship between the Public-Private Partnership on one hand and concessions on the other. Specifically, pursuant to the Law on Public-Private Partnership of RS (Official Gazette of RS no. 59/09) the contractual form of Public-Private Partnership can be a concession and for that matter it should be implemented in accordance with the provisions of the relevant law on concessions. On the other hand the Law on Public-Private Partnership has not been adopted on the FBiH level, but certain cantons have adopted relevant cantonal laws. Bearing in mind the insufficiently developed legal framework, projects in the field of Public-Private Partnerships in the FBiH are mainly being implemented through existing legislation on concessions.

The existence of different legal regimes in the area of concessions at the same time not only results in legal uncertainty, but also poses a serious obstacle to the realization of projects in the eyes of potential investors, especially in areas where various concession laws are being implemented (such as the Federation). In practice, fewer activities have been recorded in the FBiH, compared to the RS, and it seems that that most of the concessions at the BiH level have been granted to the RS.

In relation to this, the text below identifies the deficiencies of the Law on Concessions at

the entity and state levels pointed out by FIC members in 2012. These recommendations do not include cantonal laws on concessions and the Law on Concessions at Brčko District level.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Defining the term “concessionaire”

BiH, RS and FBiH: OPEN ISSUE

The definition of the term concessionaire, provided in the relevant legislation, makes the situation very difficult for the company granted the concession, especially when it comes to foreign legal entities.

In fact, all three laws on concessions indicate the regulation of issues of granting concessions to "domestic and foreign entities" (Article 1 of the Law on Concessions of Bosnia and Herzegovina, Article 1 of the Law on Concessions RS, and Article 1 of the Law on Concessions in FBiH), but while defying the term concessionaire (Article 3 of the Law on Concessions of Bosnia and Herzegovina, Article 5 of the Law on Concessions RS, and Article 4 of the Law on Concessions FBiH) it is emphasized that this "legal entity established in accordance with the laws of BiH/RS/FBiH is owned by domestic or foreign legal entity". However, none of these three laws contains precise provisions on how to resolve these issues in practice.

In practice it is common situation that the concessions are granted to a foreign legal entity which is then required to establish a domestic legal entity which will "take over" the concessions and execute the signed Concession Agreement.

Practically, negative effects are directed towards a foreign legal entity granted a concessions and there are many other concerns, especially:

- If there is a possibility of annexing already signed contracts (annexing initial Conces-

sion Agreement is very frequent in practice because the initial contracts are usually very generally drafted and should later be further specified)

- In the process of "transferring" concessions from a foreign legal entity to a domestic legal entity owned by it (When is it required to establish a domestic legal entity? When is the domestic legal entity considered the concessionaire? Etc.)

BiH, RS and FBiH: RECOMMENDATION

It is necessary to precisely define the time period in which the (foreign) legal entity, after the granting of the concession/signing of the Concession Agreement, should establish a domestic legal entity and precisely define the term "concessionaire" in a way that explicitly defines these situations as well.

The concession granting procedure

BiH, RS and FBiH: OPEN ISSUE

The procedure for granting concessions, especially the part related to the public tender is not fully defined in the three existing laws. This especially applies to the part of the procedure of approval of the public tender for granting concessions (Articles 21 to 25 of the Law on Concessions of the Bosnia and Herzegovina, Articles 23 to 27b, Law on Concessions of the RS, and Articles 24 to 28 of the Law on Concessions of the FBiH). This can cause a large number of practical problems in the period between the approval of a public tender and after the concessions are granted to a certain legal entity.

BiH, RS and FBiH: RECOMMENDATION

It is necessary to define the precise deadlines for each step in the process of granting concessions and define responsibilities of all parties in this process (required documentation, institution which receives the application, deadlines, etc.).

Unsolicited offers**FBiH and RS: OPEN ISSUE**

Granting concessions through unsolicited offers is provided at the state (Article 25 of the Law on Concessions) and at the entity level (Article 28 of the Law on Concessions of FBiH and Article 26 of the Law on Concessions RS). The procedure of granting concessions based on unsolicited offers implies that the bidder must submit a proposal for granting concessions to the competent authority in the case when there was no public tender for the concession. Therefore, unsolicited offers leave the investors with the ability for private initiative and it is a very desirable component of the concessions system.

However there are several problems for the investors related to granting concessions based on unsolicited offers. First of all, it is important to note that this procedure is not regulated in the same way by the entity laws. Furthermore, the process is not precisely and in detail regulated by existing legal framework (especially with regard to terms and conditions, deadlines, the situation where there is only one bidder in relation to the situation where there are multiple bidders, etc.). Also, unsolicited offers may result in the lack of effective price competition which would be a consequence of an incomplete competitive process and it may call in question the basic principles of transparency and equal treatment.

FBiH and RS: RECOMMENDATION

Bearing in mind the fact that the current Draft of the Law on Concessions in both entities provides significant amendments concerning unsolicited offers, it is evident that if these are adopted and entered into force it would be necessary to harmonize regulations in this area in order to establish a simple and efficient system

of granting concessions that is accessible to investors.

In any case, it is advisable to draft an independent proposal in accordance with generally accepted solutions such as those provided by the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure⁸ and by the Legislative Guide on Privately Financed Infrastructure Projects⁹. Detailed aspects of related procedures should be further regulated by the bylaws.

Finally, since the importance and the contribution of the authorities in the process of granting concessions is undeniable, it is necessary to enable public sector services in order to be better prepared for conducting the procedure for granting concessions.

Impossibility of taking over projects by financial institutions under the existing laws**RS and FBiH: OPEN ISSUE**

The relevant laws on concessions do not provide step-in rights by financial institution which finance the projects for which the concession is granted. The laws also fail to provide the possibility of transferring the project to other entities (the companies which deal with specific concession activities).

The transfer of certain concession is possible only with the approval of the competent Commission for Concessions. The exception is the Law on Concessions of the Federation of Bosnia and Herzegovina, according to which such approval is not required for concessions funded by international financial organizations given that the BiH is a member of the organization.

This may pose a barrier to the development of projects in the field of renewable energy sources since the financial institutions may be reluctant to finance projects for which there is

⁸ Articles 20-23 UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure available at: http://www.uncitral.org/pdf/english/texts/procurem/pfip/model/0390621_Ebook.pdf

⁹ UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects available at: <http://www.uncitral.org/pdf/english/texts/procurem/pfip/guide/pfip-e.pdf>

no option of stepping - in the projects and concession agreements in case that the concessionaire fails to meet contractual obligations.

Additionally, the fact is that (in case that the initial concessionaire is unable to continue the exploitation of concession goods), the financial institutions (as financiers) will most probably take the concession projects first. However, it is difficult to imagine a situation in which a financial institution would continue the concession project until the end of the period provided for in the concession agreement. The main activity of financial institutions is not to deal with the concession activities. They do not possess the knowledge and technology to perform specific concession activities and it is safe to assume that their goal is not to take over the concession project and continue to perform the concession activities till the end of the period agreed with the initial concessionaire.

When financial institutions take over the concession projects it is the result of the inability of the initial concessionaire to continue to perform the concession activities. Thus, financial institutions take over the concession projects in order to protect their interests (funds invested) and their ultimate goal is to "transfer" the concession project to another entity, which would (as opposed to financial institutions) be professionally/technically "qualified" to deal with the concession activity.

RS and FBiH: RECOMMENDATION

It is necessary to amend legislation on concessions at all levels in a way to:

- Provide the option for the concession projects to be taken over by the financial institutions
- Define precise, clear, and simple procedure for taking over concession projects
- Provide other possibilities for taking over the concession projects (from the financial institutions)

Primarily this would allow the financial institution to take over the concession and then to find a new concessionaire, which would continue with the implementation of the project, without terminating the concession agreement, which would jeopardize repayment of credit obligations to the financial institution.

Choosing a strategic partner

RS: OPEN ISSUE

The criteria for selection of strategic partner in RS leave wide discretionary abilities for the authority deciding on a strategic partner. Therefore, the entities that would be interested in gaining this status don't have any precisely defined standards based on which they could, before entering the process, even roughly predict if they meet the required criteria or not.

The Law on Concessions of RS (Article 27v.) states that "strategic partner may be domestic or foreign business entity whose investments or technical solution significantly improve the activity of general interest and which contributes to the safety of satisfying needs of users in the Republic of Srpska and makes profits".

Experience tells us that the regulations should precisely define the conditions under which something is approved or prohibited. Especially if we take into account the general importance of concession projects in every region and potential of endangering natural resources/goods of common interest.

RS: RECOMMENDATION

It is necessary to more precisely define the conditions under which a certain business entity could be granted the status of a strategic partner.

LEGISLATION IN THE PROCEDURE OF OBTAINING CONCESSIONS IN BiH

At the state level there is the Concessions Law ("Official Gazette" 32/02, 56/04), as well as

on the entity level, which determines the authority to grant concessions, institutional structures, and the method of forming and defining the competence of the Commissions for Concessions.

Furthermore, the law provides for the formation of bylaws, which are used for the proper implementation of the law (e.g. Rulebook on Request Submitting Procedure and Concession Granting Procedure, the Policy Paper on Granting Concessions in Bosnia and Herzegovina etc.).

At the entity level Commission for Concessions that work pursuant to harmonized entity laws for concessions are also formed. Also, there are cantonal laws regulating this area (namely ten cantonal laws on concessions, in addition to the Federal Law on Concessions), or the procedure for obtaining concessions within certain administrative units.

Looking at the FBiH level, the fact is that since the 2002 not a single major concession contract has been signed, while at the cantonal level there are around 300 signed contracts most of which are far from being realised in a way provided in the provisions for obtaining the concessions. For some concessions, having the process of obtaining it already finished, the contracts were never signed with the concessionaire.

Inconsistent application of the principle of timeliness and transparency in the procedure of granting concessions

BiH, FBiH and CANTONS: OPEN ISSUE

The problem occurs because the laws on concessions do not determine the deadlines for the implementation of all possible procedures for granting concessions, but when it comes to implementing these or any other laws the idea is to promote the timeliness and efficiency.

Additionally, the problem is reflected in a fact that the Law on Concessions at the Federal

and cantonal levels is drafted in a manner which allows too much autonomy to the Commission without any significant public access or disclosure to the parties involved.

**BiH, FBiH and CANTONS:
RECOMMENDATION**

The procedure for granting concessions must be managed effectively and in a timely manner, it must determine the exact deadlines for the implementation of procedures for granting the concession and ensure that all procedures are transparent so all the parties could have an insight into the work of Commission for Granting Concessions. It is necessary to introduce the real second instance jurisdiction i.e. take advantage of a joint commission that would have the role of objective and corrective factor in these cases.

If amendments to the law relating to clearly defined deadlines and transparency of the commission's activities are adopted on the BiH level, the laws on Federal and cantonal levels will have to be harmonized with it.

Restrictions on filing an appeal against the Commission's decision

BiH, FBiH and CANTONS: OPEN ISSUE

An appeal cannot be filed against the decision of the Commission for Concessions except in cases when there is a new fact which could influence the decision had it been known at the time the decision was made and if the interested party, due to justified reasons, was not able to express its opinion on the decision. In any other case it is allowed to institute an administrative proceeding at the FBiH Supreme Court i.e. cantonal courts. In both cases this is unnecessary and unprofitable due to the duration of the dispute and damage that may occur to investors and concessionaire (Article 20 of the Law on Concessions, Official Gazette FBiH 40/02).

**BiH, FBiH and CANTONS:
RECOMMENDATION**

Second instance jurisdiction should be introduced in a way that Commission at the state level functions as an appellate authority for the Commission at the Federal level, and the Commission at the Federal level would function as an appellate authority for the cantonal Commissions for Concessions (by doing this, instituting administrative proceedings or unnecessary delays would be avoided, and resolutions would be clearly defined by statutory terms).

The large number of laws on concessions in BiH complicates the procedure of granting concessions

BiH, FBiH and CANTONS: OPEN ISSUE

Another problem, especially in the Federation, is the large number of the laws on concessions, ten per cantons, with their specificities. This largely leads to bureaucratization of procedures and the process of granting concessions itself, allowing the abuse, creating the conditions for a possible corruption in the procedures for granting concessions at canton level - this complexity leads to withdrawal of a number of concessionaires due to a greater need for the involvement of third parties and extensive documentation for participation in the procedure of granting concessions.

**BiH, FBiH and CANTONS:
RECOMMENDATION**

It is necessary to perform the harmonization of policies, practices, and procedures at all lev-

els (state to municipal level, considering that in some cases municipalities play very significant role in the process of granting concessions). Also, it is necessary to remove all the unnecessary administrative barriers, particularly those that hinder the realization of already signed agreements. It is especially important to pay attention to those procedures which are in the process of obtaining the concession, which is expected for a long time and remove all administrative and other obstacles for the purpose of securing the efficient work of the Commission. It is necessary to adopt legislation for this type of concessions (e.g. the existence of FERK or other similar bodies, with special rules and regulations under which they operate and work in order to achieve efficiency in this area).

In addition to a possible harmonization with the Law on Concessions at the state level, it is necessary to further expand the Law on Concessions at the FBiH level in terms of introducing transparency in the work of the Commission for Concessions, and to set it as a condition for harmonizing cantonal legislation on concessions. It is necessary to more precisely determine the area of concessions and if needed limit the Commission's work load for the purpose of maintaining transparency. It is unacceptable that the concession is different at the state, cantonal, and federal level, in the sense that certain legal solutions at a low level contain some of the concessions cases which don't exist in legal solution at a higher level (e.g. see the concession case, Law on Concessions in FBiH and Law on Concessions in Tuzla Canton).

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> Vaguely defined term "concessionaire" at the state and entity levels, especially in the situation when the concession was granted to a foreign legal entity. 	<ul style="list-style-type: none"> Precisely define the time period in which the (foreign) legal entity, after the granting of the concession, should establish a domestic legal entity that will perform concessional activity and precisely define the term "concessionaire". 	<ul style="list-style-type: none"> Parliament of FBiH National Assembly of RS Commission for Concession of BiH Commission for Concession of FBiH and RS

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> The procedures for granting concessions are imprecisely defined (especially the part related to the public tender) in the three existing laws on concessions. 	<ul style="list-style-type: none"> Define the precise deadlines for each step and responsibilities of all parties in the process of granting concessions. 	<ul style="list-style-type: none"> Parliament of FBiH National Assembly of RS Commission for Concession of BiH Commission for Concession of FBiH and RS
<ul style="list-style-type: none"> Unsolicited offers are differently regulated by entity laws. The procedure itself is not precisely and in detail regulated by the existing legal frameworks due to lack of real price competition which challenges the basic principles of transparency and equal treatment. 	<ul style="list-style-type: none"> Ensure a harmonization of regulations through the adoption of entity Draft Law on Concessions that is currently referred to parliamentary procedure. To draft an independent proposal in accordance with generally accepted solutions such as those provided by the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure. 	<ul style="list-style-type: none"> Parliament of FBiH National Assembly of RS Government of FBiH and RS Responsible Entity Ministries of FBiH and RS Competent Commission for Concessions
<ul style="list-style-type: none"> Impossibility of taking over projects by financial institutions under the existing laws. 	<ul style="list-style-type: none"> The possibility of transferring the concession contracts to financial institutions is not clearly defined and there are practical problems in such situations. It is necessary to precisely regulate the transmission concession contracts to financial institutions/creditors, but also from creditor to a third party. 	<ul style="list-style-type: none"> Parliamentary Assembly of BiH Parliament of FBiH National Assembly of RS Commissions for Concession of BiH, RS and FBiH
<ul style="list-style-type: none"> Discretion ability of the relevant institutions in the process of choosing a strategic partner in the Republic of Srpska. 	<ul style="list-style-type: none"> More precisely define the conditions under which a particular business entity may be granted the status of a strategic partner. 	<ul style="list-style-type: none"> National Assembly of RS Commission for Concession of RS Relevant Ministries of RS for approving strategic partners
LEGISLATION IN THE PROCEDURE OF OBTAINING CONCESSIONS IN BiH		
<ul style="list-style-type: none"> Inconsistent application of the principle of timeliness and transparency in the procedure of granting concessions. 	<ul style="list-style-type: none"> Procedure for granting concessions must be managed effectively and in a timely manner and determine the exact deadlines for the implementation of procedures for granting concession. All processes involving concessions must be transparent in a way that all parties concerned have an insight into the operation and decision making of Commission for Concessions. 	<ul style="list-style-type: none"> Competent Commissions for Concessions

OPEN ISSUE	RECOMMENDATION	INSTITUTION
LEGISLATION IN THE PROCEDURE OF OBTAINING CONCESSIONS IN BIH		
<ul style="list-style-type: none"> o An appeal cannot be filed against the decision of the Commission for Concessions except in two cases. In any other case it is allowed to institute an administrative proceeding at the FBiH Supreme Court i.e. cantonal courts. 	<ul style="list-style-type: none"> o Second instance jurisdiction should be introduced in a way that Commission at the state level functions as an appellate authority for the Commission at the Federal level, and the Commission at the Federal level would function as an appellate authority for the cantonal Commissions for Concessions. 	<ul style="list-style-type: none"> o Parliamentary Assembly of BiH o Parliament of FBiH o Competent Commissions for Concessions
<ul style="list-style-type: none"> o The large number of laws on concessions in BiH which complicates the procedure of granting concessions. 	<ul style="list-style-type: none"> o It is necessary to perform the harmonization of policies, practices, and procedures at all levels. Also, it is necessary to remove all the unnecessary administrative barriers, particularly those that hinder the realization of already signed agreements and remove all administrative and other obstacles for the purpose of securing the efficient work of the Commission. 	<ul style="list-style-type: none"> o Parliamentary Assembly of BiH o Parliament of FBiH o Competent Commissions for Concessions

6.7 ENERGY EFFICIENCY AND RENEWABLE ENERGY SOURCES

ENERGY EFFICIENCY

INTRODUCTION

BiH is a signatory to a number of international agreements which establish obligations related to policy and regulatory reform in the energy sector. As a signatory to these agreements, BiH has made a series of commitments, including the modernization of legislation in the field of energy efficiency. Under modernization, in this context, it is generally considered the adoption of new legislation harmonized with the relevant EU directives (i.e. Directive 2006/32/EC, Directive 2010/30/EU and 2010/31/EU), and an obligation under international agreements and contracts signed by BiH, as follows:

- Stabilization and Association Agreement;
- Energy Charter Treaty, and
- The Energy Community Treaty

In addition, the Protocol on Energy Efficiency and Related Environmental Aspects (hereinafter: "PEEREA") (which was enacted as part of the Energy Charter Treaty and ratified by Bosnia and Herzegovina in 2001.) urges BiH to implement energy projects in order to provide economical and energy efficient way of minimizing the negative impact on the environment.

Bearing in mind the importance of the modern energy efficiency system, primarily for BiH and for foreign investors too and in accordance with the legislative reforms which are being implemented currently, hereinafter the general weaknesses related to this issue have been identified and indicated by the FIC members.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

The lack of legal framework for the implementation of measures in order to increase the energy efficiency in accordance to EU standards

BiH and FBiH: OPEN ISSUE

The last report on the implementation of the PEEREA in BiH identified the main problems as the lack of an overall energy policy at the state and entity levels as well as financing energy efficiency policies. As a consequence, the BiH has no legal framework to adequately implement energy efficiency measures in line with EU standards.

BiH and FBiH: RECOMMENDATION

First of all, BiH must adopt a national plan to formulate goals and strategies for policy at the state and entity levels with the aim of saving energy by 9% by 2018 (in accordance with Directive 2006/32/EC) and define the implementing measures to increase energy efficiency.

In addition, it is necessary to create the crucial legal, regulatory and institutional environment through:

- the adoption of Law on Energy Efficiency (expected adoption of entity laws);
- adoption of secondary legislation (bylaws) in the field of energy efficiency, in accordance with the above mentioned three EU directives; and
- initiate the adoption of incentive measures for the implementation of projects related to energy efficiency.

Finally, in addition to the foregoing, it is necessary to:

- develop and implement programs related to energy efficiency;
- implement the adopted policy; and
- cooperate at regional and international level in this area.

RENEWABLE ENERGY SOURCES

INTRODUCTION

In the energy sector in BiH the competence is divided between different levels of govern-

ment - the production, supply and distribution of electricity, as well as the internal market, falls under the jurisdiction of the entity, while the transfer and international trade in electricity falls under the jurisdiction of agencies at the state level. Accordingly, the complete regulations in the domain of renewable energy sources, including the modalities for their incentives, completely fall under the jurisdiction of the entity governments.

With the exception of relevant laws on energy, which regulate a general legal framework for the energy sector, governments, independent regulatory agencies and system operators, each within their jurisdiction, adopted a series of regulations which determine details of various aspects of the electricity industry. Additionally, given that the cantons in the Federation of BiH have the jurisdiction in the area of concessions for the exploitation of renewable energy sources it makes the procedures of the successful implementation of projects in this area very complicated. Common to both entities is the lack of a general law to fully regulate the area of renewable energy sources. Current regulations, however, treat this matter through appropriate decree of the entity governments and therefore the adoption of laws on the renewable sources of electric energy imposes itself as the next, inevitable, step. The field data indicate that there are different degrees of development of renewable energy sources projects in two entities. Until now, there has been an intensive for development of small hydroelectric power plants projects in the Federation, while other forms of energy from renewable sources is used in a negligible amount. The causes of this adverse trend are different, ranging from the previously present very low level of incentive tariffs, particularly in the Republic of Srpska, the lack of coordination among ministries responsible for issuing permits in this area, and the lack of professional competence in government agencies

that deal with this issue. Some of the key shortcomings and perceived problems were discussed below.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Government incentives for the development of projects in the field of renewable energy sources

FBiH and RS: OPEN ISSUE

The amount of incentives for the development of projects in the area of renewable energy sources is defined in the relevant decrees of both entity governments. The problem is the fact that the budget for these payments in the Federation of BiH, for the future period, is almost completely filled, while in the Republic of Srpska, primarily due to a smaller number of projects in this area, the budget is slightly higher, but also limited in a long-term sense.

FBiH and RS: RECOMMENDATION

Since the increase of available budget is directly related to the increase in electricity tariffs for the ultimate consumers, in the future it is not realistic to expect significant changes in this segment. We propose the relevant governments to consider additional measures of incentives for investments in renewable energy sources, which would prevent the total freezing of activities in this field. One of the possible measures could be a tax relief, which would enable more favourable conditions for the realization of projects in the area of renewable energy sources.

The amount of concession fees for the area of renewable energy sources

FBiH and RS: OPEN ISSUE

Certain levels of government imposed the concession fee as a key criterion in granting concessions for projects in renewable energy

sources. In doing so, the value of these benefits sometimes reached unrealistic costs, which, ultimately, led to stagnation in their realization. The problem, in fact, lies with the inexperienced bidders who offer the amount of fees that obstruct their realization.

FBiH and RS: RECOMMENDATION

The competent authorities must apply strictly defined procedures for granting these type of concessions. Therefore, it is necessary to introduce eminent experts in the subject matter as members of the Concession Commission which establishes criteria for tendering which would result in professionalizing their work and improving the technical knowledge. Aware of the fact that the amount of concession fees shall remain a key criterion for their granting for a long period of time, we propose considering the introduction of its variable values in accordance with prescribed financial flow of the realization of concrete projects in the area of renewable energy sources.

Amendment to the Ordinance on Technical Requirements for Thermal Protection of Buildings and Rational Use of Energy

FBiH: OPEN ISSUE

Article 25 of Draft Law on Energy Efficiency in the Federation, called Energy Efficiency and Characteristics of Buildings. Paragraph 3, which refers to the Ordinance on the Technical Requirements for Thermal Protection of Buildings and Rational Use of Energy, states it is necessary to point out that under Article 47 Paragraph (2) of the Ordinance compact system facades (ETICS) based on the expanded polystyrene and mineral wool are also mentioned.

We believe that the producers of the third material used in ETICS system are damaged. Specifically, it is about Multipor mineral insulation board approved on the basis of the European Technical Approval ETA-005/093. It is a

heat-insulating material for ETICS system which is neither expanded polystyrene nor the mineral wool. Besides the ETICS system there is also the European Technical Approval ETA - 06/0184. In the Appendix C of the mentioned Ordinance, Table 4 under the number 7 heat-insulating materials, there is no mention of Multipor.

FBiH: RECOMMENDATION

Mentioned thermal insulation material should be added to the Ordinance on Technical Requirements for Thermal Protection of Buildings and Rational Use of Energy, both for the heat-insulating material and for the ETICS system.

Inability to use alternative sources of energy in the cement industry

FBiH: OPEN ISSUE

The use of waste as an alternative energy source is generally known in the whole world. The cement industry is particularly suitable for these processes; because the temperature at the furnace combustion (rotary kiln for clinker production) is more than 1400 °C. Combustion at such a high temperature is practically harmless in terms of the potential occurrence of harmful substances in the exhaust gases. This very fact is the main reason why all modern cement factories in Europe and the world use waste as an alternative fuel.

It is interesting to mention everything that can be used as fuel in the cement industry - used oils, fats, chemicals, wood waste, textiles, old tires, animal waste, even sewage sludge. Today, the modern environmental and so-called sanitary landfills have been converted into fuel factories that are called RDF (Refuse Derived Fuel). Most of the cement factories use RDF as the primary fuel instead of conventional fossil fuels. The share of alternative fuels usage compared to fossil fuels - example in the Czech Republic more than 68%, in Hungary over 80%,

in Germany the percentage of waste used as a fuel has reached the whole 100%. By using the RDF and other types of alternative fuels, emissions of greenhouse gases (CO₂ and NO_x) do not increase, they even decrease. Project for the use of alternative fuels in the cement industry is called "Win - Win - Win" project. At the same time the use of grant resources (fossil fuels - expensive energy) would reduce, the problem of emission of greenhouse gases into the atmosphere and an increasing problem of waste in BiH would be solved. In addition, it creates the chance for the development of a totally new economic activity - collection and distribution of solid waste, such as old tires. The big problem for the factories that have already prepared projects of alternative fuels is the lack of understanding and resistance of local communities.

While the necessary legal regulations for the implementation of these projects exists (set of

environmental laws and implementation regulation) personal interests of individuals in the local community and political lobbying obstruct the realization of the projects, thus favouring certain factories (for which environmental permits are issued - which implies the use of alternative fuels) while other factories are at disadvantage although they operate in the same country, entity, or canton, where the same conditions and laws apply.

FBiH: RECOMMENDATION

It would be necessary for the independent experts to launch a wider campaign which would, among other things, include the education and training for local authorities and local population.

The Federal Ministry of Environment and Tourism as a national authority which is responsible for issuing environmental permits should be more involved in solving this problem.

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> The lack of legal framework for the implementation of measures in order to increase the energy efficiency in accordance to EU standards. 	<ul style="list-style-type: none"> Adopt a national plan to formulate goals and strategies for policy at the state and entity levels and define the implementing measures to increase energy efficiency through: <ul style="list-style-type: none"> - the adoption of Law on Energy Efficiency - adoption of bylaws in the field of energy efficiency, in accordance with the above mentioned three EU directives, and - initiate the adoption of incentive measures for the implementation of projects related to energy efficiency. 	<ul style="list-style-type: none"> Ministry of Foreign Trade and Economic Relations of BiH Ministry of Energy, Mining and Industry of FBiH Ministry of Industry, Energy and Mining of RS
<ul style="list-style-type: none"> Government incentives for the development of projects in field of renewable energy sources. 	<ul style="list-style-type: none"> Consider additional measures of incentives for investments in renewable energy sources, which would prevent the total freezing of activities in this field. 	<ul style="list-style-type: none"> Governments of FBiH and RS

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> The amount of concession fees for the area of renewable energy sources. 	<ul style="list-style-type: none"> The introduction of variable values of concession fees in accordance with prescribed financial flow of the realization of specific project. 	<ul style="list-style-type: none"> Commission for Concession of BiH Commission for Concession of FBiH and RS
<ul style="list-style-type: none"> Ordinance on Technical Requirements for Thermal Protection of Buildings and Rational Use of Energy does not contain a provision on the use of Multipor mineral insulation boards approved on the basis of the European Technical Approval. 	<ul style="list-style-type: none"> It is necessary to include Multipor in the Ordinance on Technical Requirements for Thermal Protection of Buildings and Rational Use of Energy. 	<ul style="list-style-type: none"> Ministry of Physical Planning of FBiH
<ul style="list-style-type: none"> Inability to use alternative sources of energy in the cement industry. 	<ul style="list-style-type: none"> The authorities competent to tackle this problem should get involved in the process of solving it and at the same time launch a campaign to raise awareness and engage the general public through education and the media. 	<ul style="list-style-type: none"> Ministry of Environment and Tourism of FBiH

6.8. JUDICIARY

INTRODUCTION

The division of the state in different political units has resulted in the division of the court system, i.e. the presence of a total of four judicial systems - the system at the state level, the system at the level of the two entities, and at the Brčko District level. At the state level there is the Constitutional Court, whose jurisdiction is defined in the text of the Constitution, and the Court of BiH, which has jurisdiction only in certain areas.

In particular, the judiciary in BiH consists of regular and specialized courts, and this is regulated at the state and entity levels, namely by: the Law on the Court of BiH – official consolidated version ("Official Gazette of BiH", no. 49/09), Law on Courts in the Federation of BiH ("Official Gazette of FBiH", no. 38/05, 22/06, 63/10 and 72/10), and the Law on Courts in the Republic of Srpska ("Official Gazette of RS", no. 111/04, 109/05, 37/06, 17/08, 119/08, 58/09 and 116/09). There are also bylaws to further regulate this area.

The judicial system of BiH has been the subject of a number of reforms in the past decade which culminated in 2002 by introducing the most significant reforms which continue to be implemented. The aim of these reforms is to simplify and improve the efficiency of the existing system and to improve the efficiency of the courts.

It is important to emphasize that in 2008 the Council of Ministers of BiH defined three main pillars of reform in the justice sector, namely: justice, greater access to justice, and support to economic growth. The Council also adopted an Action plan outlining specific activities, timelines, responsible institutions, and indicators of implementation of these activities.

However, the BiH judiciary still demonstrates certain drawbacks. In the process of accession

to the EU, BiH will be required to fulfil specific preconditions in the area of judiciary, such as the strengthening of judicial institutions and the rule of law. The problem is also in a large number of pending cases which continue to grow.

Specifically, the Stabilisation and Association Agreement in Article 78 states that "the parties in mutual cooperation in the field of justice and internal affairs will pay special importance to strengthening the rule of law and strengthening the institutions at all levels in the field of administration in general, and particularly in law enforcement and court decision enforcement." Cooperation, among other things, should be aimed at strengthening the independence of the judiciary and improving its efficiency and institutional capacity, equivalent treatment, etc.

Bearing in mind the importance of an efficient judiciary as a guarantee of legal certainty for foreign investors, in accordance to the current reforms which are being implemented, hereinafter FIC identified certain deficiencies relating to the judiciary in BiH.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

The lack of regulation on international legal assistance in civil and commercial matters

BiH: OPEN ISSUE

The growing number of cross-border transactions, which involves more dynamic movement of goods, people and services, requires a greater degree of cooperation between the states, especially when it comes to the justice sector.

In this regard, the international legal assistance is effective and concrete form of such cooperation in cases where, for the purposes of proceedings pending before a court, a foreign court (or foreign competent authority) is asked to perform certain procedural actions (e.g. presenting evidence). As such, international legal

assistance requires central role of courts and judges in order to be successfully implemented.

Existing forms of providing international legal assistance in BiH are regulated by specific rules contained in a number of multilateral and bilateral treaties¹⁰, which are based on reciprocity facts. On the other hand, this question is also regulated in a highly general manner and by entity laws on civil procedure, i.e. the FBiH Law on Civil Procedure and the RS Law on Civil Procedure.

Therefore, the judges should, in addition to domestic legislation, be familiarised with most international instruments which regulate this issue in civil and commercial matters. Particularly, this implies that the judges become familiarized with international agreements which are effective in BiH, when these agreements should be implemented, which countries signed the agreements, and the texts of agreements should be easily accessible to them. However, it is noticeable that there is still no sufficient knowledge about mentioned agreements or established practice of their implementation.

Considering the above, it can be concluded that there is legal uncertainty for foreign individuals and legal entities whose potential claims related to international legal assistance in BiH cannot be met adequately in the case of civil and commercial disputes.

BiH: RECOMMENDATION

Justice sector in BiH should be established in such a way to allow the judicial authorities in

BiH efficient cooperation with the judiciary and other institutions in foreign countries. Efficient access to justice will not be fully enabled until there's adequate implementation of legislation in BiH (like those that already exist in the chapter on criminal field¹¹) which would regulate this matter in a unique way.

In order to conduct a successful implementation of these international conventions and agreements it is necessary to adopt a specific legal framework i.e. a special law on international legal assistance in civil and commercial matters.

Such law would contain general and specific forms of international legal assistance in civil and commercial areas¹²; it would allow judges to improve their mutual judicial cooperation and facilitate addressing and execution of requests.

In this regard, the adoption of this kind of law is also the one of the main objectives that the relevant institutions in BiH are obliged to accomplish in accordance with the Action plan on Strategy for Reform of the Justice Sector in BiH¹³.

Finally, it is necessary to ensure continuous training for judges in BiH, as well as for the civil servants participating in the process of providing international legal assistance, and it is necessary to improve the harmonization of judicial practice in this area.

Specialization of courts and judges (for the commercial court cases)

FBiH and RS: OPEN ISSUE

Adoption of numerous acts in different areas, and their complexity, implies a growing need for

¹⁰ For example The Hague Evidence Convention on the presentation of evidence abroad, in civil and commercial matters, which came into force in Bosnia and Herzegovina in November 2008 and Convention on delivering judiciary and extrajudiciary acts abroad, in civil and commercial matters.

¹¹ International legal assistance is further treated by a special Law on international legal assistance in criminal matters BiH ("Official Gazette of BiH no. 53/09").

¹² The main forms of international legal assistance are delivering judicial and extrajudicial documents abroad to individuals and legal entities, presenting and obtaining evidence abroad, and obtaining information on the content of foreign public documents and foreign laws, the exercise of strict alimony requests by foreign court, court procedures in cases of cross-border child abductions.

¹³ Action plan for the implementation of the strategy for the reform of the justice sector in Bosnia and Herzegovina (third revised) , Sarajevo, January 2012.

specialization of judges in certain legal areas. In this regard, the issue of specialization of courts and judges is closely related to the organization and structure of the courts, their jurisdiction, as well as education and training of judges.

However, in practice, the lack of capacity affects the assignment of cases in a way that judges preside the cases of different nature, which prevents them from having an adequate specialization and the appropriate level of training in a particular area.

Moreover, some cases require familiarity with the concept that surpasses the legal sphere, which requires additional training for optimal resolution of the cases (e.g. in the case of commercial disputes the knowledge of certain economic concepts or market conditions is required, or in matters relating to the Law on Competition etc.).

In other words, improving the business environment for investments cannot be fully realized if investors, who need an effective resolution of their disputes with respect to their business activities and often high-value commercial disputes, lack the confidence that their case will be resolved in an efficient and quality manner by judges who have, through specialization, achieved the appropriate level of expertise to deal with them.

FBiH and RS: RECOMMENDATION

When it comes to commercial cases, it is recommended to increase the capacity, the number of judges in municipal courts with commercial departments, in order to expedite the treatment of complaints and closing of commercial disputes.

Due to the great complexity of commercial cases, it is necessary to establish a higher de-

gree of specialization for judges in order to be able to better identify the certain legal specifics of these cases. In this regard, it is necessary to provide economic-oriented training for judges which would enable them to adequately understand the market in BiH, as well as a modern market economy, and in particular the common market of the European Union, because BiH aspires to the EU membership.

It is also recommended to take into account the Recommendations of the Council of Europe - of the so called Consultative Council of European Judges¹⁴, contained in the Opinion no. 15 on the specialization of judges which was adopted November 13 2012¹⁵. These recommendations may be particularly relevant for BiH (as a member state of the Council of Europe) since they reflect various nations' experiences on judicial specialization in general, and include a comparative review of generally accepted trend of specialization and internal judicial organization of all other member states, including countries of the European Union. In addition to reviews and descriptions of different specializations, these recommendations describe the specific framework within which the specialization of courts and judges should be established.

Trial within a reasonable time

FBiH and RS: OPEN ISSUE

The Constitution of Bosnia and Herzegovina in Article II/3e provides for the right to a fair trial and the right to a fair hearing in civil and criminal matters. One of the key elements of the right to a fair trial is the right to reach a decision, or finalization of proceedings within a reasonable time.

This element is a key topic when it comes to the judicial system in Bosnia and Herzegovina. In practice every day we see the inefficiency of

¹⁴ Consultative Council of European Judges is a unique advisory body of the Council of Europe, composed entirely of judges that make recommendations related to the independence, impartiality and competence of judges

¹⁵ "Opinion no.15 of the consultative Council of European judges on the specialization of judges" was adopted during the 13th plenary session of the Consultative Council of European Judges (Paris, 5-6 November 2012).

the judiciary, long trials, as well as the failure to comply with court decisions. However, there are a number of acts that are aimed at ensuring the right to a trial within a reasonable time.

Thus, the laws on civil procedure provide that the court shall conduct proceedings without delay and with the least cost, and prevent any misuse in the proceedings. Furthermore, the current Law of Civil Procedure provides that the court handles received complaints efficiently and in a timely manner, for example Article 69 of the Law on Civil Procedure of FBiH stipulates that claim with supporting documentation shall be submitted in response to the defendant within 30 days from receiving correct and complete claim in court or Article 75, Paragraph 4 which states that a preliminary hearing will be held, as a rule, not later than 30 days from receiving the written statement of defence, or after the expiration of the deadline for filing statement of defence by defendant. Although at first glance it seems that there are mechanisms of control of the proceedings and the realization of the right to trial within a reasonable time, we witness every day a non-compliance to these provisions, which is especially apparent in Labour Law disputes which take years, even when conducting enforcement proceedings, although the Law on Enforcement Procedure expressly states that all enforcement proceedings are to be urgently treated. This situation in practice and every day discussion about the slow pace of justice has resulted in efforts to better regulate the conducting of procedure in order to increase efficiency. Efforts to reform the judiciary in BiH resulted in enactment of the Ordinance on time frames for dealing with cases in the courts and prosecutors' offices in Bosnia and Herzegovina. The main purpose of this Ordinance is to establish the criteria and methodology for determining and monitoring compliance with optimal and predictable timelines for closing the cases before

the courts and prosecutor's offices in accordance with the Guidelines of the European Commission for the Efficiency of Justice. Unfortunately, what this Ordinance lacks is determining specific measures for sanctioning in case of unreasonable duration of proceedings, but the Ordinance, as well as all previous legislations, provides only general guidance, without specifying measures that would really contribute to the application of legal and other acts in practice. Therefore, all previous legislation on the subject, actually just remain a dead letter.

FBiH and RS: RECOMMENDATION

For the purposes of expediting the judicial process it is necessary to adopt a concrete package of measures which will, on one hand, introduce specific measures determining sanctions in case of violation of the right to trial within a reasonable time, and on the other hand disburden judges in order for disputes to be dealt with quickly and efficiently.

One possible measure is the establishment of the institute of protection of the right to trial within a reasonable time, based on the Slovenian law. Request for the protection of the right to trial within a reasonable time shall be addressed to the President of the Court in which the infringement occurred, who upon receiving the request, sets a deadline for resolving the matter (no longer than 6 months). If the case is not resolved within that time the party turns directly to a higher court with a request for payment of compensation for the violation of the right to trial within a reasonable time. The Court again determines a deadline by which the case must be resolved, but also the amount of compensation to be paid for the violation of rights. In addition, it would be practical to introduce a judicial inspection, an independent body which would monitor the legality and effectiveness of the judges in the proceedings. The process would be greatly accelerated if the technical op-

erations would be transferred to the administrative staff. There is no reason for the judges to perform technical work such as determining the date of hearing, checking addresses, officially obtaining information and documents, forwarding submissions among the parties, reminding parties about the missed court duties. These are the obligations of the administrative staff. Finally, it always remains the possibility to employ a larger number of judges and thus disburden judges overloaded with cases, or under the jurisdiction of municipal courts sort out disputes between craftsmen, traders and companies which fall under jurisdiction of competent commercial courts –as it is in the Republic of Srpska.

The linkage between the companies' registry and court departments

FBiH and RS: OPEN ISSUE

When establishing a business it is necessary to obtain a certificate stating that there are no debts in the fine registry. The application for the certificate is submitted to the municipal court with a 7 days deadline for issuing it. Submitting this motion is charged 15 KM which demonstrates that this procedure is a waste of time and money given that the registration courts could resolve this procedure more easily by electronically accessing a fine registry from the offence procedures.

In addition, the lack of connection between the various judicial departments is a common problem in cases when the judges, during the executive, civil or extra judiciary proceedings, require the party to submit a land registry entry or a statement from the register, or to provide some other data which are actually issued by the same court, only different department, in the unrealistically short time. In this way the civil, extra judiciary and especially executive proceedings, which are usually of the pressing matter, are being unnecessarily prolonged. Ob-

taining data from the register or the land registry office can last a couple of months (depending on the court in question) instead; the judge should obtain this information immediately by accessing the electronic data or CMS system.

The Article 57 of the Company Law in FBiH dictates the obligation to enter the annotation about initiating the liquidation procedure or bankruptcy into the company's register. In practice, this annotation is entered upon the completion of the liquidation process which causes uncertainty in business relationships in a way that other parties, due to untimely flow of information, enter into legal procedures with companies that are in the middle of a liquidation process.

FBiH and RS: RECOMMENDATION

By consolidating the companies' registry and the court offence department in a way to facilitate the access to the companies' registry and the fine registry, with minor cost and technical improvements, the procedure would be significantly accelerated and the cost of registering a business or data change would be significantly reduced. An access to the fine registry records would allow the registry courts to confirm, in a matter of minutes, if the founder or a CEO has any unpaid fines.

The abolition of submitting the certificate which proves that there is no debt is due to fact that this step is not listed in the procedures of the Law on Business Registration. In addition to connecting companies with the offence department of the court, connecting the companies' registry and land registry with the civil, extra judiciary and executive departments of the courts would also accelerate time consuming procedures before the court. Doing so would reduce the workload of judges who, instead of having conclusions or orders for delivering the date from one of the above mentioned registers delivered to the parties on several occasion,

should have an insight into those registers. In this way the principle of the effectiveness of the procedure would be fully honoured, the result would be a significant time savings for the judges and the civil parties which would facilitate the completion of the proceedings before the court. It is important to emphasize that this way of work would increase the legal certainty of the parties in the procedure, especially given the fact that due to enormously long proceed-

ings before the court some of the parties (particularly the enforces) cease to exist.

Additionally, it is necessary for the registration courts to introduce a practice of entering annotations when companies enter into liquidation process in order to ensure the safety of legal transactions in a way that the annotation would be entered immediately upon the commencement of the liquidation process.

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> The lack of regulation on international legal assistance in civil and commercial matters. 	<ul style="list-style-type: none"> In order to conduct a successful implementation of international conventions and agreements it is necessary to adopt a specific legal framework i.e. a special Law on International Legal Assistance in Civil and Commercial Matters. Such law would contain general and specific forms of international legal assistance in civil and commercial areas; it would allow judges to improve their mutual judicial cooperation, and facilitate addressing and execution of requests. 	<ul style="list-style-type: none"> Ministries of Justice of BiH, FBiH, RS Legislative Authorities of BiH, FBiH and RS
<ul style="list-style-type: none"> Specialization of courts and judges (for the commercial court cases). 	<ul style="list-style-type: none"> It is recommended to increase the number of judges in municipal courts with commercial departments, in order to expedite the treatment of complaints and closing of commercial disputes. It is necessary to establish a higher degree of specialization of judges in order to be able to better identify the certain legal specifics of these cases. In this regard, it is necessary to provide economic-oriented training for judges which would enable them to adequately understand the market in BiH, as well as a modern market economy, and in particular the common market of the European Union, because BiH aspires to the EU membership. 	<ul style="list-style-type: none"> High Judicial and Prosecutorial Council of BiH– HJPC Centre for Judicial and Prosecutorial Training of FBiH and RS - CJPT
<ul style="list-style-type: none"> Trial within a reasonable time. 	<ul style="list-style-type: none"> In order to accelerate court proceedings it is necessary to adopt a concrete 	<ul style="list-style-type: none"> High Judicial and Prosecutorial Council of BiH – HJPC

OPEN ISSUE	RECOMMENDATION	INSTITUTION
	<p>te package of measures, such as measures for sanctioning the infringement of trial within a reasonable time; establish the institute of protection of the right to trial within a reasonable time; establish a judicial inspection which would monitor the legality and efficiency of judges, technical operations such as determining the date of hearing, checking addresses, official data acquisition, etc. should be transferred to administrative staff; hire more judges.</p>	
<ul style="list-style-type: none"> • The linkage between the companies' registry and court departments. 	<ul style="list-style-type: none"> • By consolidating the companies' registry and the court offence department in a way to facilitate the access to the companies' registry and the fine registry, with minor cost and technical improvements, the procedure would be significantly accelerated and the cost of registering a business or data change would be significantly reduced. Additionally, it is necessary for the registration courts to introduce a practice of entering annotations when companies enter into liquidation process in order to ensure the safety of legal transactions in a way that the annotation would be entered immediately upon the commencement of the liquidation process. 	<ul style="list-style-type: none"> • Courts in FBiH and RS

6.9. EXPORT

INTRODUCTION

The importance of implementing reforms to increase exports from Bosnia and Herzegovina is reflected in the positive correlation between the flows of direct foreign investments (FDI) and export and the assumption that the sectors which recorded more export were usually the ones with the highest FDI inflows in a country, and vice versa, the sectors that attracted the largest amounts of FDI have the greatest export potential. In recent years this assumption has been a subject of many scientific studies and there is much evidence in its favour. According to the research carried out by the World Trade Organization (WTO) there is a moderately positive correlation between FDI in a country and import and export. The data indicates that the FDI inflow into the country and country's export are complementary categories, while in the case of import, the FDI inflow and import are alternative or complementary categories, depending on the country's policy. If we compare the period between 2007 and 2011 we will see that there is a direct proportional movement of total BiH export and the inflow of FDI in BiH which shows a significant decrease in both categories in 2009 due to an emergence of the global economic crisis and a slight recovery between the period of 2010 and 2011.

The inflow of the FDI is not only an influx of capital, but also the basis for the increase in trade, economic growth and development, and creating new jobs. It is therefore necessary to carry out all the reforms in the field of investment policy in BiH in order to overcome the regulatory barriers to attracting and retaining foreign investments in Bosnia and Herzegovina.

When exporting their products, the exporters from BiH, among other things, deal with the problems which could be classified as non-tariff measures/barriers. In February 2012 the

Conference on Trade and Development of the United Nations (UNCTAD) adopted a new classification of non-tariff measures for import and export. Nowadays the non-tariff barriers are the most important regulatory instrument for the trade policy of various countries, especially for the developed major economies, and they are reflected in different policy measures which, in addition to customs tariffs, may have an economic effect on international trade and are largely governed by the rules of the World Trade Organization.

Administrative barriers are special types of non-tariff barriers. The main sources of these barriers are legislations and administrative procedures which have a restrictive effect on the international trade and export from the country and can be seen in all non-tariff measures. Many of these administrative procedures are common and necessary for the protection of peoples' health, environment and, country's economy. However, some of the procedures are the obstacles to the international trade and export due to its complexity, duration, and cost, and have a negative effect on export.

When exporting their products to CEFTA region, BiH exporters also face problems of non-tariff barriers and related administrative barriers for example: providing a single bank guarantee at the state level, by the region and by type of the import - since the ITA has 4 regions the forwarder must provide a single bank guarantee for each region. Also, for each type of import, such as temporary import, transit, etc. the special bank guarantee should be provided. A reform should be carried in order to insure that the forwarder provides a single bank guarantee.

Also, the companies are faced with problems related to the provision of documentation for import and export. In order to receive a permit for a specific import an importer must collect documentation from multiple levels of government which often involves state and entity lev-

els and makes the process very complex. Also, the systematized information on the required documentation is not available at one place. When issuing permits, a problem often arises due to failure to submit documents which state institutions could obtain ex officio. In addition to general problems there are those related to obtaining import/export documentation in specific cases (example different taxes between the entity ministries of commerce).

We hope that the constant cooperation with all levels of BiH government will result in intensifying reform process in order to accelerate country's path to the EU, reduce the administrative burden for enterprises, attract direct foreign investments, increase export, and strengthen the unique economic area.

The focus should be on transparency and "smart" (better) regulation. Smart (better) regulation is particularly used in the EU since 2010 when the European Commission (EC) firmly stood for the view to ensure quality control. It is necessary to carry out systematic work on the simplification of export procedures, and then to improve the quality of regulation and, finally, the completion of regulation and transparent publication of information and procedures on-line. Analysis of the procedures should be designed in a way that opens the possibility of increasing regulation, if the benefits exceed the costs of such an approach, as it is the case in the UK. The idea is to introduce better and smarter regulation which would protect the consumers and the work of entrepreneurs. Also, it is necessary to establish an electronic registry with all import/export procedures in one place which would facilitate an access to information for the business sector and ensure transparency.

The BiH Council of Ministers, the governments of the Republic of Srpska and the Federation of Bosnia and Herzegovina in cooperation with the International Finance Corporation

(IFC), a member of the World Bank Group, in partnership with the Kingdom of Sweden and the Ministry of Finance of Austria, initiated reforms to simplify import/export procedures and reduce export expenses for private sector. Work on this reform involves reducing administrative barriers related to import/export procedures for the key export sectors in BiH, food preparations, vegetable and animal products, wood, metal processing sector, and mechanic engineering sector.

248 administrative procedures related to import and export have been mapped - 94 at the state level, 74 at the FBiH level, and 80 at the RS level. The total costs of these proceedings burden the economy by 56.308.247, 53 BAM, out of which 37.157.759, 83 BAM at the state level, 9.855.929, 58 BAM at the FBiH level, and 9.294.558, 11 BAM at the RS level. The calculation was made using the methodology of assessing the administrative burdens used by EU which is based on a frequency of actual applications for issuance of administrative decisions in 2012. Indirect costs are much higher. If the authorities accepted the joint recommendation, it would result in a reduction of direct and indirect costs of administrative procedures for business sector for over 30%.

EXPERIENCES: OPEN ISSUES AND RECOMMENDATIONS

Issuing and Recognition of Certificates in Countries in the Region and EU*

FBiH and RS: OPEN ISSUE

The difficult relations among countries formed following the collapse of the former Yugoslavia are burdened by their mutual non-recognition of certificates or national certifying institutes that issue certificates for products that seek to find buyers in neighbouring countries. This is the reason we need to certify one and the same product in the same way, but by

each national certifying body, depending on the neighbouring country where we want to export the product. For example, a certificate for cement that is in line with the requirements of harmonized EU standards or norms (EN) and is issued by the national institute in BiH is not recognized in Croatia; on the other hand, the same certificate issued by the Croatian institute according to the requirements of the same EN norm is not recognized in the EU! An additional problem in BiH is the fact that at BiH level there is no institute or a similar body that can issue a certificate or CE mark for a product that will be valid in the countries in the region and in EU member's states.

FBiH and RS: RECOMMENDATION

In this respect, additional efforts should be made to ensure that at least the neighbouring countries (BiH, Croatia, Serbia, Montenegro) start mutually recognizing certificates issued by competent national institutions. This would avoid

duplication or multiplication of the certification procedure, which requires a lot of funds and time from everyone, makes the product more expensive and reduces its competitiveness in the neighbouring countries' markets.

Automation of the Process of Awarding ECMT licenses*

FBiH and RS: OPEN ISSUE

The award of ECMT licenses is not fully transparent at the moment, in part due to the fact that the present regulation does not include a specific formula for the license award.

FBiH and RS: RECOMMENDATION:

The Ministry of Transport and Communications should amend the regulation in order to formulate the entire process of awarding an ECMT license through the use of algorithmic award software. This would prevent discretionary award of licenses and would ensure full transparency.

CUSTOMS AND SPECIFIC ISSUES EXPORTERS FACE DURING CLEARANCE

FBiH and RS OPEN ISSUES AND RECOMMENDATIONS

ISSUE	RECOMMENDATION
o Too high price for correcting a CD (very often due to a trivial technical error).	o Reduce the price to a reasonable level (2,00-5,00 BAM).
o Individual payment of duty for each export generates additional bank charges.	o Allow collective complete monthly declaration for those who have the status of an approved exporter or at least collective payment of all duties on a single payment slip when submitting documents for the complete declaration.
o Collecting a copy of 3 EX declarations stamped by competent authority at a border crossing and submitting it to the competent institution is a complicated procedure, especially for large exporters.	o Placing mailboxes at all border crossings for forwarders to put certified copies of EX declarations in addressed envelopes supplied by exporters would significantly facilitate this important and complex operation. This practice has been used in EU countries for a long time. Liberalization of deadlines for submitting the documents would also be very beneficial to exporters.

ISSUE	RECOMMENDATION
<ul style="list-style-type: none"> o The customs authorities of some countries, at the entrance, insist on retaining one copy of the invoice with the stamp of the BiH customs authorities. This may result in the inability to submit customs declarations for definitive export, which is a customs offense that may result in withdrawing the approval for simplified procedure. 	<ul style="list-style-type: none"> o Since we are not able to influence the customs regulations of other countries we suggest that the ITA - regional centre Banja Luka modifies the "Instructions on simplified customs procedures based on the invoice" - referring to the part containing the number of approved invoices that are returned to a exporter (three certified copies instead of two). Our suggestion is that the customs officer does not have obligation to inscribe tally number on third copy, in which he notes the invoices – the stamp of the customs office would be enough.
<ul style="list-style-type: none"> o Collecting invoices in the simplified procedure by invoice represents a complex process, and by not collecting all the invoices, problems arise with the additional registration which then calls the approval into question. 	<ul style="list-style-type: none"> o Provide opportunity and simple procedure for subsequent endorsement of invoices by the customs office at the border based on which the goods enter into a simplified customs procedure, since there is a hard copy in the official records and the records in the electronic tally.
<ul style="list-style-type: none"> o Insufficient number of ECMT licenses for the BiH and the carriers. 	<ul style="list-style-type: none"> o State action to obtain a larger number of ECMT licenses, particularly for Austria and Italy. There is an insufficient number of these licenses in relation to the demands and it represents a barrier to export.
<ul style="list-style-type: none"> o Low speed of commercial rail and lack of cargo wagons. 	<ul style="list-style-type: none"> o It is necessary to repair railroads, build a new infrastructure, and purchase cargo wagons Uacs and Habis.

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<ul style="list-style-type: none"> • Issuing and recognition of certificates in countries in the region and EU. 	<ul style="list-style-type: none"> • In this respect, additional efforts should be made to ensure that at least the neighbouring countries (BiH, Croatia, Serbia, Montenegro) start mutually recognizing certificates issued by competent national institutions, to avoid duplication or multiplication of the certification procedure. 	<ul style="list-style-type: none"> • Ministry of Foreign Trade and Economic Relations of BiH • Institute for Accreditation of BiH - BATA
<ul style="list-style-type: none"> • Automation of the Process of Awarding ECMT licenses*. 	<ul style="list-style-type: none"> • The Ministry of Transport and Communications should amend rules to formulate the complete process of issuing ECMT licenses through the use of algorithmic software. This would prevent the discretionary issuance of licenses and ensure complete transparency. 	<ul style="list-style-type: none"> • Ministry of Transport and Communications of BiH

OPEN ISSUE	RECOMMENDATION	INSTITUTION
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<ul style="list-style-type: none"> o Individual payment of duty for each export generates additional bank charges. 	<ul style="list-style-type: none"> o Allow collective complete monthly declaration for those who have the status of an approved exporter or at least collective payment of all duties on a single payment slip when submitting documents for the complete declaration. 	<ul style="list-style-type: none"> o Indirect Taxation Authority of BiH - ITA
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10 REFERENCES

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Directorate for Economic Planning

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