Foreign Investors Council

Improving the Business Environment in BiH

FOREIGN INVESTORS COUNCIL

WHITE BOOK 2020

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TABLE OF ACRONYMS

APA	Advanced Pricing Agreements
APIF	Agency for Intermediary, IT and financial services (RS)
ATM	Automated Teller Machine
ATV	Authorization to Verify
B2B	Business-to-Business
BAM	Bosnia and Herzegovina Convertible Mark (Currency)
BAT	Best Available Technique
BGN	Bulgarian Lev (Currency)
BiH	Bosnia and Herzegovina
C2B	Consumer-to-Business
CC	Constitutional Court
CEST FBiH	Judicial and Prosecutorial Training Centre of Federation of Bosnia and Herzegovina
CEST RS	Judicial and Prosecutorial Training Centre of Republika Srpska
DERK	State Electricity Regulatory Commission
EC	Electronic Communication
EU	European Union
EUR	Euro (Currency)
FERK	Regulatory Commission for Energy in Federation of Bosnia and Herzegovina
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation (EU) 2016/679
GIZ	German Corporation for International Cooperation
GIZ ProRE	Promotion of Renewable Energy in BiH Project (GIZ)
HJPC	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
IBNR	Incurred But Not Reported
ICT	Information and Communications Technology
ILO	International Labour Organization
IT	Information Technology
ITA	Indirect Taxation Authority
JNA	Yugoslav People's Army
LCP	Law on Civil Procedure
LEP	Law on Enforcement Procedure
LNG	Liquefied Natural Gas
LPG	Liquid Petroleum Gas
LRCL	The Law on Resolving Conflict of Laws with Regulations of Other Countries in Certain Matters
LTE	Long Term Evolution

MBT	Mechanical Biological Treatment of Waste
MVNO	Mobile Virtual Network Operator
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
OPC	Oil Price Change Request Form
PIT	Personal Income Tax
POS	Point of Sale
PPP	Public-private Partnership
PWCB	Purchase with Cash-Back
R BiH	Republic of Bosnia and Herzegovina
RDF	Refuse Derived Fuel
RERP	Real Estate Registration Project
RERS	Regulatory Commission for Energy of Republic of Srpska
RON	Romanian Leu (Currency)
RUGIP	Republic Authority for Geodetic and Property Affairs (RS)
SAA	Stabilisation and Association Agreement between the EU and Bosnia and Herzegovina
SCC	Special Conditions of Contract
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
SR BiH	Socialist Republic of Bosnia and Herzegovina
SRF	Solid Recovered Fuel
SS	Single System for Registration
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
USA	United States of America
USAID	United States Agency for International Development
USAID EIA	USAID's Energy Investment Activity
USAID FAR	USAID's Fiscal Sector Reform Activity in BiH
VAT	Value-added Tax

PRESIDENT'S FOREWORD

It is my pleasure to have the opportunity to present the latest edition of the most important written document of the Foreign Investors Council (FIC) – the 2020 White Book.

Numerous studies and reports of international corporations and organizations show that, overall, the legal and political landscape of Bosnia and Herzegovina (BiH) seems very unstable and affects both the outflow and the inflow of future investments. In this regard, our activities over the past 10 years have been focused on advocating and lobbying for the creation of better business conditions for foreign and local investors. The fact that the "White Book", our most important written document has become part of the reform processes in a number of governmental and nongovernmental institutions bears witness to the significance of this document. This is corroborated by the fact that our "White Book", as an official document, has been subject to parliamentary discussion twice, in the FBiH and in RS.

By its continuous activities to eliminate and identify key barriers to further economic development and boosting of the investments by supporting reforms, the FIC has established itself as the legitimate representative of foreign investors in BiH and the main partner and interlocutor with the government representatives and the coordinator of advocating and initiating changes aimed at the development of the economy and attracting foreign investments.

The FIC, through the White Book, seeks to provide concrete solutions to the legal and procedural obstacles, so that the line ministries and other competent institutions could refer them to the legislative procedure and thus jointly contribute to the overall business environment in BiH to make it as business-friendly and convenient as possible.

Branimir Muidža,
FIC President in BiH

It appears that the authorities listen to, and consult the voice of investors more closely by including the recommendations given in the White Book in their work programs (at all levels) and by institutionally including the representatives of investors in the task forces working on drafting and amending the laws and regulations relevant to the development of the economy. In addition to our desire for dialogue, our aim and message is to have a large portion of recommendations implemented by both Entity governments.

In this sense, I believe that the implementation could and should go faster, bolder, with more concrete and decisive measures, which requires political will.

The 2020 White Book edition contains nine chapters covering the following areas: licenses, energy sector, information and communication technologies, concessions and public-private partnerships, corporate law, taxes, shadow economy, the rule of law, employment and education.

The past period was marked by the Reform Agenda, as well as its inconsistent implementation. Relieving the economy, increasing the public sector efficiency, structural reforms in labour legislation, strengthening the fiscal system, public administration reform, employment policy in the public sector, improving the business climate and competitiveness, reform of social benefits, restructuring of public enterprises, reform of the health sector and the rule of law – these have been the objectives set in the Reform Agenda that are fully in line with the development platform and concept advocated by our association for many years. We further believe that the decisive implementation of these policies has no alternative and that it requires consistent urgent actions aiming to achieve higher competitiveness and growth of the domestic economy.

The FIC supports and commends all the efforts of the current governments in the implementation of reforms and the creation of a predictable and stable business environment. Likewise, the FIC encourages, supports and urges the adoption of specific recommendations made by the business community, both by the FIC and by our partner associations, because the business community can best identify, recognize and design a sound approach to stimulate investments, employment, growth, development leading to a better living standard for all BiH citizens. In this regard, we expect additional efforts from all stakeholders in creating conditions for stronger economic growth and a predictable and stimulating business environment through the adoption of our recommendations.

The cooperation with Entity governments takes place at several levels and through various initiatives and forms of cooperation, mostly working groups and individual meetings with the government authorities where we point to and advocate for amendments to certain legal provisions.

Foreign direct investment is an excellent tool, leverage and mechanism that can stimulate growth, development, employment and boost the competitiveness of the economy in the fastest and most efficient way. This is especially true for production-, industry- and value added-oriented capital.

Low competitiveness of exports, insufficient capacity to attract foreign capital and poor credit rating are the indicators of insufficient competitiveness of BiH economy, largely caused by unsupportive business environment and long-lasting political instability, inadequate quality of education system, high share of shadow economy, as well as insufficiently functional labour market. Negative demographic trends will additionally affect the economy in the long run and it is, therefore, of great importance to embark on concrete reforms as quickly and decisively as possible to help lift the burden off the labour and capital.

In order to increase the scope of foreign direct investments it is necessary to establish a country-wide coordination for developing and implementing an economic reform program that should also include structural reforms, aiming to improve the business environment and create conditions for attracting foreign investments.

Our recommendations are, inter alia, aimed at:

- tax reform, which should be aimed towards tax relief and relief of other various fees,
- significantly shortening the deadlines and time required for issuing and obtaining various permits (environmental, construction, etc.),
- adopting framework or harmonized laws relevant to the fields of energy, agriculture,
- reducing bureaucracy and increasing its efficiency and,
- facilitating the procedures for the establishment and operation of companies.

The implementation of the above would significantly contribute to the economic growth and development of BiH, and make room for new investments, create jobs and ensure the rule of law for both domestic and foreign companies.

With gratitude to all who participated in the White Book drafting, I would like to raise awareness of the need to adopt our recommendations and implement them for the sake of public interest and say that our association will always be available for partner dialogue with all economic policy makers.

In order to create optimal investment climate in BiH and a much better business environment, it will be necessary to address a total of 110 outstanding issues and make interventions in a total of 111 regulations currently in force in BiH, including Laws, Regulations, Decisions and Guidelines governing 9 areas covered by this edition of the White Book. This is the bottom-line of the latest White Book edition, a unique publication that answers a number of questions and proposes specific solutions.

In lieu of conclusion: The White Book is an exceptionally useful guideline and a roadmap; however, it is increasingly becoming a must in the sense of actions to be taken through dynamic changes to make the business environment in Bosnia and Herzegovina more supportive for investments and business development.

In the era of the Fourth Industrial Revolution and the digital transformation, education is key. Growth potentials exist in all areas of the economy. Our economy will be as strong, first and foremost, as our industry and agriculture are strong. It will be as strong as it is capable of attracting investors, as strong as our real sector is strong, and as strong as our public sector is efficient. The strength can also be measured by the level of optimism and jobs offered to young people and the educated. To make it as strong as possible, we need accountability, knowledge, determination and appreciation of the ideas and recommendations coming from the real sector.

Branimir Muidža
FIC President in BiH

FOREWORD EU

Dear White book reader,

It is my great pleasure to provide the foreword for the latest edition of the Foreign Investors Council's White Book – an important publication and source of insights and recommendations aimed at improving Bosnia and Herzegovina's poor business environment.

Over the last 13 years, the FIC developed into a reputable business association of over 60 international and regional companies whose voice resonates. The publication in front of you is the result of this experience, expertise and impressive network and should serve as an inspiration to various decision-makers.

The seventh edition of the White Book is timely. As I am writing this foreword, BiH finds itself at an important juncture. The European Commission is preparing its Opinion on BiH's application for membership of the EU that will mark an important step forward for the country's EU aspirations. At the same time, political parties are in the process of negotiating coalitions at all levels that will lead the country over the next four years.

Yet, regardless of who eventually ends up in power, two priorities should drive the agenda. The first is to advance the country's EU path and meet the recommendations stemming from the Opinion. The second is the economy.

The necessary preconditions to achieve progress on both fronts have been laid. Last year, the European Commission presented its Strategy on the Western Balkans, while the Sofia Summit once again reconfirmed, recommitted and gave credibility to the EU perspective of BiH. Although the process remains merit-based, there is a political commitment on our side to make this perspective credible and finally come true.

With regards to the economy, today it looks rather different than it did just a few years ago. In 2015, BiH embarked on an ambitious Reform Agenda with the aim of bringing back economic growth, jobs and opportunities. Throughout this process, some important and often painful decisions were taken – decisions to create a more flexible labour market, a sustainable pension system, a sound financial sector and better infrastructure.

It took some time for these efforts to bear fruit, but some economic indicators have undoubtedly improved and the current macroeconomic situation is quite positive. The prerequisites for more and deeper reforms have been created and the opportunity should not be missed.

However, time is ticking as the list of challenges remains broad and daunting: BiH's society is ageing rapidly, too many citizens are constantly hurt by widespread corruption, and young people are leaving the country in search of a better future. The rule of law remains weak and an oversized and inefficient public sector is a constant drag on a private sector that still provides too few opportunities.

In order to provide a framework for the incoming governments and highlight the need for continuing with reforms, the EU Office in BiH facilitated numerous discussions between various stakeholders in recent months. We brought together representatives of political parties, businesses, civil society and academia in order to discuss with them the way ahead and the outline of a future socio-economic agenda.

Although a detailed agenda has yet to be developed, six priority areas seem to be emerging. These would help BiH to meet the Copenhagen economic criteria – a functioning market econ-

omy and the capacity to cope with competitive pressures and market forces within the Union.

First, there is an urgent need to increase the competitiveness of the private sector, beginning with the long-overdue reduction of the tax burden on labour.

Secondly, bold steps need to be taken to improve the quality of public services and reform the country's wasteful and inefficient health care system.

Third, public companies need to be depoliticised either through improved governance, restructuring or prudent privatisation. This is crucial for providing a level playing field, increasing transparency and breaking up the country's patronage system.

Fourth, continued efforts are needed to improve the country's business environment which remains poor and impediment to investments and transfer of knowledge. This is where the findings of the White Book will be of tremendous importance.

Fifth, BiH needs to become more creative in fighting widespread corruption and take advantage of the technologies that are now easily available. This includes digitalisation, automation and increased use of e-governance and e-services.

Finally and crucially, specific policies need to be designed to provide more opportunities and hope to youth and women. Here we need a holistic approach ranging from better education and vocational training to support to creative industries and start-ups.

The above list merely presents the outline of what needs to be done in the coming years. The challenge now is tome come up with concrete measure that would allow you to meet these ambitious goals and the White Book presents an extremely valuable piece of this puzzle.

As always, the EU will continue to provide all the necessary support you need – political, technical and financial. Yet, what the last years have repeatedly and convincingly demonstrated is that there is no substitute to local ownership – the recognition of the issues plaguing the economy and commitment to pursue them, even in the face political challenges and short-term sacrifices. No international pressure, promises, financial incentives or foreign experts can make up for this.

BiH is already European – historically, geographically, but also economically. The EU is BiH's main trading partner, while an overwhelming majority of investors come from our Member States.

I hope that you will seize the opportunities and make the bold moves that will make our ties even stronger and irreversibly embed BiH into the European Union.

Sincerely,

Ambassador Lars-Gunnar Wigemark

Head of the Delegation of the European Union to BiH and European Union Special Representative in BiH

BIH BUSINESS CLIMATE OVERVIEW - 2018/19[1]

Structural reform developments in Bosnia and Herzegovina

Bosnia and Herzegovina has committed to ambitious reforms. As noted elsewhere, in July 2015, after lengthy discussions, governments at the state and entity levels adopted the new Reform Agenda. This agenda includes six priority areas of reforms: public finances, taxes and tax sustainability; business climate and competitiveness; labour market; social protection and pensions; the rule of law and good governance; and public administration reform. The Agenda is aligned with the EU's new emphasis on economic governance in Bosnia and Herzegovina and other Western Balkans countries. In April 2015 the Council of the European Union decided to unfreeze the long frozen Stabilisation and Association Agreement (SAA) which had been signed in 2008, and this entered into force in June 2015. Further in February 2016 Bosnia and Herzegovina submitted an application for membership to the EU, a step which has been widely welcomed both by the EU and Bosnia's key trading partners.

In September 2016, BIH signed a 36-month arrangement with the IMF under the Extended Fund Facility (EFF), worth around €555 million at the time of approval. The arrangement focused on raising BIH's growth potential while maintaining macroeconomic stability, which would also support implementation of reform agenda. However, the programme has been on hold since May 2018 because of IMF's concerns over new spending proposals in both entities. Bosnia and Herzegovina is in the final stages of accession to the World Trade Organisation (WTO). The country currently has observer status in the WTO, having applied for membership in 1999 and submitted its memorandum covering all aspects of its trade and legal regime already in 2002.

Doing business remains difficult, among the rest due to the country's complex constitutional structure, which fundamentally constrains reforms and private sector activity. For example, company registration and business licensing have to be performed twice, once in each respective entity. There is also weak co-ordination between public institutions at state and entity levels, leading to the difficulties in formulation of policies and their implementation.

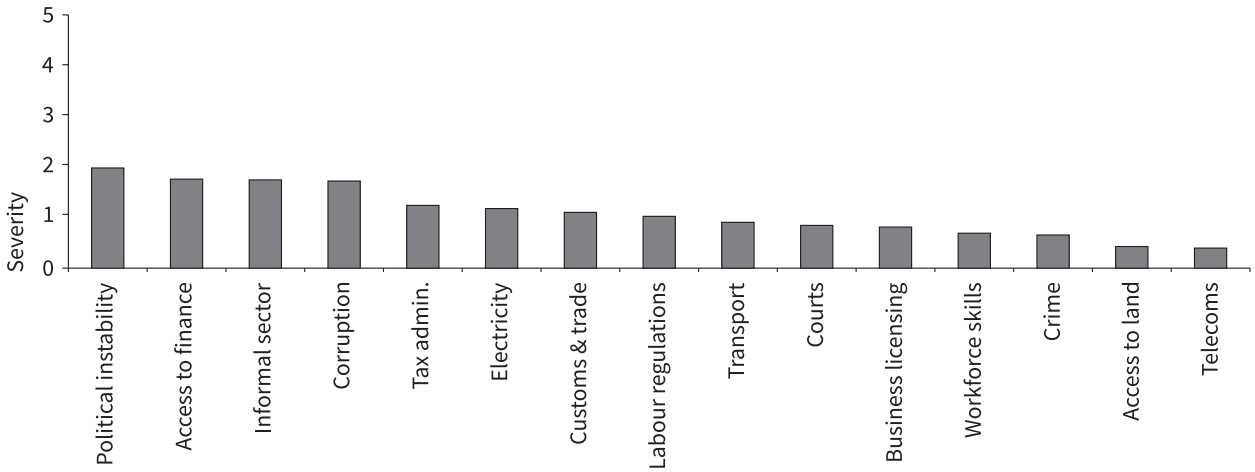
Consequently, Bosnia and Herzegovina continues to perform poorly (worst in the Western Balkans) on various international rakings both of competitiveness and of the quality of the business environment. In the World Bank Doing Business 2019 report Bosnia and Herzegovina was ranked 89th overall (out of 190 countries), ten places lower than three years before. The country is ranked worst in the areas of starting a business, obtaining construction permits, getting electricity, and paying taxes. In the World Economic Forum Global Competitiveness Report 2018, the country ranks 91st (out of 140 countries), scoring particularly low in innovation capability, flexibility of labour market and quality of institutions. In general, the main issues in BiH's business environment are: weak rule of law and judiciary system, corruption, numerous para-fiscal charges, high costs of compliance with regulations, numerous and lengthy

1 The FIC would like to acknowledge Mr. Ian Brown, head of EBRD office in BiH, for his special contribution for the development of this White book section.

procedures for entering or leaving the product market, sizeable informal economy, difficult access to finance for SMEs, as well as insufficiently developed transport and energy infrastructure.

To gain further insight into the obstacles to doing business in Bosnia and Herzegovina, as perceived by businesses, the EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) provides useful insights. The BEEPS, carried out every 3-4 years since the first round in 1999, is a face-to-face survey of top managers that looks at various aspects of the business environment through both quantitative and qualitative questions. One of the parts of the survey is an opinion-based question that asks respondents to grade areas according to their perception of how severe an obstacle is. The responses range from "not an obstacle", which can be scored at 0, to "a very severe obstacle", scored 4. Chart 1 highlights the main obstacles identified in the BEEPS 2012-2013, ranked by severity, for a hypothetical "average" firm in BiH.

Chart 1. Business environment obstacles



Competition from the informal sector stood out as one of key constraints. This is a long-standing problem in the region and efforts to address it have been sporadic at best. The complex political structure is also noted as an important obstacle to doing business in BiH.

Overwhelmingly in the Western Balkan region the main reason behind the constraint of access to finance was the discouraging level of interest rates. Although it is not so much case anymore, competition among lenders appears to be limited and SMEs in particular struggle to get the funds they need to grow their businesses. Other reasons that discourage firms from applying for bank credit include: complex procedures, collateral requirements and size of the loan.

PERMITS

CONSTRUCTION PERMITS

INTRODUCTION

Generally speaking, some progress has been achieved in this area over the past years in the sense that the process of issuing construction permits and approvals has been simplified, i.e. the number of days required for certain steps within the said procedure has been reduced in some of the municipalities. However, in most cases, investors still face the issues of unclear laws, inconsistent and non-transparent procedures, as well as inefficient administrative staff unable to provide them with adequate and timely support.

In addition to the Entity-level laws, in the Federation of BiH, there are also cantonal laws defining the procedures for obtaining permits and approvals, which further complicates the process for investors, as they cannot use their experience acquired in one municipality for obtaining the permits in another. This is particularly the case for the investors operating across Bosnia and Herzegovina.

A well-designed system and an efficient processing of the permit applications could significantly enhance the permitting/licencing process to the mutual benefit of both investors and the municipal authorities responsible for issuing the required permits.

INEFFICIENT SYSTEM FOR PROCESSING THE PERMIT APPLICATIONS

FBiH and RS: OPEN ISSUE

As in the past, the processing time of the received applications varies from one municipality to another and largely depends on the level of development of a municipality or the number of applications to be processed. In less developed municipalities, employees provide support to investors, both because of a smaller workload, and for the purpose of attracting the investors to their local community. The problem in less developed municipalities may be the lack of skilled staff to deal with the applications, which also slows down the investors.

In developed municipalities, the problem is not in the lack of skilled staff, however, due to a large number of applications, the issuing process, in principle, takes longer. The challenges related to the exchange of information among the institutions/employees and the lack of understanding for the investors' needs are still present. The time oscillations are still large, as in some of the municipalities it takes 30 days, while in others even more than a year to obtain a permit/approval. The laws clearly set a deadline for responding to an application, however this deadline is not observed in a large number of cases.

FBiH and RS: RECOMMENDATION

Consider the possibility to introduce a mechanism in the relevant laws/regulations that will improve the efficiency of local self-government units in terms of dealing with the applications in such a way that, if they fail to respond to an application within the legally prescribed deadline, they are required to report on the delay to the line ministry, or otherwise, the "silence" of the administration will be deemed an approval thereof.

EXTENSIVE DOCUMENTATION REQUIRED FOR ISSUING URBAN AND CONSTRUCTION APPROVALS

FBiH and RS: OPEN ISSUE

The first problem that arises during the process of obtaining construction approvals is that the investors are required to submit a large number of consents/approvals (related to infrastructure, utility services, telecommunications, the Institute for Protection of Monuments, the local electricity provider, etc.) that will, in most of the cases, remain effective only for one year from the date of their issuance. For each additional facility that is to be built within the industrial zone, the applicant is required to re-apply and obtain the same approvals again, even though it has already been stated that, e.g. there are no facilities that are under the protection of the Institute for Protection of Monuments or transmission lines or telecommunication infrastructure on the construction site. In addition to the extensive documentation, the problem encountered by the investors pursuing construction projects across BiH is the inconsistency between the Entity-level and cantonal laws, as well as their arbitrary interpretations by the officials conducting the procedures.

An additional problem is the temporary character of the permits, which cannot be resolved by the currently applicable laws. Namely, telecommunications facilities are considered to be facilities of temporary character, and the timeframe is most often tied to the duration of the lease agreement concluded for the land where the facility is installed.

FBiH and RS: RECOMMENDATION

A shift towards reducing the amount of documentation required in the process of issuing permits could be made by harmonizing the Entity-level laws while applying the good practices from the region. With respect to the approvals that are to be obtained in the process of issuing permits for a single site, their validity period should be extended, especially if there is no communal infrastructure in the area concerned. In addition, an effort should be made to establish a system under which the competent issuing authorities will categorize the incoming applications according to certain criteria, such as business or civil sector, project value, or the introduction of a special treatment in case of large investment projects, in order to avoid the submission of unnecessary documentation for specific facilities.

This open issue can also be addressed through timely implementation of the activities set out in the "Action Plan for the Implementation of the 2017-2021 BiH Electronic Communications Sector Policy", specifically, by implementing the activities listed under point 1.1.3 of the Action Plan, which reads: „Adoption of procedures for issuing construction approvals, obtaining the right to road access, installation, utilization and maintenance of EC infrastructure and supporting equipment which has been installed on the real estate where the EC infrastructure and supporting equipment was built" and under point 1.1.4 of the Action Plan, which reads: „Adoption of regulations governing the requirements and procedures for the construction and utilization of public EC networks".

INADEQUATE COOPERATION OF THE STATE/FEDERAL ADMINISTRATIVE AUTHORITIES - THE APPROVALS OF WHICH ARE REQUIRED FOR OBTAINING CONSTRUCTION PERMITS, WITH STATE-OWNED/PUBLIC COMPANIES

FBiH and RS: OPEN ISSUE

The utility companies (electricity companies, municipal services companies, telecommunications operators, mines, railways) issuing approvals for the supporting infrastructure in the process of obtaining a construction permit do not have a blueprint of their installations, which results in a collision between the installations of some utility companies. This additionally extends the period needed for issuing the approvals/certificates or impedes setting up a particular installation.

Namely, the current Law on Spatial Planning and Land Utilization in FBiH stipulates that the municipal authorities responsible for spatial planning and land utilization are required to collect the information related to the construction from the investors, legal entities and other organizations and forward it to the cantonal or FBiH Ministry for the adoption of the report on the implementation of the planning documents in the relevant Canton. However, no sanctions have been prescribed in case of non-compliance with the aforementioned requirement imposed by the municipality, as it is the case in RS.

Furthermore, in RS the main problem in this area is the mismatch of cadastral and land registry records, which, in many cases, slows down or even prevents the fulfilment of the main prerequisite for obtaining the construction permit – resolving property and legal issues on the piece of land in question. A particular problem is the land that is listed as state-owned property in the land-registry records, while in the cadastral records, the same piece of land is sometimes listed as the property owned by a natural person.

FBiH and RS: RECOMMENDATION

The best solution would be to have the Entity governments responsible for maintaining and updating the central database containing infrastructure blueprints, while the lower government levels would be required to submit and update these data, so that the central database reflects the changes occurring on the ground, with the possibility to seek information from the entity governments when dealing with the applications.

It should be made clear that the aforementioned persons are required to periodically (e.g. quarterly, semi-annually or annually) provide information, rather than merely upon request submitted by the competent authorities. The fines should also be specified as an inducement for timely submission of information, as it is regulated by the Law on Spatial Planning and Construction of RS that prescribes a fine ranging from BAM 5,000 to BAM 30,000 for a legal entity – investor in case of his failure to comply with the requirements set out by the municipal authority or the failure to submit the required information and documentation.

With respect to the currently open issue in RS, it is proposed to speed up the process of harmonizing the cadastral with the land-registry records and to resolve the issue of state property.

AMBIGUITY IN REGARDS TO REGULATING THE PAYMENT OF THE FEES FOR THE USAGE OF CONSTRUCTION LAND IN FBIH AND RS

FBiH and RS: OPEN ISSUE

In the Federation of BiH, it is still not clearly defined how the fees for the usage of construction land are determined, what the objective criteria are, or who is required to pay the fee. In addition, there is no distinction between the persons intending to build on a piece of state-owned construction land and those intending to build on a privately owned one. Furthermore, the legislation does not provide for the cases of exemption from payment of fees, and it is not clear how and under what conditions the investor is entitled to a reduced amount of the fee on the account of the fact that the fee had been already paid for the construction of the previous facility on the same construction site where the new one is to be built, i.e. it not clear whether the fee is to be paid only once, for the initial construction, or for each subsequent construction, nor is it clear at which stage the fee should be paid. The current entity-level legislation does not provide any answers to the above issues and problems.

Furthermore, in the Federation of BiH, the FBiH Constitutional Court rendered judgement No. U-64/17 on 23 October 2018 assessing as unconstitutional the provisions of the FBiH Law on Construction Land referring to the requirement to pay a fee for using urban construction land (annuities), taking into consideration that the enforcement of the FBiH Law on Property Rights induced changes in the legal regime covering real estate, i.e. there has been a transformation of property relations and conversion of social property (rights of use, management or disposal) into private one, i.e. ownership right to property. Bearing in mind that the right of ownership includes the right to possess, the right to use and the right to dispose of real estate, the Court has held that the uniform regime of ownership rights on a building, the land underneath the building, and the land used for the regular exploitation of that building rules out the obligation of paying the fee for the use of the urban construction land.

FBiH and RS: RECOMMENDATION

Insist on harmonizing the provisions of relevant laws at the level of FBiH and RS, cantons and municipalities, in formal and substantive terms, and provide a clarification on when, how and who is required to pay the fee, and what the exception cases are.

In the FBiH, amend the Law on Construction Land in line with the FBiH Constitutional Court's judgement declaring the requirement to pay the fee for using urban construction land (annuities) unconstitutional.

SELECTION OF COMMITTEE FOR TECHNICAL ACCEPTANCE OF BUILDING

FBiH: OPEN ISSUE

The Law on Spatial Planning and Land Utilization in FBiH does not provide an applicant with a possibility to select the committee for technical acceptance of the building, nor does it entitle the applicant to seek a legal remedy.

FBiH: RECOMMENDATION

The FBiH should introduce a requirement of submitting a list of legal entities or individuals authorized to perform technical acceptance, who would be selected on the basis of a public competition, and give the applicant right to choose. This proposal aims to increase efficiency and facilitate the evaluation. It is also necessary to come up with a method for adequate monitoring of time given for the submission of individual reports by the committee members and the chairperson to the institution authorized for issuing the Use Permit, as it is often the case that the work of the committee members is unnecessarily prolonged not for technical reasons, but rather because of their absence (vacations, travel, personal matters and the like). Given that the investor pays the full amount of remuneration for the work of the committee members according to the legislation, and that this remuneration is based on a percentage of the total investment, the investor expects their full engagement throughout the normal working hours, rather than a part-time one.

TELECOMMUNICATION INFRASTRUCTURE UTILITY CHARGES

FBiH and RS: OPEN ISSUE

The number of local communities in BiH introducing utility charges for the owners of telecommunication infrastructure has been increasing recently, which creates an unfavourable investment climate, where investors do not wish to make their investments on the territory of such municipalities, and seek to remove their facilities from those areas, if possible without any consequences for their business operations.

The question is, what the utility charges are, what the purpose of their collection is and how their amount is determined. When applying for a construction permit, investor pays all charges/fees prescribed by the law. The utility charges are prescribed by the municipalities in their official gazettes and they, ***inter alia***, refer to all telecommunication operators that have their infrastructure in the territory concerned. The amount of such charges/fees is prescribed arbitrarily per antenna pillar/equipment, most often on an annual basis. Imposing such additional charges, not foreseen by the investors, results in the withdrawal of investors from certain municipalities. Investors do not shirk paying the charges, however, such charges were not taken into account in their investment plans, but only appear several years later without any explanation.

FBiH and RS: RECOMMENDATION

We suggest that the municipalities that have prescribed the above-described charges abolish them, as it leads to the withdrawal of investors from those municipalities. All utility charges should be clearly specified in the process of issuing construction permits to enable investors to have a clear financial picture before commencing a construction project, i.e. to enable them to project the total investment in the specific area. Imposing utility charges subsequently exposes investors to the costs that have not been envisaged at the beginning of the investment, which is unacceptable.

UTILITY LINES CADASTRE

FBiH and RS: OPEN ISSUE

Although there is significant progress in the field of land registry law and related cadastral records in BiH (which have been established with the help of foreign non-governmental and other organizations), the area of utility lines cadastre is still neglected in practice. According to the RS Law on Land Survey and Cadastre, the utility lines cadastre is the main register of utility lines, the property rights thereon and the holders of those rights. Thus, according to the mentioned Law, the lines cadastre consists of:

a) Utility Lines Survey Study,

b) A set of documents, and

c) Utility Lines Cadastre database.

The utility lines cadastre entails data management for the utility lines and the pertaining facilities

of electricity, telecommunication infrastructure (both public and private), as well as water supply, sewage, hot water, gas and oil pipeline networks. The purpose of the utility lines cadastre is a well-regulated system of geospatial data on the underground (and overhead) lines, and it is of interest for:

- units of local government (planning, designing - urban plans and construction, designing new and reconstruction of existing lines, discovering and repairing failures on utility lines, determining the value of landscaped construction land, etc.),
- owners of utility lines (registration of title on utility lines in public registers – ownership evidence, a Utility Lines Sheet is the main document on utility lines and property rights thereon), conditions for acquiring other property rights, maintenance works, preventing consequences caused by damage made by the owners of (other types) of utility lines laid along the same alignments or close to the utility lines e.g. during repairs, reconstruction, and the like)
- citizens (interruptions in the supply of energy or services) due to damage to utility lines for the reasons stated above.

As regards the current state of the RS utility lines cadastre, in spite of the fairly good legal basis, the RS Authority for Geodetic and Property Affairs (RUGIP) has neither commenced the activities of establishing the utility lines cadastre in all segments prescribed by the RS Law on Land Survey and Cadastre nor has it started developing the main designs. The activities currently undertaken mainly concern surveying and mapping of the utility lines, the development of survey studies, and the collection of data (receiving the survey data) by the authorized persons who are to deliver it to the RUGIP (quality control of geodetic works, compliance with the regulations) that is to issue a certificate of the completed geodetic surveys or impose measures for remedying deficiencies, if any. The certificate of completed geodetic survey is a precondition for issuing an operating license. The RUGIP receives survey studies for all utility lines built on the basis of the construction permits, however, it does not collect any data on the property rights holders with respect to such utility lines. Documents that could be used for registering such rights are not submitted with the survey studies. In less developed regional units, no utility lines mapping (either analogue or digital) is performed, but merely the collection of survey data.

When it comes to the FBiH, in June 2013, the FBiH Government prepared the Preliminary Draft Law on Surveying and Registration of Real Estate in the Federation of BiH, the adoption of which is still uncertain. This Preliminary Draft Law provides for the Utility Lines Cadastre to be defined as a compilation of technical records of overhead and underground lines, consisting of: 1) utility lines survey studies; 2) a set of underlying documents; 3) utility lines cadastre database, while the utility line owners would be mainly required to keep and maintain records on the utility lines they own and to provide information on any changes thereon to the competent authorities. The law that is currently in force is the Law on the Cadastre of Utility Devices and it stipulates that the utility line users must keep a record of the utility lines to the extent and in manner that sustain their use. The aforementioned law is not applied consistently in all municipalities in the FBiH, that is, most of the municipalities do not keep a cadastre of utility devices. In the Sarajevo Canton, this area is partially well-regulated owing to the fact that the Sarajevo Canton Construction Institute, within its line of responsibilities, keeps a cadastre of utility installations (which includes underground, but not overhead lines) that is up-to-date and contains information about the owners.

RS and FBiH: OPEN ISSUE

- Harmonize the RS Law on Land Survey and Cadastre and the FBiH Law on the Cadastre of Utility Devices, as the latter should be amended to include the records of the utility line owners (Utility Lines Sheet);
- Involve relevant public stakeholders (ministries, geodetic authorities, local self-government units) in finding a solution to regulate this area;
- Find sources of funding (international organizations that have previously participated in land registry planning projects in BiH).

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 more than complex, especially taking into account that legal provisions and standards prescribed by the law are often not applied in practice; that the FBiH and cantonal laws on environmental protection are not harmonized; that the procedures for renewing environmental permits upon their expiration are either underdeveloped or not established at all; that the practice of issuing environmental permits varies from one canton to another, and the like.

It should be noted that through continuous improvements and investments made by foreign investors, and through modernization and automating of the processes, new plants are being built and changes are being introduced to the operations of the existing ones with the aim to reduce the negative impacts on the environment while respecting the principles of sustainable development.

An integrated approach supports and fosters a sustainable, social, and economic development, improves the quality of life of residents in the municipalities, raises awareness and respect for nature, which is of vital importance for the environment, but also for long-term success of the internal market.

DURATION OF THE ENVIRONMENTAL PERMITS ISSUING PROCEDURE

FBiH: OPEN ISSUE

In the process of issuing environmental permits, the public debates are non-transparent; the applications are processed slowly; the length of procedure depends on the territorial organization of Bosnia and Herzegovina and the procedure for obtaining an environmental permit, from the moment of submitting an application to obtaining the permit, takes a very long time, i.e. several months, which has a negative impact on investors in technical and financial terms.

FBiH: RECOMMENDATION

It is essential that the call for public debate on the action plan is reduced to the shortest period possible, not exceeding 10 or 15 days (taking into account the arrangements provided for in RS). We recommend that the FBiH Government amends the Rulebook on Licensing that is currently in force, as soon as possible, in order to clearly define the scope of the integrated environmental permit, as well as the possibility of e-permits (electronic permit) and to clearly define the procedure for renewal of the existing environmental permits. In terms of environmental permit, the issuing procedure should be shortened, as well as the procedure for obtaining approvals from the public institutions (e.g. the FBiH Ministry of Environment and Tourism, Water Agencies, etc.), because these approvals are a precondition for obtaining urban approval and construction permit, which slows down the investment cycle.

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. Therefore, a detailed knowledge of the zero state of the environment can serve as the basis on which all future dealings could be realistically based, correct conclusions regarding the negative consequences made, and the 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 the source points, and quantitative and qualitative characteristics of waste streams (waste, noise, air emissions, wastewater), 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, the lack of data on the share of individual emitters in the overall emissions on the site, the lack of emis-

sions stations for analysing air quality in populated areas.

FBiH: RECOMMENDATION

Since the operator's action plan cannot be submitted without the aforementioned Study of pollution in the zero state, the competent Ministry of Environment and Tourism, through the competent cantonal and local authorities, should take the necessary measures to eliminate these obstacles, in particular, urge the setup of a registry of pollutants in the respective locations.

PUBLIC TENDER APPLICATIONS AT THE ENVIRONMENTAL PROTECTION FUND

FBiH: OPEN ISSUE

From the public tender published by the FBiH Environmental Protection Fund it is evident that an applicant can only submit one project per program. However, it is not clear what the reason for this restriction could be, given that such a restriction is not prescribed by the Rulebook on the procedure for announcing public tenders and selecting the beneficiaries of the FBiH Environmental Protection Fund, the Rulebook on the criteria for the evaluation of applications for funds i.e. programs, projects and similar activities of the Fund, the Rulebook on the requirements to be met by the beneficiaries of the FBiH Environmental Protection Fund or the Rulebook on the conditions and manner of granting loans, credits or other facilities of the Fund.

FBiH: RECOMMENDATION

We are of the opinion that the applicants investing major resources in the FBiH Environmental Protection Fund should be allowed to submit multiple projects when applying within a programme scheme.

ABOLISH FEES FOR OPERATORS MAINTAINING EMISSIONS WITHIN LIMIT VALUES

FBiH: OPEN ISSUE

The air pollutant fee is paid regardless of the fact whether the emissions are inside or outside the emission limit values. The Decree on the types of fees and criteria for calculating air pollutant fees stipulates that only those liable for obtaining the permit are required to pay the fee, based on the above-mentioned criteria. The fee will not be revoked in case that the emissions are below the limit values. In EU countries, operators pay fees only for the emissions exceeding the limit values, i.e. for the amount of emitted pollutants exceeding the limit (allowable) values prescribed by the environmental permit.

FBiH: RECOMMENDATION

The Decree on the types of fees and criteria for calculating air pollutant fees, should be amended so that the operators are exempt from paying the fees if it has been determined that the emissions are within the limit values, i.e. the Decree should be aligned with the EU legislation.

DEFINING LIMIT VALUES FOR EXISTING PLANTS

FBiH: OPEN ISSUE

The regulations governing this area do not define the limit values for the existing plants, i.e. the plants that are currently at the stage of being adjusted to the best available techniques and emission limit values, and the deadlines for gradual emission reduction and adjustment of the existing plants to the best available techniques are very tight. Specifically, the Rulebook on limit values of pollutant emissions into the air provides for specific deadlines for aligning the existing plants, which has not been done since the release of the last White Book. On the other hand, in 2013, a new Rulebook on limit values for emissions into the air from combustion plants was adopted to supersede the Rulebook on limit values for emissions into the air from combustion plants adopted back in 2005. In this respect, it has been prescribed that the operators of the existing large combustion plants and/or gas turbines can comply with the obligation to reduce SO2, NOx and solid particles either by applying the emission limit values laid down in the Rulebook or by developing a Program for reducing emissions of pollutants into the air or a combination of the these two approaches. Obviously, the prescribed methods of fulfilling the requirements are related to the requirements prescribed by the new Rulebook. The new Rulebook defines the emission limit values for new and existing combustion plants.

FBiH: RECOMMENDATION

The Rulebook on limit values of pollutant emissions into the air should define the limit values for the existing plants that do not fall under the category of combustion plants. In addition, the environmental permits should specify the limit values applicable during the adjustment period that should be somewhat milder compared to the limits defined in the Rulebooks that apply to new plants or the plants compliant with the best available techniques. It is necessary to define realistic deadlines for the implementation of projects in the field of environmental protection.

PROVIDING CLEARER DEFINITION OF THE LEVEL OF OXYGEN IN THE WASTE GASES

FBiH: OPEN ISSUE

The level of oxygen in the waste gases, which is used to reduce the parameters down to Nm3, is not defined in the relevant regulations, and due to the lack of these data, it is impossible to determine the concentration of pollutants in the flue gases unambiguously and perform a valid comparison of emissions from different sources.

FBiH: RECOMMENDATION

The Rulebook on limit values of pollutant emissions into the air should clearly define the level of oxygen in waste gases, except for combustion plants because the level of oxygen for these plants is defined in the Amendments to the Rulebook on limit values for emissions into the air from combustion plants.

CLEARLY DEFINE THE DEVELOPER OF THE WASTEWATER MONITORING PROGRAM

FBiH: OPEN ISSUE

The Decree on conditions for discharging wastewater into natural recipients and public sewer systems defines the general parameters for the wastewater quality, but no specific ones, for instance, in the case of iron or steel production. The Decree does not clearly define the entity responsible for developing a Wastewater Monitoring Program or the mandatory chapters of the Program which would identify the entity responsible for developing the Monitoring program.

FBiH: RECOMMENDATION

The entity responsible for the development of the Wastewater Monitoring Program should be clearly defined (whether authorized laboratories or operators or both). In addition, it is necessary to clearly define the chapters of the Wastewater Monitoring Program with a focus on defining the specific parameters that must be monitored for discharged wastewater from specific technological processes and plants.

LACK OF COHERENCE BETWEEN THE RELEVANT GOVERNMENT INSTITUTIONS

FBiH: OPEN ISSUE

The lack of coherence between the competent government institutions is a major issue. For instance, environmental permit issued by the competent FBiH ministry is not delivered *ex officio* to the other government institutions, such as the Water Agency and the Environmental Protection Fund and the measures specified in the environmental permit, as well as the deadlines for their implementation are not compliant with the water regulations.

FBIH: RECOMMENDATION

Improve the level of cooperation between the competent government institutions and introduce a system of sharing the environmental permits and decisions *ex officio* with other relevant governmental institutions.

INTRODUCTION OF CORRECTIVE INCENTIVE COEFFICIENTS IN THE CASE OF IMPLEMENTATION OF PROJECTS TO REDUCE UNCONTROLLED EMISSIONS

FBiH: OPEN ISSUE

For the purpose of collecting the funds, which could not be collected otherwise, and investing them in the environmental and energy efficiency projects and programs, the FBiH established the Environmental Protection Fund to ensure the basic mechanism for the implementation of such projects and programs. The funds for financing

projects, programs and other activities in the field of environmental protection by the Fund, as defined in Article 18 of the Law on Environmental Protection Fund of the Federation of Bosnia and Herzegovina are to be collected from the fees.

The unit fee and the corrective coefficient, as well as the method of their calculation and payment are prescribed by:

1. Rulebook on the method of calculation and payment, and the deadlines for calculation and payment of fees by air pollutants;
2. Decree on the types of fees and criteria for calculating air pollutant fees.

The Decree prescribes corrective incentive factors for calculating emissions from controlled sources aiming to stimulate operators (pollutants) to reduce emissions and environmental loads, and to reduce the costs resulting from the payment of these fees, i.e. to reduce the costs of rehabilitation caused by air pollution. The amendments introduced by the adoption of the Decree amending the Decree on the types of fees and criteria for calculating air pollutant fees (Official Gazette of FBiH, 107/14), in Article 3, read as follows:

"Asphalt plants and uncontrolled emissions from the process of dry distillation of coal in coke ovens shall be subject to an emission factor, i.e. the mass of emitted pollutants shall be determined by the mass output, so that in case of asphalt plants it shall be 0.01% of solid particles (dust) in relation to the total annual output, and in case of uncontrolled emissions of coke ovens, it shall be 0.035% of solid particles (dust) in relation to the total annual output of coke"; same as in Article 4.

In Article 6, paragraph 3, the words "*from asphalt plants*" are followed by the words "and coke ovens (for uncontrolled emissions)", i.e. Article 6 of the Decree on the types of fees and criteria for calculating air pollutant fees currently reads as follows:

"*Notwithstanding paragraph 1, line 3 of this Article, the amount of the annual fee for one ton of solid particles (dust) from asphalt plants and coke ovens shall be 2350 KM/t."*

Furthermore, uncontrolled emissions from coke batteries are put in a more difficult position than the uncontrolled emissions of asphalt plants (emission factor of 0.01% for asphalt plants and 0.035% for coke plants). According to the Amendments to the Decree, the operator (pollutant), in this case, of a coke plant, is being deterred with the aim to reduce future investments in a significant reduction of uncontrolled emissions, given that the fees are directly dependent on their annual output.

The projects defined in the best available techniques (BATs) for these plants are the projects that require major investments (where the investment value of each such project exceeds 10 million EUR).

FBiH: RECOMMENDATION

It is necessary to introduce corrective incentive coefficients that would apply in case of the implementation of projects aimed at the reduction of uncontrolled emissions from coke batteries. When defining corrective incentive coefficients, it is necessary to take into account the overall reduction of emissions from coke batteries, as well as the value of investments.

CONSTRUCTION OF COLLECTORS AND WASTEWATER TREATMENT PLANTS

FBiH: OPEN ISSUE

All those who release wastewater as a result of their technological manufacturing processes are subject to a legal requirement of its proper disposal, i.e. they are required to ensure appropriate wastewater treatment before it is discharged back into the environment. In order to be operational, companies/foreign investors in the Federation of BiH must obtain a water permit from the competent Agency (Sava River Basin Agency and/or Adriatic Sea Watershed Agency).

To obtain the water permit, companies are required to maintain biological wastewater treatment in a satisfactory manner. In this regard, some of the municipalities, at the local level, have initiated a project that should be implemented by 2022 and refers to the wastewater disposal/bioremediation plants that would be connected to the production plants of the companies that would, then, pay for the wastewater treatment service calculated per cubic meter. In the meantime, the plants use chemicals trying to maintain the set parameters or reduce them to allowable values. However, the aforementioned system is only a provisional solution that is not sustainable.

Given that the municipalities have not yet provided wastewater collectors and treatment plants to which companies need to be connected, the standard practice is that the competent Agency (Sava River Basin Agency) requires each company to have a wastewater treatment plant. Such plants represent large investments for the companies, whilst it has been anyway planned to build municipal wastewater treatment plants to which the companies will be eventually connected. It can thus be concluded that the plants constructed by the companies will become useless in the end, while still being a large, but unnecessary investment.

FBiH: RECOMMENDATION

As long as the municipalities do not implement the wastewater disposal/bioremediation project that entails the wastewater treatment plants to which the companies' production plants would be connected and for which service they would be charged per cubic meter of wastewater treated, it is necessary that the Sava River Basin Agency cooperates with the municipalities at the local level in order to introduce a set of provisional measures and clear guidelines that would help companies to maintain the industrial wastewater values at a satisfactory level, until such time as wastewater treatment plants and collectors are ensured for the companies to connect to, all for the purpose of releasing the manufacturing companies of the obligation to build their own self-contained wastewater bioremediation facilities.

It is also necessary to provide for certain incentives specific to manufacturing industries, in order to financially facilitate the process of obtaining water permits in this sector generally. Bearing in mind that potential investors are not able to obtain information on investment opportunities, licensing procedures, etc., it would be desirable to improve the institutional access to all necessary information related to the licencing processes, responsible institutions/bodies and timeframes in one place or in one institution at any level of government in BiH. Finally, it would be preferable to consider advanced oxidation processes (i.e. those that do not produce secondary waste, which represents their advantage over conventional treatment methods), as an alternative solution to conventional biological, physical and chemical methods of wastewater treatment.

INCONSISTENCY OF THE REGULATIONS GOVERNING THE ISSUANCE OF WATER MANAGEMENT ACTS

FBiH: OPEN ISSUE

The issuance of water management acts (i.e. preliminary water approval, water approval and finally, water permit) is, generally, governed by the FBiH Law on Waters and the Rulebook on the Contents, Form, Requirements and Method of Issuing and Keeping of Water Management Acts (hereinafter, the FBiH Rulebook on Water Management Acts). The competences for issuing the water management acts are divided between the Federal and Cantonal authorities, i.e. two water management agencies in the FBiH, on the one hand, and the Cantonal ministries responsible for issuing water management acts, on the other. The division of competences for issuing water management acts between Entity and Cantonal levels is based, ***inter alia***, on the water categories. The problem is reflected in the absence of a hierarchy of regulations, i.e. in the fact that, in some cases, the regulations of lower legal force (cantonal laws) are not compliant with the regulations of higher legal force (Entity laws). Furthermore, it is often the case that the procedure for issuing water management acts under the FBiH Law on Waters results in the duplication of administrative procedure for those plants and facilities for which an integrated environmental permit – which also includes water aspects, is to be issued by the FBiH Ministry of Environment and Tourism, which makes the whole process of obtaining certain administrative documentation required for a water permit, even more difficult for the investors. In addition, the issue of cooperation and regular exchange of information between the institutions responsible for issuing the permits and approvals across several government levels in BiH is not legally regulated, and accordingly, the communication takes place on an ***ad hoc*** basis. Moreover, in practice, several different permits, both cantonal and federal ones, need to be obtained within the same industry branch for different plants and facilities located on a single site, which are, then, subject to different inspections.

FBiH: RECOMMENDATION

It is necessary to harmonize the legislation on issuing environmental permits between the Federation of BiH and its Cantons to align the requirements that need to be met for obtaining the environmental permit and water management acts. This harmonization of the legislation could also be achieved through the issuance of an integrated environmental permit covering two or more plants or facilities managed by one or more operators at a single site. Finally, although the responsible institutions typically communicate in cases when the law stipulates that an institution should obtain an approval or opinion from another institution before issuing a specific permit, establishing a clear mechanism of communication between the institutions at different government levels (i.e. the cantonal ones and the Federal Ministry, and the cantonal and federal inspectorates) would facilitate solving the identified problems, which have been addressed on an *ad hoc* so far.

ENERGY SECTOR-RELATED PERMITS

GAS

The gas market in BiH is still in an early stage of development, which means that BiH still does not have a liberalized and regulated gas market. BiH has no domestic production of gas, and it imports gas to meet the domestic demands. The FBiH has started implementing the regulations aimed at the organization and liberalization of the gas market in general, and the latest developments in this sector refer to the planned adoption of a new FBiH Gas Law which should govern the gas sector in more detail. It is still unclear whether the new law will actually be adopted, and if so, when.

The gas market in RS is mostly regulated by the RS Gas Law governing the organization and operation, as well as the performance of business activities in the natural gas sector in RS. Given that the Regulatory Commission for Energy of RS (RERS) is the authority responsible for regulating gas-related operations in the RS, the regulations issued by the RERS are also of importance.

FBiH: OPEN ISSUE

The current regulations covering the area of gas in the FBiH is contained in the Decree on organization and regulation of the gas industry sector. Although the present Decree provides for the licensing of gas supply to tariff customers, such a license is not obtainable in practice. The same applies to the performance of other energy-related business activities in the gas sector (transport, distribution, storage and operation of LNG plants).

FBiH: RECOMMENDATION

It is necessary to urgently adopt the FBiH Gas Law, which will systematically regulate the functioning of the gas sector in FBiH, and then, to pass the relevant implementing regulations which would further regulate the licensing requirements for gas supply to tariff customers, performing other energy-related business activities in the gas sector, as it is has already been done in RS.

RS: OPEN ISSUE

Currently, the companies registered in FBiH cannot apply for license to perform energy-related activities in the gas sector at RERS. The RERS's Licensing Rule, in essence, does not set such a restriction, however, in practice, RERS does not issue licenses to the companies headquartered in the FBiH. Such companies are, basically, completely precluded from engaging in the gas sector activities, particularly, gas trading, across BiH.

RS: RECOMMENDATION

It is necessary to allow the companies headquartered in the FBiH to perform gas sector-related business activities in RS.

ELECTRICITY

The liberalization of the electricity market in Bosnia and Herzegovina has started as of 1 January 2015 giving end users an opportunity to choose the supplier and the terms and conditions of electricity supply. The opening of the electricity market occurred gradually, and the aim was to create, maintain and develop competition among participants in the electricity market. According to Article 4, paragraph (1) and Article 8 of the Law on Power Transmission, Regulator and System Operator in BiH, the electricity market in Bosnia and Herzegovina is a unique economic space and is based on free and equal access to the transmission network, following the principles of regulated access and applicable directives of the European Union.

The opening of the electricity market in Bosnia and Herzegovina followed the schedule according to which the status of an eligible customer was granted to:

- all customers with annual consumption of electricity exceeding 10 GWh, as of 1 January 2007.
- all customers with annual consumption of electricity exceeding 1 GWh, as of 1 January 2008.
- all customers, except households, as of 1 January 2009.
- all electricity customers as of 1 January 2015.

Any business entity registered in the Federation of BiH that performs or wishes to perform activities of production, distribution, supply or trade of electricity, is required to hold or obtain the appropriate license issued by the Regulatory Commission for Energy in FBiH (FERK). The procedure is carried out in accordance with the FERK's Licensing Rule.

At the same time, any legal person registered in the RS, that performs or wishes to perform activities of production, distribution, supply or trade of electricity, is required to hold or obtain the appropriate license issued by RERS. The procedure is carried out in accordance with the RERS's Licensing Rule.

A legal person who wishes to perform or performs the activity of international electricity trade must hold the appropriate license issued by the State Electricity Regulatory Commission (DERK). The procedure is carried out in accordance with the DERK's Licensing Rule.

The above procedures are associated with several outstanding issues that need to be addressed in the coming period to increase efficiency.

FBiH and RS: OPEN ISSUE

A significant portion of the prescribed licensing requirements is not compliant with the actual situation in practice, and some evidence of compliance with the requirements laid down by the aforementioned licensing regulations cannot be submitted, as the electricity market has not been fully liberalized yet, as it is provided for in the said regulations. This results in legal dilemmas facing the applicants when preparing the required documentation, and submission of a large number of statements about the non-fulfilment of the requirements laid down in the licensing regulations.

FBiH and RS: RECOMMENDATION

We are generally of the opinion that there is a realistic need for amending and revising the above-mentioned regulations on issuing licenses for performing electricity/energy activities in order to align them with the factual situation on the market. This is particularly important in relation to the requirements and criteria set out in these regulations.

ISSUING PERMITS FOR THE CONSTRUCTION OF ELECTRICITY GENERATION FACILITIES[2]

FBiH and RS: OPEN ISSUE

According to the World Bank Doing Business 2019 report, out of a total of 190 countries analysed, Bosnia and Herzegovina ranks 167 under the "Dealing with construction permits" indicator. The USAID Energy Investment Activity project (USAID EIA) analysed the permitting processes for the construction of electricity generation facili-

2 This recommendation comes from the USAID Energy Investment Activity project that provided technical assistance to the competent ministries of energy in improving the permitting processes for construction of electricity generation facilities. The Project activities have resulted in a set of recommendations accepted by the entity governments.

ties and found out that more than 20 permits, obtainable in more than 100 steps, were needed for construction of this type of facility, and that, in practice, the procedure could take more than five years. Another problem for investors is the lack of information on permitting/licensing procedures.

FBiH and RS: RECOMMENDATION

The competent institutions should start implementing the activities aimed at improving the licensing system at all levels of government in BiH. The second step in this direction is the implementation of the recommendations made within the activities pursued by the relevant ministries of energy. Representatives of all permitting/licensing authorities participated in these activities and the technical assistance was provided by the USAID EIA and GIZ ProRE projects. The activities resulted in more than 100 recommendations that have been accepted by the Entity governments[3]. Among these recommendations, one of the key ones for improving the efficiency of the licensing system in both Entities has been the introduction of the "e-permit" system, which allows the necessary licenses/permits to be issued to investors electronically.

3 The analysis and recommendations are available at the following links:
https://www.usaideia.ba/wp-content/uploads/2018/10/Final-Analysis-and-Recommendations-for-FBiH-Compilation-local-6-27-18-final-1.pdf
https://www.usaideia.ba/wp-content/uploads/2018/10/Final-Analysis-and-Recommendations-for-RS-Compilation-local-8-24-18-final.pdf

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
	CONSTRUCTION PERMITS	
FBiH and RS Inefficient system for processing the permit applications	Introduce a mechanism in the relevant laws/regulations that will improve the efficiency of local self-government units in terms of dealing with the applications in such a way that, if they fail to respond to an application within the legally prescribed deadline, they are required to report on the delay to the line ministry, or otherwise, the "silence" of the administration will be deemed an approval thereof.	• Municipalities in the FBiH --- • Municipalities in RS
FBiH and RS Extensive documentation required for issuing urban and construction approvals	Reduce the amount of documentation required in the process of issuing permits. With respect to the approvals that are to be obtained in the process of issuing permits for a single site, their validity period should be extended, especially if there is no communal infrastructure in the area concerned.	• Municipalities in the FBiH • FBiH Ministry of Physical Planning --- • Municipalities in RS • RS Ministry of Spatial Planning, Civil Engineering and Ecology
FBiH and RS Inadequate cooperation of the state/federal administrative authorities - the approvals of which are required for obtaining construction permits, with state-owned/public companies	Establish a system under which the Entity governments will be responsible for maintaining and updating the central database containing infrastructure blueprints, while the lower government levels would be required to submit and update these data, so that the central database reflects the changes occurring on the ground, with the possibility to seek information from the entity governments when dealing with the applications. In RS, speed up the process of harmonizing the cadastral with the land-registry records and resolve the issue of state property.	• Responsible State and FBiH authorities • Public enterprises in FBiH and RS
FBiH and RS Ambiguity related to the payment of the fees for the usage of construction land in the FBiH and RS	Insist on harmonizing the provisions of relevant laws at the level of FBiH and RS, cantons and municipalities, in formal and substantive terms, and provide a clarification on when, how and who is required to pay the fee, and what the exception cases are. In the FBiH, amend the Law on Construction Land in line with the FBiH Constitutional Court's judgement declaring the requirement to pay the fee for using urban construction land (annuities) unconstitutional.	• FBiH Ministry of Physical Planning • FBiH Government • FBiH Parliament --- • RS Ministry of Spatial Planning, Civil Engineering and Ecology • RS Government • RS National Assembly
FBiH Selection of committee for technical acceptance of building	The FBiH should introduce a requirement of submitting a list of legal entities or individuals authorized to perform technical acceptance, who would be selected on the basis of a public competition and give the applicant right to choose. This proposal aims to increase efficiency and facilitate the evaluation.	• FBiH Ministry of Physical Planning

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH and RS Telecommunication infrastructure utility charges	Abolish the utility charges at the municipalities that have prescribed them, as it leads to the withdrawal of investors from those municipalities. All utility charges should be clearly specified in the process of issuing construction permits to enable investors to have a clear financial picture before commencing a construction project. Imposing utility charges subsequently exposes investors to the costs that have not been envisaged at the beginning of the investment, which is unacceptable.	• Municipalities in the FBiH --- • Municipalities in RS
FBiH and RS Utility Lines Cadastre	• Harmonize the RS Law on Land Survey and Cadastre and the FBiH Law on the Cadastre of Utility Devices, as the latter should be amended to include the records of the utility line owners (Utility Lines Sheet); • Involve relevant public stakeholders (ministries, geodetic authorities, local self-government units) in finding a solution to regulate this area; • Find sources of funding (international organizations that have previously participated in land registry planning projects in BiH).	• FBiH Ministry of Physical Planning • FBiH Government • FBiH Parliament --- • RS Ministry of Spatial Planning, Civil Engineering and Ecology • RS Government • RS National Assembly
ENVIRONMENTAL PERMITS		
FBiH Duration of the environmental permits issuing procedure	Reduce the call for public debate on the action plan to the shortest period possible, not exceeding 10 or 15 days. Amend the Rulebook on Licensing that is currently in force, in order to clearly define the scope of the integrated environmental permit, as well as the possibility of e-permits; and clearly define the procedure for renewal of the existing environmental permits.	• FBiH Government • FBiH Ministry of Environment and Tourism
FBiH Difficulties in analysing zero state	Due to the lack of information on emissions in certain areas, difficulties arise in the implementation of the Study on pollution in the zero state. Since the operator's action plan cannot be submitted without the Study of pollution in the zero state, the competent ministry should take the necessary measures to eliminate these obstacles, in particular, urge the setup of a registry of pollutants in the respective locations.	• FBiH Ministry of Environment and Tourism
FBiH Public tender applications at the Environmental Protection Fund	The applicants investing major resources in the Fund should be allowed to submit multiple projects when applying within a programme scheme.	• FBiH Environmental Protection Fund
FBiH Abolish fees for operators maintaining emissions within the limit values	Amend the Decree on the types of fees and criteria for calculating air pollutant fees, so that the operators are exempt from paying the fees if it has been determined that the emissions are within the limit values, i.e. align the Decree with the EU legislation.	• FBiH Ministry of Environment and Tourism • FBiH Government

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH Defining limit values for existing plants	The Rulebook on limit values of pollutant emissions into the air should define the limit values for the existing plants that do not fall under the category of combustion plants. In addition, the environmental permits should specify the limit values applicable during the adjustment period that should be somewhat milder compared to the limits defined in the Rulebooks that apply to new plants or the plants compliant with the best available techniques	• FBiH Ministry of Environment and Tourism
FBiH Providing clearer definition of the level of oxygen in the waste gases	The Rulebook on limit values of pollutant emissions into the air should clearly define the level of oxygen in waste gases, except for combustion plants because the level of oxygen for these plants is defined in the Amendments to the Rulebook on limit values for emissions into the air from combustion plants.	
FBiH Clearly define the developer of the wastewater monitoring program	The entity responsible for the development of the Wastewater Monitoring Program should be clearly defined (whether authorized laboratories or operators or both). In addition, it is necessary to clearly define the chapters of the Wastewater Monitoring Program with a focus on defining the specific parameters that must be monitored for discharged wastewater from specific technological processes and plants.	• FBiH Ministry of Environment and Tourism • FBiH Government
FBiH Lack of coherence between the relevant government institutions	Improve the level of cooperation between the competent government institutions and introduce a system of sharing the environmental permits and decisions *ex officio* with other relevant governmental institutions.	• FBiH Ministry of Environment and Tourism
FBiH Introduction of corrective incentive coefficients in the case of implementation of projects to reduce uncontrolled emissions	It is necessary to introduce corrective incentive coefficients in case of the implementation of projects aimed at the reduction of uncontrolled emissions from coke batteries. When defining corrective incentive coefficients, it is necessary to take into account the overall reduction of emissions from coke batteries, as well as the value of investments.	• FBiH Ministry of Environment and Tourism
FBiH Construction of collectors and wastewater treatment plants	Pending the implementation of the municipal wastewater treatment projects and the construction of plants to which manufacturing plants would be connected, it is necessary that the Sava River Basin Agency cooperates with the municipalities at the local level in order to introduce a set of provisional measures and clear guidelines that would help companies to maintain the industrial wastewater values at a satisfactory level, all for the purpose of releasing the manufacturing companies of the obligation to build their own self-contained wastewater bioremediation facilities.	• Sava River Basin Agency --- • Municipalities in the FBiH

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH Inconsistency of the regulations governing the issuance of water management acts	It is necessary to harmonize the legislation on issuing environmental permits between the Federation of BiH and its Cantons to align the requirements that need to be met for obtaining the environmental permit and water management acts. This harmonization of the legislation could also be achieved through the issuance of an integrated environmental permit covering two or more plants or facilities managed by one or more operators at a single site.	• FBiH Ministry of Environment and Tourism • FBiH Government --- • Cantons in FBiH
ENERGY SECTOR-RELATED PERMITS		
FBiH Although the Decree on organization and regulation of the gas industry sector provides for the licensing of gas supply to tariff customers, such a license is not obtainable in practice.	It is necessary to urgently adopt the FBiH Gas Law, which will systematically regulate the functioning of the gas sector in FBiH, and then, to pass the relevant implementing regulations which would further regulate the licensing requirements for gas supply to tariff customers, performing other energy-related business activities in the gas sector, as it is has already been done in RS.	• FBiH Ministry of Energy, Mining and Industry • FBiH Government • FBiH Parliament
RS The companies registered in FBiH cannot apply for license to perform energy-related activities in the gas sector at RERS. Although the RERS's Licensing Rule does not set such a restriction, in practice, RERS does not issue licenses to the companies headquartered in the FBiH.	It is necessary to allow the companies headquartered in FBiH to perform gas sector-related business activities in RS.	• RS Regulatory Commission for Energy (RERS)
FBiH and RS A significant portion of the prescribed licensing requirements is not compliant with the actual situation in practice, which results in legal dilemmas facing the applicants.	Amend the relevant regulations on issuing licenses for performing electricity/energy activities in order to align them with the factual situation on the market. This is particularly important in relation to the requirements and criteria set out in these regulations.	• State Electricity Regulatory Commission (DERK) --- • FBiH Regulatory Commission for Energy (FERK) --- • RS Regulatory Commission for Energy (RERS)
FBiH and RS Issuing permits for the construction of electricity generation facilities	The competent institutions should start implementing the activities aimed at improving the licensing system at all levels of government in BiH. Implement the recommendations made within the activities pursued by the relevant ministries of energy, among which one of the key ones for improving the efficiency of the licensing system in both Entities has been the introduction of the "e-permit" system, which allows the necessary licenses/permits to be issued to investors electronically.	• FBiH Ministry of Energy, Mining and Industry • Municipalities in the FBiH --- • RS Ministry of Industry, Energy and Mining • Municipalities in RS

ENERGY SECTOR

ENERGY EFFICIENCY

INTRODUCTION

BiH has abundant energy resources and is one of the few Balkan countries that exports electricity, however, the supply of electricity from these resources is not sustainable. Due to inefficient utilization, electricity consumption increases, while coal and fossil fuels generally cause enormous air pollution. However, in BiH, the specific energy consumption, both thermal and electrical, is very high. According to the latest available data, almost 20% of gross national income in BiH is spent on energy, which is, compared to 6.1% in the US or 4.75% in EU countries, a really high percentage.

Energy efficiency entails a series of measures that are taken in order to reduce energy consumption, save costs and reduce CO_2 emissions, without affecting working and living conditions. In September 2015, the UN General Assembly defined a set of comprehensive UN Sustainable Development Goals 2030 at the global level. These goals were adopted by 193 member states, including BiH.

The EU has highlighted energy efficiency as one of the key tools to achieve the Sustainable Development Goals. For this reason, an energy development strategy has been developed, making the EU a world leader in the fight against climate change. The key target of the EU 2030 climate and energy framework involves 40% cuts in greenhouse gas emissions (from 1990 levels). This implies that the share of renewable energy in the whole EU is at least 27%.

By signing the Treaty establishing Energy Community and the Stabilization and Association Agreement, BiH has assumed the obligation to align its legislation with the EU laws, and adopt EU directives and standards in the field of energy. Owing to this, a number of thermal insulation projects have been launched in the BiH building sector lately, with the goal of increasing energy efficiency. This is a good trend that certainly needs to continue.

However, what about the industry?

It has been established that there are small and medium enterprises in BiH that are capable of implementing energy efficiency measures. Some of these enterprises have already defined their commitments in the sense of meeting the 2010 sustainable development goals. Unfortunately, one of the major obstacles to implementing these measures on a larger scale, especially under public-private partnership schemes, is the lack of financial resources and the failure to comply with the adopted legislation governing this area.

This primarily refers to the development of potentials in the use of alternative fuels in the industries that are major consumers of heat energy (cement industry, metallurgical industry, thermal power plants, etc.). In these industries, there are tremendous possibilities for replacing fossil fuels with energy from waste, which directly contributes to the rational, responsible and efficient use of energy sources, with an enormous reduction in greenhouse gas emissions.

Significant attention will have to be devoted to this area of energy efficiency in the future, in order to provide prerequisites (political, financial, technological and all other) for the mass use of alternative fuels as the sources of thermal energy.

LEGAL FRAMEWORK FOR THE IMPLEMENTATION OF MEASURES TO INCREASE ENERGY EFFICIENCY IN LINE WITH THE EU STANDARDS

FBiH: OPEN ISSUE

The FBiH Law on Energy Efficiency was adopted in 2017, with the aim of achieving the goals of sustainable energy development: reducing adverse environmental impacts, increasing energy security, meeting end-consumer energy needs and fulfilling international commitments undertaken by BiH in terms of reducing greenhouse gas emissions by implementing the energy efficiency measures in final consumption.

Although more than a year has passed since the adoption of the Law, according to our knowledge, no subordinate legislation related to it has

been adopted yet. The deadline for preparing and adopting subordinate legislation is usually six months after the law has been adopted. Without such implementing regulations, the FBiH Energy Efficiency Act cannot be adequately enforced, and thus, it cannot be applied by the interested parties. As a consequence, there is no legal framework in BiH to adequately implement the measures to increase energy efficiency in line with EU standards.

FBiH: RECOMMENDATION

It is necessary to create the required legal, regulatory and institutional environment for the implementation of energy efficiency measures. The competent ministries (FBiH Ministry of Energy, Industry and Mining, FBiH Ministry of Physical Planning) that have participated in the Law drafting process must urgently adopt the necessary implementing regulations, in order to make the FBiH Law on Energy Efficiency effectively enforceable. Currently, we have this law merely as a fulfilment of one of the obligations of BiH as a signatory to the Treaty establishing the Energy Community.

USE OF ALTERNATIVE FUELS IN CEMENT INDUSTRY

FBiH: OPEN ISSUE

The issue of the existing legislation inadequacy when it comes to the use of alternative fuels in industry is reflected in the fact that the FBiH Law on Waste Management, as well as its 2017 amendment, provides for the introduction of specific waste categories, such as, for example, packaging waste, automotive tires, used oils, etc., whereas there are no implementing regulations governing the manner in which the above-listed waste categories, as well as municipal and industrial waste, should be used to produce alternative fuels known as RDF (Refuse Derived Fuel) or SRF (Solid Recovered Fuel). The existing Rulebook on the Requirements for the Operation of Waste Incineration Plants has defined the methods for waste disposal (incineration), as alternative fuel in industry and the requirements that need to be fulfilled in order to incinerate waste in an environmentally friendly and safe manner, however, the link between the waste collection process and the waste incineration process is missing, and that is the preparation of waste for incineration.

Thus, the existing legislation, although insisting on closing the so-called urban waste dumps and waste disposal at so-called regional sanitary landfills (such as the landfills in Sarajevo and Zenica), has not provided for the necessary preconditions for sanitary landfills and similar public utilities to be transformed into plants (MBT plants) where mechanical and biological treatment of primarily municipal waste will be carried out and where a product called RFD/SRF will be produced from waste for the purpose of its subsequent use as alternative fuel in the industry (especially, cement industry).

FBiH: RECOMMENDATION

Industries in the EU countries are certainly inclined towards using alternative fuels – waste, which is, in turn, generates a number of benefits: reducing the amount of waste at landfills, reducing the use of fossil fuels as a non-renewable natural resources (primarily coal which companies mainly import due to the low calorific value of BiH coal), reducing greenhouse gas emissions (primarily CO_2), and making significant savings for businesses.

Some factories in BiH have obtained a license to use alternative fuels, but are still facing the problem of procuring such fuels and the lack of MBT plants (Mechanical Biological Treatment Plants in BiH), and are therefore compelled to import waste from EU countries.

The Federal Ministry of Environment and Tourism should undertake to implement the adopted set of energy efficiency and waste management regulations (which implies the so-called integrated approach and the closure of urban landfills), and work on public promotion and awareness raising on the benefits of using alternative fuels in industry. At present, waste in FBiH is largely disposed at the so-called urban landfills (which are, in effect, illegal), while it should be disposed on the regional landfills. The regional sanitary landfills should become municipal waste treatment facilities (MBT plants), which would launch a new product (RDF/SRF) on the BiH market that already has a reliable customer.

STIMULATING POWER GENERATION FROM RENEWABLE ENERGY SOURCES

(I) FBiH: OPEN ISSUE

In the FBiH, the problem is the non-compliance of the Decree on Stimulating Power Generation from Renewable Energy Sources and in Efficient Cogeneration Facilities with the FBiH Law on Use of Renewable Energy Sources and Effective Cogeneration. Specifically, the Decree stipulates that the status of a potentially privileged and privileged electricity producer entitled to conclude a contract for the purchase of electricity at guaranteed prices can also be acquired for a part of the installed power that fits into dynamic quotas for that type of plant. Such a provision is contrary to the provision of the Law stipulating that the status of a privileged producer can only be obtained if the entire installed power of the plant generating electricity from renewable sources fits into the dynamic quota scheme.

(I) FBiH: RECOMMENDATION

An amendment to the FBiH Law on Use of Renewable Energy Sources and Effective Cogeneration is required in order to enable encouraging power generation and sale at guaranteed prices for only a part of the planned power generation, i.e. the part that fits into free dynamic quotas, as provided for in the RS Law on Renewable Energy Sources and Efficient Cogeneration and the RS Rulebook on Stimulating the Production of Electricity from Renewable Sources and Efficient Cogeneration.

(II) FBiH: OPEN ISSUE

The FBiH Law on Use of Renewable Energy Sources and Effective Cogeneration has determined a possibility of the qualified electricity producers to conclude the power purchase agreement at the reference price. The standard model of such contract, which has been established by the Operator for Renewable Energy Sources and Efficient Cogeneration of FBiH, envisages an obligation of its annexation in the event of change of the reference price. The reference price is in principle determined on annual basis and calculated in accordance with the Rulebook on Methodology for Determination of Reference Price of Electricity adopted by the FERK. Such standard model of the agreement and the fact that the reference price changes on the annual basis can not be considered as a bankable agreement on basis of which the banks will provide the necessary funds for the construction of a production plant using renewable energy sources, since the purchase of electricity is not predictable in the financial sense.

(II) FBiH: RECOMMENDATION

In order for power purchase agreement to be considered bankable the FBiH Law on Use of Renewable Energy Sources and Effective Cogeneration should envisage that the amount of the reference price should be fixed during the validity of the power purchase agreement at the reference. An alternative possibility is that the Law and the Rulebook on Methodology for Determination of Reference Price of Electricity should determine the minimum amount of the reference price at which electricity can be purchased from qualified electricity producers. Only in those cases the security and reliability of return of the investment in accordance with the concluded power purchase agreement at the reference prices can be ensured.

PETROLEUM PRODUCTS

INTRODUCTION

Aligning energy legislation with the latest global market trends is still one of the key issues and of great importance for enabling the BiH market participants to become more competitive by improving their products and services, and to achieve a better economic position. The comments and guidelines provided in the last White Book edition 2015/2016 are unfortunately still up-to-date to a large extent, although we welcome and recognize the efforts made by the official institutions to introduce the necessary and desirable practices in this area. However, even after the three-year period, the major issues in the petroleum products market have not been resolved, such as the issue of petroleum products additization, which is still regulated by the extremely confusing provision of Article 32 of the FBiH Law on Petroleum Products, which leaves room for the interpretation that additivized fuel is forbidden. Furthermore, the issue related to the compensation for petroleum products monitoring services has not been resolved either, meaning that the inspection authorities are still imposing disproportionately high sampling costs, while setting the price of

services by an agreement which is contrary to all competition rules.

As the importance of petroleum products is extremely high, we reiterate that the specific legislative reforms should be urgently implemented and finalized in order to align the state and entity regulations with European legislation and international standards, all with a view to prosperity and elimination of legal insecurity for both the local community and foreign investors.

INCONSISTENCY OF THE LEGISLATION AT THE ENTITY AND STATE LEVEL

BiH and FBiH: OPEN ISSUE

The key focus is on amending certain provisions in the following legislation:

- Decision on the Quality of Liquid Petroleum Fuels (Decision on quality)
- Law on Petroleum Products of FBiH (Law)
- Rulebook on Determining the Quality of Liquid Petroleum Fuels (Rulebook on quality)
- Rulebook on Licensing for performing energy activities in the sector of the oil industry (Rulebook on licencing)
- Decision on Obligatory Application of Domestic Preferences (Decision on Preferences)
- BAS EN 228 and BAS EN 590 set of standard (Standards)

Labelling of petroleum products on the FBiH market is governed by the above-listed regulations. However, none of the above-listed regulations specifies, or provides for specifying which of the regulations should be given priority in the application, and due to the differences in the prescribed methods of labelling, the application of all regulations at the same time is not possible.

Article 5a) of the Decision on quality sets out the labels for liquid petroleum fuels, i.e. it requires "the method of labelling liquid petroleum fuels to be compliant with the titles provided for in the Standard, while the Rulebook on quality, unlike the Decision on quality, prescribes mandatory labels that must be displayed on every fuel dispenser. Specifically, the Rulebook on quality has made a difference in terms of labelling fuel dispensers by obligatory introduction of additional labels related to the content of sulphur in fuel - "ppm" (50 ppm or 10 ppm), which is contrary to, or different from the provision set out in the Decision, the Law and the Standard prescribing the label for diesel fuels without specifying the content of sulphur in the fuel (CN reads: DIZEL BAS EN 590).

Since the transitional and final provisions of the Rulebook on quality do not specify whether the Rulebook or the Decision on quality should prevail, the effectiveness of the Law on quality and the Rulebook on quality resulted in problems in the application and practice, because these provisions have been interpreted differently by the FBiH inspectors and the businesses in the energy sector. The inconsistency of the legislation at the state and entity level opens up the possibility of arbitrary interpretation of the laws by the inspection authorities, which may result in a financial burden for businesses in the energy sector due to colliding legislation.

BiH and FBiH: RECOMMENDATION

In order to eliminate the described collisions in the legislation, the competent authorities at the state level should, above all, adopt a new Decision on the quality of liquid petroleum fuels in BiH that will be compliant with the international standards, current market trends and the development of petrochemical and petroleum industry. After regulating this area at the state level, it will be necessary to harmonize the entity-level legislation with the Decision on the quality of liquid petroleum fuels, in order to create a single BiH market. It is essential that the Decision on quality provides for:

- Import / marketing / labelling of high octane petroleum products / high-quality fuels
- Import / marketing / labelling of additivated petroleum products
- Marketing of a wide range of petroleum products
- Labelling of petroleum products with their commercial names in addition to the mandatory labels prescribed by the Standards.

PETROLEUM PRODUCTS LABELLING

BiH and FBiH: OPEN ISSUE

The provisions of the Decision on quality and the Rulebook on quality require labels for liquid petroleum fuels that do not follow the current market

trends and the development of petrochemical and petroleum industry, as these regulations do not provide for distinctive labelling of high-quality fuels or additivated liquid petroleum products (gasoline and diesel) at all. The businesses in the energy sector primarily face the issue of an outdated Decision on quality that can be interpreted as stipulating that the fuel label and its trade name/mark are one and the same. Due to the failure to make a distinction between fuel labels and fuel names, the situation on the market is as such that fuel of different quality is marketed under the same name (Diesel 4 and Diesel 5).

Namely, Article 5a) of the Decision on quality prescribes the labels for liquid petroleum products restrictively, which makes it impossible for the energy sector businesses to market high-octane petroleum products, gasoline and diesel fuels with and without additives at the petrol stations at the same time, because they must use the same label for all of them, which in practice, inhibits the marketing of both products.

The Oil Price Change (OPC) Request Form, which is submitted to the FBiH Ministry of Trade cannot contain a different price for the same petroleum product label, and the trade name of petroleum products must not be used as an indicator of the product's distinctiveness. In this way, foreign energy operators are forced to market their high-quality/high-octane additivated petroleum product as a product of standard quality, thereby misleading consumers and energy operators who wish to sell high-octane products and additivated fuels on the market, and being deprived the opportunity to offer a wide range of products, while the improved quality of their product is simply not recognized in local laws.

In the Western European countries practice, developing high-quality fuels is desirable, especially given that such fuels are mostly environmentally-friendly types of fuels. Foreign investors are mainly oriented towards the production of high quality fuels and in this way the doors are closing for them because they have to bounce back and produce the type of fuel that may no longer be produced in their home countries in order to adjust to the (lower) standards. The applicable legislation restricts the companies to sell only the products the labels of which are prescribed by the law, while completely ignoring the product quality. Putting an emphasis on the fuel label or its trade name, instead on the fuel quality, restricts the growth and competitiveness of the participants in the market of petroleum products.

BiH and FBiH: RECOMMENDATION

First of all, it is necessary to adopt a new Decision on the quality of liquid petroleum fuels in BiH at the state level, with the aim of creating a single BiH market, which will be compliant with the international standards and will not contain restrictive provisions, and with which the entity level regulations should be harmonized.

AMENDMENTS TO THE FBIH LAW ON PETROLEUM PRODUCTS

FBiH: OPEN ISSUES

Following the entry into force and beginning of implementation of the Law, energy operators in FBiH faced a number of challenges in the area of petroleum products sale. Namely, due to restrictive and/or ambiguous provisions of the Law, foreign investors have been put in a worse/unequal position in FBiH entity in relation to the competitors, as well as in relation to petroleum product sellers in the other BiH entity – RS, which has ultimately resulted in legal uncertainty.

a) Petroleum products additization

The largest problem for the foreign investors is the provision of Article 32, paragraph 4 imposing ban on the use of additives to improve the fuel parameters. Specifically, the provision is not sufficiently clear, i.e. it does not make the necessary distinction between the uncontrolled fuel manipulation by the importers and/or energy operators – participants in the retail and wholesale of petroleum products and the controlled additizing of fuels in the production process. It is necessary to amend the provisions so as to make a clear distinction between the controlled production of high-quality petroleum products and the uncontrolled manipulation in this matter. The introduction of this ban has mostly affected the consumers, who are denied the opportunity to buy high-quality fuel with improved performance characteristics (referring to engine output and preservation, reduction of consumption, engine cleaning and numerous other performance characteristics that can be improved by additizing fuels), which

is also subject to quality assurance issued by the refineries where the fuel is produced and all other accompanying certificates. The legislation governing petroleum products in RS does not contain this limiting provision, and therefore, the energy undertakings operating in this BiH entity do not face this problem.

b) Stamp duty for setting up oil reserves

Another very important issue that came as a result of this Law is the requirement to pay the petroleum product fees in the amount of 0.01 KM/litre of petroleum products. In this regard, Article 30 of the Law stipulates that in case the taxpayer is a retailer of petroleum products, such a retailer must include the tax in the fiscal invoice as an addition to the retail price, which already includes all indirect taxes (customs, excise, road and highway tolls, value-added tax), thus avoiding the possibility to include this tax in the base for calculation of VAT. However, despite the above legal provisions, energy operators that were subject to inspections by the ITA were fined in such a way that they had to pay additional amount of VAT on the accrued and paid taxes. Charging this additional VAT amount arising from the taxes for setting up oil reserves, which was imposed by the inspectors during the VAT inspection performed at the energy operators, is contrary to the principle of legality and causes legal uncertainty in the operations of the taxpayers operating in compliance with the applicable laws and other relevant regulations. These actions directly burden the operating costs of the foreign investors, given that the sums paid by order of the ITA have not been charged to customers.

c) LPG trading

Definition of the term “LPG Trading” set out in Article 2 of the Law on Petroleum Products refers only to trading LPG bottled gas. It is necessary to clarify how the LPG wholesale is to be treated if not sold in bottles. According to current legislation, the requirements for obtaining a license to trade in LPG is to be issued if an energy operator either owns or leases a storage with the capacity of 150 m3 (in a single or several storage facilities) for the purpose of LPG trading, and provided that it owns at least one LPG tank car. The transportation of petroleum products can be carried out only by carriers licensed in the FBiH (whose core business activity must be the transport of petroleum products).

d) Monitoring companies and monitoring of petroleum products

The Law defines monitoring of the quality and quantity of petroleum products. The Law explicitly prohibits the appointment of the accredited monitoring companies by the energy operator, thus ruling out any competition between the monitoring companies. In addition, the Law does not define the compensation for monitoring services rendered by an inspection authority or the compensation ceilings per sample, and therefore, given the fact that energy undertakings have no influence on the selection of the inspection authorities, the inspection authorities have the possibility to arbitrarily set disproportionately high fees for their services. In fact, the monitoring fees are imposed by the monitoring companies on the basis of an agreement concluded contrary to the BiH Law on Competition.

Given that sampling is carried out by an accredited inspection authority in any case, it is absolutely unacceptable that the legislator deprives the energy operators of the possibility to select a monitoring company that turns out to be economically the best contractual partner selected on the basis of a tendering procedure. Similarly, the current monitoring method implies that the arbitrary sample is to be kept by the inspection authority, while sealed unilaterally, i.e. by the same inspection authority. According to the Standards, it would be necessary to allow the operator to affix its seal on the arbitrary sample, as such a procedure would ensure integrity, transparency and security in terms of the representativeness thereof. For this reason, it is necessary to ensure bilateral sealing.

When it comes to fuel sampling, the Law refers to the Decision on quality and Monitoring Program, which makes it extremely complex and unclear. The law does not define “the number of samples”, nor does it specify the sampling method for the purpose of quality compliance control. It is therefore necessary to make the provisions of this Law clearer and more precise. Straightforwardness and accuracy can only be achieved by amending the Decision on quality of liquid fuels at the state level, as certain ambiguities in determining the

number of samples of petroleum products would be thus eliminated.

A further problem is disproportionately frequent and extensive sampling, without the possibility to object to the sampling number prescribed by the Program of the FBiH Ministry of Energy, Mining and Industry. The scope of sampling activities should be defined based on a set of transparent criteria.

FBiH: RECOMMENDATION

The amendments to the FBiH Law on Petroleum Products must be adopted urgently putting special emphasis on the following:

- Article 32 of the Law should be amended by adding paragraph 5 that reads: "It is allowed to import and market additivated petroleum products under controlled conditions, as well as high octane petroleum products ";
- Article 30 of the Law on Petroleum Products should be urgently amended by adding a new paragraph specifying whether the stamp duties for setting up oil reserves is taxable or not, while taking into account the applicable entity and state-level laws;
- Arbitrary sample that is kept under controlled conditions in the inspection authorities' storages must be protected by being lead-sealed by both parties, i.e. the inspection authority and the distributor of liquid fuel;
- Article 2 and Article 11 of the Law should be amended by omitting the provisions requiring LPG traders to own or lease the prescribed storage capacities and to own their own tank car for LPG transportation;
- It is necessary to amend the definition of the term "LPG Trading" by defining if this term also covers the wholesale of LPG not sold in bottles.

In addition, urgent amendments to the Decision on quality of liquid fuels at the state level would eliminate certain ambiguities in determining the number of samples of petroleum products. Bearing in mind the importance of petroleum products trading primarily for BiH, but also for foreign investors, we hope that you will support this initiative and our proposals, thus contributing to the creation of business environment in BiH, where all traders of petroleum products would be treated equally, which is a guarantee for enabling the single market to operate effectively.

AMENDMENTS TO THE RELEVANT RULEBOOKS

FBiH: OPEN ISSUES

a) Rulebook on Licensing

Pursuant to the Rulebook on Licensing, the Regulatory Commission for Energy in FBiH (FERK) prescribes the procedure for issuing licenses, criteria, requirements, documents and other elements needed to obtain a license. The basis for the adoption of this Rulebook is the FBiH Law on Petroleum Products. The Rulebook contains a number of provisions that should be urgently amended, considering that they create policies for energy operators. However, since the FBiH Law on Petroleum Products is the legal basis for the adoption and approval of the Rulebook, it is necessary to first adopt the amendments to the Law, in particular, the aforementioned provisions.

b) Rulebook on the Submission of Oil Sector-related Data

The Rulebook on the Submission of Oil Sector-related Data defines the obligation of the energy operator to keep records on the monthly and annual marketed quantities by all possible criteria and using the predefined tables that form an integral part of the Rulebook. There is not even a single article in the Rulebook defining that such records have the status of "Business Secret", which they indeed are, nor is there a prescribed method of keeping such records by the receiving authority. The liability in case of unauthorized disclosure is not stipulated, either. The tables are quite confusing and unclear with respect to certain requirements, especially sale and purchase of goods by product (Annexes 1 and 3), or sale to end consumers (Annexes 2 and 4) or distributors by country of origin (Annex 2).

FBiH: RECOMMENDATION

We believe that national authorities should be in conjunction when it comes to the flow of information, and be sure to assign such data the status of "business secret". In order to prevent such irregularities, public hearings would produce much greater effect if held before the adoption of such Rulebooks, when the energy operators would be given an opportunity to provide concrete and relevant examples of submitting oil sector-related

data, as well as the content and form of the Annexes accompanying the Rulebook.

It should be particularly noted that internal linking of the institutions requiring these data is essential in order to avoid submitting different reports to different institutions (e.g. FBiH Ministry of Trade, FBiH Ministry of Energy, Mining and Industry). The new Rulebook stipulates that the data (except for the information on the tax for setting up oil reserves) are to be delivered only to the FBiH Ministry of Energy, Mining and Industry, while the requirement to submit a similar report to the FBiH Ministry of Trade is still effective. Also, the stamp duty payment report is to be submitted to the FBiH Tax Authority and the company "Operator - Terminali FBiH" in addition to the FBiH Ministry of Energy, Industry and Mining.

FBiH DRAFT LAW ON THE TRANSPORT OF HAZARDOUS SUBSTANCES

FBiH: OPEN ISSUE

In February 2016, the FBiH Ministry of Internal Affairs prepared a draft Law on the Transport of Hazardous Substances (hereinafter referred to as the Draft Law), which in Article 5 imposes a constraint on the choice of a type of transportation of petroleum products in the FBiH, i.e. it requires the transportation of these goods from the refinery to the terminal/warehouse to be carried out exclusively by rail. The said Article is in conflict with the provisions of the international treaties to which BiH has committed and neglects the actual situation on the FBiH oil market and the manner in which it operates. Article 5 of the Draft Law stipulates the following:

(Transport of Class 3 Hazardous Substances):

„In order to protect human life and health, environment, material goods and traffic safety, any transport of class 3 hazardous substances relating to oil and petroleum products to refineries and oil warehouses (terminals) on the territory of the Federation shall be carried out by rail, and the transport from oil warehouses (terminals) to end buyers (filling stations for road motor vehicles) shall be carried out by road, unless otherwise specified in the contracts referred to in Article 6 of this Law."

The constraint imposed by this Article is practiced by neither the EU Member States nor the countries in the region, which is reflected in the absence of such a constraint in their national legislation: the laws governing the transport of hazardous substances in Slovenia, Slovakia, Croatia and Serbia do not limit the company's choice of transportation means for transporting petroleum products. Bearing in mind that EU membership is a BiH's foreign policy priority, it is important to note that European trade legislation is based on the principle of free trade, and that it does not contain provisions restricting the right to choose the type of transportation. The transport (of, ***inter alia***, petroleum products) can be done by road, rail, river or sea and the companies have the right to choose the type of carriage guided by the principle of economic justification.

It is important to emphasize that free trade is endorsed by the international provisions binding upon BiH. Thus, in accordance with the Stabilisation and Association Agreement (SAA) between the EU, of the one part, and BiH, of the other part, one of the cooperation aims in the area of transport is improving the free movement of goods (Article 106), which is impossible to achieve if the choice of transportation type is limited. The SAA also obliges BiH to encourage the development of combined transport (Article 9 of Protocol 3 of the SAA), which also includes the use and road transport. Although one of the aims of the cooperation between the EU and BiH in the area of freight transport is to encourage the use of railways, the SAA emphasizes that the user of transport services must have the freedom of choice (Article 10 of Protocol 3 of the SAA), i.e. that it has the right to decide on the type of transport it will use.

In addition, the adoption of Article 5 of the Draft Law would violate the CEFTA provisions prohibiting the introduction of any new quantitative restrictions on imports and exports and measures having equivalent effect in trade between the CEFTA signatories (Article 3 of the CEFTA). Such restrictions are defined as non-tariff and relate to non-technical measures or export-related measures that may have a potential effect on international trade in goods, affect the quantities and prices of goods sold, which also includes the restriction of the choice of transportation type as prescribed by Article 5 of the Draft Law.

It is important to point out that Article 5 will create major difficulties for oil company operations. Its enforcement will lead to an increase in logistical costs due to the underdevelopment of railways in the FBiH and the lack of connections with a number of regions in FBiH. Given that there is only one operational oil refinery headquartered in RS, and that the legislation of this entity and other countries does not restrict the right to choose the type of transport of petroleum products, it is not clear how the transport of petroleum products imported into FBiH from other countries or RS will be regulated under the current version of the Draft Law. According to the FBiH Ministry of Trade data, in 2016, 911.5 thousand tons of petroleum products were imported in FBiH, including 211 thousand tons from RS. The FBiH railways do not have the necessary capacities for transporting this amount of petroleum products. Namely, in 2015, the volume of goods (including hazardous substances) transported by the FBiH railways amounted to 8.8 thousand tons and to transport only the imported petroleum products, the FBiH railways have to provide technical capacities that are 103.5 times larger than the existing ones, which cannot be done within a short period of time given the rigorous international requirements for the transport of hazardous substances. Taking into account the underdeveloped railways in the FBiH, the Draft Law should define the transport of petroleum products by rail exclusively as an alternative, rather than as an obligation.

Application of Article 5 of the Draft Law ill have serious negative consequences for petroleum products' road carriers. Specifically, over 1,000 tank cars certified for the transportation of petroleum products have been registered in the FBiH tax office. All vehicles meet the technical standards in force in BiH and the EU. Over the past few years, carriers in FBiH have invested millions of euros in their fleets to make it suitable for the transportation of petroleum products. Petroleum products are transported by 1500 drivers who have undergone appropriate training and hold the needed certificates. Application of Article 5 of the Draft Law will result in reduced demand for tank cars and layoff of more than 500 certified tank car drivers. The ineffectiveness of the investments made and the increase in unemployment are only some of the negative socio-economic consequences that can be expected following the adoption of the Draft Law. In view of the above, we consider that the adoption of the FBiH Law on Transport of Hazardous Substances, primarily its Article 5, which imposes the requirement to transport petroleum products from refinery to terminals/warehouses exclusively by rail, will lead to multiple negative consequences for oil companies operating in FBiH, road carriers and their employees, as well as to violations of BiH's international commitments, including the ones set out in the SAA.

FBiH: RECOMMENDATION

It is necessary to remove controversial Article 5 from the FBiH Draft Law on the Transport of Hazardous Substances and ensure appropriate active participation of all energy business that operate in this field or are affected by the above described in the law drafting processes. The experience of experts in this field can maximize its viability and effective implementation, while protecting the local community from the said negative consequences that will certainly be minimized, if not completely eliminated.

SETTING PRICES IN PUBLIC PROCUREMENT PROCEDURES

FBiH: OPEN ISSUE

One of the major issues that oil companies are currently encountering in public procurement procedures is the issue of so called wholesale tenders (delivery to tank cars).

The legislation governing the tender procedure leaves the possibility to prescribe a variable price that the Contracting authorities, when it comes to fuel procurement, often do not use, rather opting for a fixed fuel price for the entire duration of the contractual relationship.

FBiH: RECOMMENDATION

Given that fuel is an exchange-traded commodity that is prone to constant price changes (growth or decline), the Contracting authorities should define the possibility of changing the offered price and well as the terms and conditions thereof in their tendering dossier (within public procurement procedures). In other words, the contracting authorities should prescribe that price changes are allowed when caused by changes in fuel prices on the domestic and international market or changes

in the regulations governing the field of oil and petroleum products.

The current practice is that, in case of delivering goods to petrol stations (or tank cars in specific cases), any changes in the price should be made by using an OPC form (Price Change Form approved by the Federal Ministry of Trade) by adjusting the offered price (including the offered discount) to the average price published by the BiH Statistics Agency on a monthly basis, and in case of a certain percentage of increase (e.g. 3% or 5%), the offered price will also change by that percentage; or by adjusting the price with the average prices published by the FBiH Ministry of Trade in the same way.

PREFERENTIAL TREATMENT

BiH: OPEN ISSUE

The BiH Council of Ministers has passed the Decision on Obligatory Application of Domestic Preferences applicable as of 1 January 2015 until 1 January 2020. The Decision stipulates that, in order to protect, develop and restore the BiH economy, when calculating the bidding prices for the purpose of comparing the bids under the BiH Law on Public Procurement, the Contracting Authority shall be obliged reduce the prices of domestic bids by the preferential factor of:

- 15% for contracts awarded in 2015 and 2016,
- 10% for contracts awarded from 2017 to 2018,
- 5% for contracts awarded in 2019.

Article 1, item c) of the Decision stipulates that domestic bids are those submitted by legal or natural persons headquartered in BiH and where, in the case of supply contracts, at least 50% of the total value of the offered goods originates in BiH. Each tenderer is to prove its preferential treatment to the Contracting Authority by submitting a Certificate issued by the relevant Chamber of Commerce (Foreign Trade Chambers of BiH, FBiH Chamber of Commerce or the RS Chamber of Commerce) clearly stating that the goods concerned meet the requirements for issuing a certificate of BiH origin.

The purpose of such a decision is certainly understandable for a developing country such as BiH that is trying to limit the sale of foreign products, while striving to improve the sale of domestic products by stimulating the development of certain industries. However, when it comes to protecting the domestic oil sector, taking into account all the factors that affect the current value of oil as a commodity, it would be very suggestive to pose a question if BiH oil exists as a domestic product, which is then, as such, subject to preferential treatment. On the other hand, the Decision on Obligatory Application of Domestic Preferences compromises the principles of global and free trade within public procurement procedures, producing specific consequences such as:

- Inability to equally participate in the tendering procedures for energy operators that do not procure goods from a domestic refinery/producer;
- Violation of the principle of free movement of goods and services, which is contrary to the SAA, international free trade standards and the WTO rules;
- Disproportionately preferential treatment of domestic (national) products or manufacturers over the products imported from abroad;
- The market is directly divided by a state regulation, i.e. one source of supply is clearly put in a far more better position, contrary to the Law on Competition of BiH;
- Discrimination of energy operators employing local people, as the definition of preferential treatment is in contradiction with the purpose of protecting the domestic labour force;
- putting a company or product in a significantly better position extremely adversely affects the trade between BiH and EU countries and other countries in the region;
- Limiting competition in public procurement can only produce negative financial consequences for contracting authorities.

BiH: RECOMMENDATION

It is necessary to abolish the preferential treatment in relation to the foreign countries, because it is contrary to the international commitments of BiH, and to make an effort to comply with the international standards related to free movement of goods and prohibited preference for certain products/producers and enabling marketing of goods having minimum required quality of Euro 5 and above.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
	ENERGY EFFICIENCY	
FBiH Absence of the legal framework for the implementation of energy efficiency measures in line with the EU standards	It is necessary to create the required legal, regulatory and institutional environment for the implementation of energy efficiency measures. The competent ministries that have participated in the Law drafting process must urgently adopt the necessary implementing regulations, in order to make the FBiH Law on Energy Efficiency effectively enforceable.	• FBiH Ministry of Energy, Industry and Mining • FBiH Ministry of Physical Planning
FBiH Inadequate legal framework for the use of alternative fuels in industry	The Federal Ministry of Environment and Tourism should undertake to implement the adopted set of energy efficiency and waste management regulations (which implies the so-called integrated approach and the closure of urban landfills), and work on public promotion and awareness raising on the benefits of using alternative fuels in industry. After closing the urban landfills, the regional sanitary landfills should be converted into municipal waste treatment facilities (MBT plants), which would launch a new product (RDF/SRF) on the BiH market that already has a reliable customer.	• FBiH Ministry of Environment and Tourism
FBiH Inconsistency of the regulations governing the stimulation of power generation from renewable energy sources	• An amendment to the FBiH Law on Use of Renewable Energy Sources and Effective Cogeneration is required in order to enable encouraging power generation and sale at guaranteed prices for only a part of the planned power generation, i.e. the part that fits into free dynamic quotas, as provided for in the RS legislation. • In order for power purchase agreement to be considered bankable the FBiH Law on Use of Renewable Energy Sources and Effective Cogeneration should envisage that the amount of the reference price should be fixed during the validity of the power purchase agreement at the reference. An alternative possibility is that the Law and the Rulebook should determine the minimum amount of the reference price at which electricity can be purchased from qualified electricity producers.	• FERK • FBiH Ministry of Energy, Industry and Mining • FBiH Government • FBiH Parliament

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
	PETROLEUM PRODUCTS	
BiH and FBiH Inconsistency of the legislation at the entity and state level	Adopt a new Decision on the Quality of Liquid Petroleum Fuels in BiH that will be compliant with the international standards, current market trends and the development of petrochemical and petroleum industry. After regulating this area at the state level, harmonize the entity-level legislation with the Decision on the Quality of Liquid Petroleum Fuels, in order to create a single BiH market.	• Council of Ministers of BiH --- • FBiH Ministry of Energy, Mining • and Industry • FBiH Government • FBiH Parliament --- • RS Ministry of Industry, Energy and Mining • RS Government • RS National Assembly
BiH and FBiH Inconsistency of petroleum products labelling	Adopt a new Decision on the Quality of Liquid Petroleum Fuels in BiH at the state level, and align the entity-level regulations with it, in line with the international standards and without imposing restrictive provisions, with the aim of creating a single BiH market.	• Council of Ministers of BiH --- • FBiH Ministry of Energy, Mining • and Industry • FBiH Government • FBiH Parliament --- • RS Ministry of Industry, Energy and Mining • RS Government • RS National Assembly
FBiH Unclear provisions in the FBiH Law on Petroleum Products	Urgently amend the FBiH Law on Petroleum Products in order to achieve the following: • To enable importing and marketing of the high octane petroleum products and additivated petroleum products; • To remedy the concerns regarding the stamp duties for setting up oil reserves; • To better regulate the monitoring issue; • To amend the definition of the term "LPG Trading" and abolish the redundant requirements for obtaining an LPG license.	• FBiH Ministry of Energy, Mining • and Industry • FBiH Government • FBiH Parliament

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH Inadequacy of the relevant rulebooks covering the area of oil sector	Amend the controversial provisions in the Rulebook on Licensing for performing energy activities in the sector of the oil industry in FBiH that affect the business policies of the energy sector companies and the FBiH Rulebook on the Submission of Oil Sector-related Data as the latter does not regulate the protection of confidential information that petroleum companies submit to competent institutions.	• FBiH Regulatory Commission for Energy (FERK) • FBiH Ministry of Energy, Mining and Industry
FBiH Restrictions in the FBiH Draft Law on the Transport of Hazardous Substances	Remove controversial Article 5 from the FBiH Draft Law on the Transport of Hazardous Substances as it imposes a constraint on the choice of a type of transportation of petroleum products in the FBiH, i.e. it requires the transportation of these goods from the refinery to the terminal/warehouse to be carried out exclusively by rail, which might eventually lead to negative consequences for the FBiH economy.	• FBiH Ministry of Interior • FBiH Government
FBiH Setting prices in public procurement procedures	Given that fuel is an exchange-traded commodity that is prone to constant price changes, the Contracting authorities should define the possibility of changing the offered price and well as the terms and conditions thereof in their tendering dossier.	• Contracting Authorities in tender procedures
BiH Domestic Preferences in public procurement procedures	Abolish the preferential treatment in relation to the foreign countries, because it is contrary to the international commitments of BiH, and to make an effort to comply with the international standards related to free movement of goods and prohibited preference for certain products/producers and enabling marketing of goods having minimum required quality.	• Council of Ministers of BiH

INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)

INTRODUCTION

Information Technology (IT) is undoubtedly a branch of industry that has achieved the highest growth rate in Bosnia and Herzegovina over the past few years, showing a great potential and further prospects for growth and development. This, *inter alia*, has been driven by the global development of this industry, as well as the skilled and entrepreneurial local professionals able to respond to the needs of national and international markets and contribute to the development of these markets. However, IT companies face many difficulties and obstacles in their day-to-day business, including the lack of institutional support and sectoral development strategy; an inadequate legal framework for the activities pursued by companies in this sector; an increasing deficiency of qualified and skilled staff; inadequate education system and many others. Addressing these difficulties and obstacles, as well as solving them is one of the most important prerequisites for creating an adequate business environment for the operations of the IT sector companies and enabling them to achieve their full potential.

The communication sector, on the other hand, is one of the most active economic sectors in terms of both domestic and foreign investments in Bosnia and Herzegovina. Although there is a regulatory legal framework governing the operations of the companies in this sector, it is necessary to improve the existing legislation with a view to keeping up with technological progress and market developments and aligning the national legislation with the relevant EU regulations. In addition, operators face numerous problems with regard to the construction and use of infrastructure, including those related to their rights to construction and use of infrastructure, as well as complex and slow procedures for issuing the required permits/licenses.

Below are the specific problems encountered by the FIC members from the ICT sector, as well as the pertaining recommendations. In addition, this section will also address the issues related to personal data protection, as well as the issues of electronic business transactions, as the segments that are extremely important for the operations of ICT companies.

INADEQUATE CLASSIFICATION OF OCCUPATIONS FOR THE ICT SECTOR

FBiH and RS: OPEN ISSUE

In the currently applicable decisions on the classification of occupations that are in force in BiH, the FBiH and RS, namely the Decision to introduce and apply the classification of occupations of BiH that is incorporated in, and applicable to Brcko District (directly) and the Entities (indirectly) through the adopted Decisions on the classification of occupations in the Federation of BiH and the Classification of Occupations 2008 (KZBiH - 08) in Republika Srpska, there are no references to ICT-specific occupations, such as Software and Applications Developers and Analysts; Frontend Developer; Quality & Assurance Tester; Mobile Developer; System Developer; Key Account Manager; IT Operations Manager; 3D Designer; Communications & Events Specialist; Support Operator; Business Analyst; 3D Animator; iOS Developer; System Administrator; Business Development Manager; Android Developer; Information Systems Security Specialist; Big Data Specialist; and many others.

Due to the above-described deficiencies, ICT companies face difficulties in aligning their internal regulations on systematization of jobs, as well as their employment contracts, with the mandatory regulations governing this area of business.

FBiH and RS: RECOMMENDATION

In order to address the aforementioned deficiencies, it will be necessary to amend the current Decisions on the classification of occupations so that they reflect the ICT-specific occupations as well.

NECESSITY TO REGULATE THE USE OF SPACE ON CO-WORKING PRINCIPLES

FBiH and RS: OPEN ISSUE

Lease of commercial and residential buildings and premises is primarily governed by the Law on Obligations, as well as by the Law on Lease of Business Premises and Buildings from the Socialist Republic of Bosnia and Herzegovina that is still applicable, even though it is obsolete and generally not in line with current market conditions. In addition, for a newly established company (from a specific sector) to obtain a certificate from the competent city/municipal authority allowing it to start its business operations, the company must meet the minimum technical requirements for its operations (e.g. available business premises of a certain size, enclosed by partition walls, doors, etc.).

Many IT companies rent large business premises, part of which they lease to other smaller IT companies. In reality, they "lease" one or two desks usually covering at least 5 square meters, where the rented workspace is not separated by partition walls from the business premises of the lessor or other companies doing business in such premises.

'Co-working' represents the future of working environment, i.e. a work model under which individuals, who, in principle, are not the staff members of the same company, work in a common workspace where professionals of different vocations, professions and affiliations have the possibility of networking. Although the relevant secondary legislation prescribes the minimum technical requirements that the business premises must meet if they are to accommodate certain type of business (e.g. trade, tourism, etc.), this is not the case in the IT sector.

FBiH and RS: RECOMMENDATION

BiH is currently in the process of expanding the IT market, but the IT business models, including the co-working principle, have not been adequately addressed in the applicable regulations yet, and therefore, it is necessary to work on recognizing these communities and their potential for strengthening the economic stability of the country, as well as on identifying a legal framework that would allow for renting a workspace that is merely a "work desk", as opposed to the entire business premises.

In this regard, it is necessary to establish an applicable legal framework which would explicitly foresee the possibility of using workspace in line with the 'co-working' principle, i.e. the possibility of establishing so-called virtual offices, all with a view to harmonizing the practices and lawful treatment of companies in terms of the requirements that their workspace must fulfil.

NEED FOR ADOPTING AND APPLYING STRATEGIC AND INSTITUTIONAL MEASURES AIMED AT FURTHER DEVELOPMENT OF IT SECTOR

BiH: OPEN ISSUE

Over the past couple of years, BiH has seen an increase in the number of companies that enable the development of start-ups for individuals and teams with excellent business ideas, thus developing the start-up scene in BiH and promoting entrepreneurship in the IT industry. Taking into account the complex legal and administrative system in BiH and the lack of adequate incentives or facilities for the development of IT industry, start-ups encounter various administrative and legal obstacles in their development phase.

Unlike some EU Member States that have introduced new legal schemes for start-ups, thus recognizing the specificity and importance of start-up businesses, in BiH, start-up groups of individuals can appear on the market only after their formal registration, primarily in accordance with the FBiH/RS Law on Companies. In this way, start-ups, among other things, spend their paid-in founding capital on tax levies and other charges, instead of using it for furthering and developing their products on the market.

In this context, certain legislative changes have already been implemented in the region, where new and simpler forms of economic activity have been introduced (such as 'simple limited liability company' (referred to as j.d.o.o.), which differs from a limited liability company by the amount of its founding capital, the maximum number of founders, the method of profit distribution, as well as by payable taxes and the ability to receive tax incentives). In addition, it is noteworthy that the

countries in the region are working on the implementation of different strategies, i.e. programmes entailing the introduction of different types of fiscal and para-fiscal incentives for IT companies, as well as other measures aimed at fostering the development of IT entrepreneurship (e.g. financial support to technology incubators, hubs and IT clusters).

BiH: RECOMMENDATION

It is necessary to undertake a series of strategic and institutional steps and activities aimed at improving the business climate for the operations and development of IT companies, including amendments to the applicable legislative framework that neither recognizes nor adequately supports the IT businesses, the introduction of tax and other incentives (especially in the context of start-ups and companies that make significant investments in research and development) and subsidies related to the operations of IT companies on the national and international markets, as well as the measures to improve the education system, which is an extremely important factor for further development of the IT sector in BiH.

In this context, a strategic document at BiH level should be adopted as soon as possible, which would, inter alia, refer to the strategy and policies of the IT sector development in BiH, and which is currently in the drafting and consultation phase.

INADEQUATE IMPLEMENTATION OF THE ACTION PLAN FOR THE IMPLEMENTATION OF THE 2017-2021 ELECTRONIC COMMUNICATIONS SECTOR POLICY OF BiH

BiH: OPEN ISSUE

As an integral part of the 2017-2021 Electronic Communications Sector Policy of Bosnia and Herzegovina (hereinafter: Policy), an Action Plan for the implementation of the said Policy was adopted in 2017, further defining the steps to be taken in order to implement the Policy, as well as the deadlines for the implementation of each individual goal and activity (hereinafter: Actin Plan). Some of the key policy goals are: (i) maintaining competitiveness in the electronic communications market, which should result in an increased quality of services, and therefore satisfy the needs of service users, (ii) further development of infrastructure with an emphasis on electronic communications infrastructure enabling broadband services, especially in scarcely populated areas and underdeveloped parts of the country, (iii) defining minimum requirements for providing universal services at an affordable price for all users across BiH and meeting the demand for free calls to emergency services, etc.

In addition, the adoption of the Policy, as well as the goals set, are the result of recognizing the need to amend the existing regulations due to the advancement of technology and significant market development, and due to the fact that BiH is obliged to align the national legislation governing this area with the acquis communautaire, which is also specified in the Stabilization and Association Agreement signed by BiH.

Numerous problems are evident in practice and they refer to different aspects of operators' business, especially those related to the construction and use of infrastructure, including the following:

- Since the "right to road access" institution, as an instrument for the development of electronic communications infrastructure has not yet come into force in BiH, each municipality arbitrarily defines its rules and charges different land use fees (very often extremely high) for setting up electronic communications infrastructure. This is in contradiction with the Policy that, as one of its goals, provides for the abolition/reduction of land use costs if the land is to be used for the construction and maintenance of electronic communications infrastructure on the entire BiH market;
- In the process of obtaining permits, there is a problem related to 'social property', i.e. land parcels that are registered in the land registers as owned by owners that no longer exist (such as the Yugoslav People's Army (JNA), public enterprises, and the like). In such cases, operators are generally encouraged to initiate legal proceedings acting in the capacity of investors, where the court would eventually - after the completion of these proceedings - determine the legal successor, after which the conditions for resolving the right to use the property for the purpose of infrastructure construction might

be met. Taking into account the duration of court proceedings in BiH and the uncertainty of their outcome, it can be concluded that the above-described situations prevent operators from implementing infrastructure development projects and, consequently, the development of their operations in BiH;

- Failure to meet the statutory deadlines for dealing with the applications for issuing permits/licences, as prescribed by the provisions governing the administrative procedure. An additional problem is the obligation of the applicant to obtain the approvals from the utility companies for the designed alignment, without having defined a limitation period for such utility companies to respond to the application for approval, which causes further delays in the procedure;
- The liberalization of telecommunications services in BiH has not been fully completed, and one of the key drawbacks is the fact that the issue of local looping has not been systematically regulated. Although there is a regulation governing local looping in BiH, a complete and systematic solution to this problem requires a Market Analysis of the Wholesale Network Infrastructure Access (including a shared or fully-fledged access to a designated location) – at the wholesale level (known as Market Analysis 4), as well as the Broadband Market Analysis – at the wholesale level (the bit-stream, known as Market Analysis 5), in line with the European Commission's Recommendations and the Market Analysis Policy. The Communications Regulatory Agency has prepared Market Analyses 4 and 5 twice (in 2014 and 2016), but these documents have not been adopted by the Communications Regulatory Agency Council. In developed telecommunications markets, local loop engagement combined with the portability of telephone numbers has been the cornerstone of liberalization of the telecommunications market, which unfortunately is not the case in BiH. As a consequence, all operators have to build their own infrastructure to reach the end user, which requires high costs and results in irrational investments.

Since many activities aiming at ensuring a more functional, transparent and efficient system of infrastructure construction and use, as well as a set of more adequate conditions for business operations in the relevant market in BiH are foreseen in the Policy and the Action Plan, it is of utmost importance to ensure timely and adequate implementation of the Policy and the individual activities defined in the Action Plan.

The Action Plan, among other things, envisages the following activities that need to be undertaken in pursuit of Policy goals that have not yet been achieved:

- adopting procedures for issuing construction permits, exercising the right to road access, which entails the right to access, installation, use and maintenance of electronic communications infrastructure and supporting equipment, which is to be installed on the real estate where the respective infrastructure and the equipment are built (deadline: December 2018);
- adopting the regulations governing the requirements and procedures for the construction and use of public electronic communications networks (deadline: December 2018);
- adopting the Broadband Access Development Strategy in Bosnia and Herzegovina (deadline: December 2017);
- ensuring the necessary frequency bandwidth in order to provide wireless broadband access in urban, suburban and rural areas in BiH, while observing the technology neutrality principle (deadline: June 2018);
- adopting the Decision on issuing LTE licenses to licensed mobile operators in Bosnia and Herzegovina, the price, manner and procedure for payment of licenses and the purpose of the funds paid (deadline: December 2017). Due to the delay in the adoption of the said Decision, it is evident that there will be a delay in the adoption, i.e. application of the Mobile Virtual Network Operator (MVNO) License, since it is only two years after the commercialization of the LTE network that the Communications Regulatory Agency, in cooperation with the competent ministries, will submit a proposal for the decision to the Council of Ministers that would enable the

MVNO to enter the BiH mobile communications to market.

- adopting the Law on Electronic Communications (deadline: September 2017).

BiH: RECOMMENDATION

It is necessary to undertake the delayed activities set out in the Action Plan, i.e. the Policy as soon as possible, as well as the other relevant activities within the set deadlines.

NON-COMPLIANCE OF THE LAW ON PERSONAL DATA PROTECTION WITH THE RELEVANT EU REGULATIONS

BiH: OPEN ISSUE

EU General Data Protection Regulation 2016/679 (GDPR) entered into force on 25 May 2018 stipulating, inter alia, the possibility of its extraterritorial application to companies outside the EU, including those operating in BiH and processing personal data of individuals in the European Union, if such processing activities are related to:

- offering goods or services to individuals in the European Union, irrespective of whether such activities are connected to a payment, or
- the monitoring of the behaviour of individuals in so far as their behaviour takes place within the European Union.

Practically, the application may relate to the activities of IT/software industry businesses, the products of which are oriented towards the EU market, online trade or online advertising in so far as their target group includes individuals from the European Union, profiling, etc.

The Law on Personal Data Protection of BiH and the related implementing regulations are still not aligned with the GDPR, which brings certain BiH companies (especially those that are export-oriented) in a position that they are required to align their business with several regulatory regimes, further causing additional costs and often uncertainty regarding the scope of their rights and obligations under such different regimes.

BiH: RECOMMENDATION

The current Law on Personal Data Protection of BiH and the related implementing regulations should be aligned with the GDPR to enable easier and more affordable compliance with the protection of personal data for the companies that fall under the scope of the GDPR. Furthermore, in the process of enacting the Law on Personal Data Protection and its implementing regulations, it will be necessary to involve a wider social community, especially the private sector, with the aim of adequate and consistent alignment of the Law with EU regulations.

NECESSITY TO ESTABLISH A FUNCTIONAL SYSTEM OF ELECTRONIC LEGAL AND BUSINESS TRANSACTIONS

BiH: OPEN ISSUE

BiH has adopted a set of laws that is a prerequisite for the introduction of e-Business and business digitization, such as the Law on Electronic Signature of BiH, the Law on Personal Data Protection of BiH, the Law on Electronic Legal and Business Transactions of BiH, the Law on Electronic Document of BiH, the Law on Electronic Document of FBiH and the Law on Internal Payment System of FBiH.

Nevertheless, although some of these laws have been adopted more than ten years ago, such as the Law on Electronic Signature, they have not yet been fully implemented in practice. Thus, the reason for not implementing the Law on Electronic Signature is the fact that no institution in BiH has been authorised to issue certificates certifying the authenticity of electronic signatures. The Office for Supervision and Accreditation of Certifiers was set up in January 2018 as an institution responsible for accrediting the competent certifiers, however, it has not yet issued any accreditation, because - according to the available information - applicants have not yet fulfilled all the necessary requirements for acting in the capacity of certification bodies, and therefore, the relevant procedures have not yet been completed. BiH is still one of the few countries that insists on the physical use of seals, owing to the fact that it has not enabled electronic commerce yet, which imposes unnecessary administrative burdens on the BiH economy and slows down its development.

In the course of 2017, the public was presented a draft Law on Electronic Document, Electronic Identification and Trust Services for Electronic

Transactions, which would repeal the Law on Electronic Signature that is currently in force, but have not been implemented, while the BiH legislation governing these matters would be aligned with the EU regulations, i.e. Regulation 910/2014/EU on electronic identification and trust services for electronic transactions in the internal market. The aforementioned draft Law has been referred to the adoption procedure, but it has not been adopted yet.

It is important to point out that the issue of electronic signature is legislated at the entity level as well, namely in RS since 2015, when the Law on Electronic Signature was adopted, while in the Federation of BiH, the Law on Electronic Signature has been drafted, but has not been adopted yet.

Switching to electronic business will enable BiH's rating to increase on the scale of the business environment advantages by increasing its index on international scales.

BiH: RECOMMENDATION

It is necessary to take actions aimed at the adoption of the new law as soon as possible and implement the laws already in force, as well as to take all other relevant activities, such as aligning and amending other relevant laws, all for the purpose of establishing and promoting electronic business.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH and RS Inadequate classification of occupations for the ICT sector	In the currently applicable decisions on the classification of occupations that are in force in BiH, the FBiH and RS, there are no references to ICT-specific occupations. In order to address the aforementioned deficiencies, it will be necessary to amend the current Decisions on the classification of occupations so that they reflect the ICT-specific occupations as well.	• Agency for Statistics of BiH --- • FBiH Institute for Statistics --- • RS Institute for Statistics
FBiH and RS Necessity to regulate the use of space on co-working principles	It is necessary to establish an applicable legal framework which would explicitly foresee the possibility of using workspace in line with the 'co-working' principle, i.e. the possibility of establishing so-called virtual offices, all with a view to harmonizing the practices and lawful treatment of companies in terms of the requirements that their workspace must fulfil.	• Ministry of Communications and Transport of BiH • Council of Ministers of BiH
BiH Need for adopting and applying strategic and institutional measures aimed at further development of IT sector	It is necessary to adopt a strategic plan at BiH level as soon as possible, which would, inter alia, refer to the strategy and policies of the IT sector development in BiH, and which is currently in the drafting and consultation phase. This will enable the establishment of an adequate legal framework which will follow the development of the IT sector in BiH.	• Ministry of Communications and Transport of BiH • Council of Ministers of BiH
BiH Inadequate implementation of the Action plan for the implementation of the 2017-2021 Electronic Communications Sector Policy of BiH	It is necessary to undertake the delayed activities set out in the Action Plan, i.e. the Policy as soon as possible, as well as the other relevant activities within the set deadlines.	• Communications Regulatory Agency of BiH • Ministry of Communications and Transport of BiH • Council of Ministers of BiH
BiH Non-compliance of the Law on Personal Data Protection with the relevant EU regulations	The current Law on Personal Data Protection of BiH and the related implementing regulations should be aligned with the GDPR to enable easier and more affordable compliance with the protection of personal data for the companies that fall under the scope of the GDPR.	• Personal Data Protection Agency of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
BiH Necessity to establish a functional system of electronic legal and business transactions	It is necessary to adopt the new Law on Electronic Document of BiH, Electronic Identification and Trust Services for Electronic Transactions as soon as possible, which would repeal the Law on Electronic Signature that is currently in force but has not been implemented, and align and amend other relevant laws, all for the purpose of establishing and promoting electronic business.	• Ministry of Communications and Transport of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH

CONCESSIONS AND PUBLIC-PRIVATE PARTNERSHIP

INTRODUCTION

Concessions and Public-Private Partnerships (PPPs) in Bosnia and Herzegovina share the same and/or similar problems. These are primarily a lack of transparency in the concessions awarding procedures, absence of two instances in appellate and other procedures, conflict of competences among the concession commissions, absence of a registry/registries of awarded concession contracts, variety in forms design and fees and a number of other matters that have been differently arranged in the laws at the same level of government. There are also cases where certain concession-related matters have not been treated at all by some government levels.

Taking into account all of the foregoing, the underlying issue that needs to be addressed primarily is the issue of harmonizing the laws governing the concessions, starting from the state, as the overarching and framework law, all the way to the cantonal concession laws. The White Book, through the open issues and the recommendations arising from these issues, seeks both to put the problems out in the open and to present the best practice and solutions, all in order to eliminate the existing varieties, inconsistencies and non-compliance. The aforementioned recommendations are key for the enforceability of the said laws, as well as other laws, which helps preserving the current level of legal certainty and maintaining market competition, as the basis for attracting foreign investments. The European Commission continues emphasising that the biggest disadvantages of the concession system in BiH are its fragmentation, lack of formal channels for the cooperation of administrative structures responsible for managing concessions and non-compliance with the EU acquis, which in turn creates "legal uncertainty and high administrative costs and leads to the division of a single economic space".

On the other hand, the Law on PPPs at the entity and cantonal levels needs to be harmonized with all other laws governing the same or similar subject matters, and since it is at its outset, it is necessary to create a legal framework for public-private partnership in line with the best practices, so that the law becomes a supporting instrument for market development and freedom, rather than an additional bureaucratic obstacle.

CONCESSIONS

PRESCRIBING TIME LIMITS FOR THE AUTHORITIES TO TAKE ACTION AND THE APPLICATION OF THE TRANSPARENCY PRINCIPLES

BiH, FBiH and CANTONS: OPEN ISSUE

Certain shortcomings and obstacles facing the businesses mentioned in the Laws on Concessions are reflected in the fact that no time limits have been set for conducting the concession award procedures. However, the competent authorities have indicated that the amendments to, or new laws on concessions will put an emphasis on the principle of timeliness and efficiency. An additional problem is the fact that the law at the FBiH level and the cantonal laws give too much freedom and autonomy to the Commissions responsible for awarding concessions without providing for any significant public scrutiny or disclosure to the parties involved. The concessions awarding procedure is not clearly defined, which particularly refers to the time limits for the concession awarding authorities to take action. In practice, this leads to the situation that an investor cannot foresee the time required for the completion of a project or its costs.

Particularly problematic is awarding concessions through unsolicited offers, for a number of reasons: firstly, because of the fact that this procedure does not provide the benefits of a faster and more cost-effective procedure, given that in such a case, the procedure is still almost identical to the public tender procedure, whereby the investor bears all the costs that would otherwise be borne by the conceding party, without any possibility to control the amount of such costs and without any guarantees that the concession will be actually awarded. This is particularly important, given the fact that in practice, the majority of conces-

sions is awarded under the unsolicited proposals, whereby the conceding party actually transfers all of its costs to the concessionaire. On the other hand, in cases where the conceding party and the concessionaire manage to agree on the concession terms and conditions, the aspect of transparency is completely missing due to the lack of an adequate legal framework. Given that the unsolicited proposals are very poorly regulated by the regulations currently in force, in the sense that the entire unsolicited proposal activity is conducted by a single party and that after the submission of the proposal, the competent authorities launch the call for tender, whereas the party that submitted the unsolicited proposal finds itself in the same position as any other party, irrespective of the costs and the fact that in this way, the "idea" of that party became a public good.

BiH, FBiH and CANTONS: RECOMMENDATION

It is necessary to legally define and prescribe clear and precise time limits for each of the concession awarding authorities to take action in order to enable investors to make a reasonable estimate of the duration of the concession awarding procedure, and to establish a mechanism to control the compliance with the deadlines in practice.

The concession awarding procedure must be transparent, so that all parties involved have access to the operation and decision-making procedures pursued by the Commission responsible for awarding concessions.

In case of amendments to the Law on Concessions at the BiH level, which will define the issue of time limits and transparency in the work of the Commission for concessions, it will be necessary to harmonize the laws at the entity and cantonal levels.

The issue of unsolicited proposal/offer should be regulated by the laws on concessions currently in force, so that no calls for tender are launched after an unsolicited proposal/offer has been submitted, i.e. so that the unsolicited proposal/offer, including the entire supporting documentation, is protected and remains unavailable to the public.

In addition, primary or secondary legislation should clearly define the open issues related to the costs incurred during the preparation of proposals/offers, which, in some cases, entail a concession fee, even though the concession has not been awarded at that point in time, and the legal uncertainty of the parties in the procedure, given that it often takes a very long time for the Commission to take its final decision after the proposal/offer was submitted, and that the decision may ultimately be undesirable for the applicant.

The concession laws at different government levels must be harmonized through adopting a framework law at the BiH level that will clearly define the competences of the Concession Commissions at the lower levels of government in order to resolve the issues arising from the conflict thereof.

LEGAL PROTECTION IN THE CONCESSION AWARDING PROCEDURES

BiH, FBiH and CANTONS: OPEN ISSUE

The essential flaw in the procedure for awarding concessions is the lack of second-instance ruling in an administrative procedure for awarding concessions, i.e. the fact that an appeal cannot be filed against the decision rendered by the Commission for Concessions, except in cases when there is a newly arisen fact which could have influenced the decision had it been known at the time the decision was made and if the party involved was not able to express its opinion on the Commission's decision for justified reasons.

In all other cases, the right to second-instance ruling can be exercised by bringing an action within an administrative proceedings before the competent court (i.e. the Supreme Court of FBiH or the cantonal courts). The above solutions are inadequate and hardly cost effective, taking into account the duration of administrative disputes and damages that the investors and concessionaires may suffer.

The open issue is reflected in the lack of adequate legal protection for investors, i.e. concessionaires, given that the only protection available to them is the judicial one, the same as to any other legal or natural person, which is unfortunately slow and insufficient. In addition to the above, since the final decision on the concession award is made by the FBiH Government, there is no adequate instrument of administrative and legal protection, since such decisions are not subject to regular administrative supervision.

BiH, FBiH and CANTONS: RECOMMENDATION

It is necessary to introduce second-instance ruling procedure, i.e. the second-instance subject matter jurisdiction in order to make use of the joint commission that would act as an objective and remedial factor in all disputed cases. The second-instance ruling procedure should be established in a way that the Commission responsible for awarding concessions at the BiH level functions as an appellate authority dealing with the decisions made by the entity-level Commissions, while the Commission at the Federal level should function as an appellate authority dealing with the decisions made by the Commissions responsible for awarding concessions at the cantonal level.

In this way, instituting administrative proceedings or unnecessary delays in concession awarding process would be avoided, while statutory deadlines for deciding in the second instance would be clearly defined.

It is important to point out that there is no register of resources that could potentially become subject to concessions. Such a register would give potential investors an overview of open investment opportunities and the timeframes for their implementation. In addition, there are no adequate cadastral and land registry records or a register of existing installations, which makes proper designing practically impossible. There is also the problem of overlapping competences in energy projects. As a result of this overlapping, the concessionaires are required to obtain a series of permits and approvals that are content-wise identical but issued by different authorities, where particular emphasis should be put on the overlapping role of public enterprises in the field of transmission and distribution of electricity with the authorities vested in RERS and FERK.

Given that in some cases the concessionaires are prevented from exercising their rights due to the objective circumstances that have been known, or must have been known to the Commissions as the circumstances that could be an obstacle in exercising the concessionaires' rights, a provision stipulating damage compensation in such cases must be included in the contract as its integral part. This would increase the legal certainty of future concessionaires, i.e. investors.

HARMONIZATION OF THE LAWS ON CONCESSIONS

BiH, FBiH and RS: OPEN ISSUE

Taking into account that a set of laws on concessions is in force at different levels of government, starting from the state level, through Entities to Cantons and that these laws are not mutually compatible there is a need for their harmonization. Different pieces of legislation, which address the single matter of concessions in a variety of ways, due to their specificities, bring potential investors, as well as concessionaires in a very difficult situation that they have to resolve themselves in order to protect their own interests, property, rights and ideas or to resolve the issue of competence among the concessions awarding authorities, and to deal with a number of other uncertainties and obstacles in exercising their concession-related rights.

Transparency in the concession awarding procedures, at any of the government levels, remains one of the key issues that arises in practice.

BiH, FBiH and RS: RECOMMENDATION

The harmonization of the legislation must be performed by improving the Law on Concessions at the state level, through adopting the above recommendations, aligning the current and future regulations with international standards and practice and the highly efficient provisions that have been affirmatively assessed so far, in order to create a legal framework that would set the boundaries and the level of harmonization among the Entity and Cantonal laws. This, also, includes legally defined principles of equal treatment of investors/concessionaires; a clear definition of the concession objects; a straightforward division of competences and resolving any conflict therein; the introduction of a two-instance procedures in case of complaints and appeals by lower-level authorities within concession awarding procedure; a single methodology for calculating concession fees; a single methodology for allocating revenues from concessions; the obligation to maintain and update the concession register; the requirement to standardize the templates and forms, and to make the administrative fees payable during the procedure consistent.

The laws at the state and lower levels of government should be harmonized and drafted upon reviewing and identifying the natural resources that might be subject to concessions, while protecting the rights of both the state, and its lower levels of government, and the concessionaires.

In the Federation of BiH, where there is a wide range of regulations governing the area of concessions, it is necessary to harmonize all such regulations, primarily with regard to concession objects and competences, in order to create equal conditions for investments and concession awards throughout the FBiH, and thus a better climate for future investors, both domestic and foreign.

In the Federation of BiH, it is necessary to establish an appropriate Concession Register, coupled with the cantonal data, in order to increase the legal certainty, scrutiny and transparency in awarding concession.

PUBLIC-PRIVATE PARTNERSHIP

ADOPTING LAWS ON PPP

BiH and FBiH: OPEN ISSUE

The levels of BiH and FBiH are the only levels of government where there is still no law governing PPPs. When adopting the BiH/FBiH Law on PPP, special attention should be paid to the harmonization of all existing pieces of the PPP-related legislation with the BiH Law on Public Procurement and the FBiH Law on Property Rights. In addition, it would be practical and desirable to harmonize the respective legislation with the FBiH Law on Local Government and Self-Government and the FBiH Law on Companies.

BiH and FBiH: RECOMMENDATION

It is necessary to adopt the laws governing the area of PPPs at the level of BiH and FBiH.

POSSIBILITY TO ASK QUESTIONS FOR THE PURPOSE OF CLARIFYING AMBIGUITIES IN THE CONCESSION AND PPP CONTRACT AWARDING PROCEDURES

BiH, FBiH and RS: OPEN ISSUE

The laws on concessions at the level of BiH, FBiH and RS do not provide the potential investors with a possibility to address the competent authorities in order to clarify ambiguities in the calls/tenders or the procedures for the award of the concession. The RS Law on PPP does not provide for such a possibility in the procedure for the award of PPP contracts either.

BiH, FBiH and RS: RECOMMENDATION

It is necessary to establish an adequate procedure and method of addressing the competent authorities and filing written and, where possible, oral requests for clarifications and additional information in the regulations governing the area of concessions at the level of BiH, FBiH and RS, as well as in the Law on PPP of RS. This should also be taken into account when drafting the Laws on PPP at the BiH and FBiH levels.

Legislating the issue of transparency in the concession awarding procedures would prevent the creation of a possible monopoly or abuse of rights arising from the concessions and the aforementioned framework law at the state level must clearly and decisively define this principle, which then, through the harmonization of laws, must be adopted and observed by the lower levels of government.

DEFINING THE TERM 'CONCESSIONAIRE'

BiH, FBiH and RS: OPEN ISSUE

As defined in the relevant BiH legislation, the term "concessionaire" is discriminatory at its very roots given that a concessionaire can be only and exclusively a legal entity registered with the competent authorities in accordance with the BiH/FBiH/RS laws. Such a definition of the term "concessionaire" does not allow physical persons or a group of physical and legal entities to become concessionaires.

The BiH/FBiH Law on Concessions indicates that it governs the matters of awarding concessions to

"*national and international legal entities*" (Article 1 of the BiH Law on Concessions and Article 1 of the FBiH Law on Concessions). However, the BiH/FBiH Law defines the concessionaire (Article 3 of the BiH Law on Concessions and Article 4 of the FBiH Law on Concessions) as "***a legal entity established in accordance with the laws of BiH/FBiH owned by domestic and/or foreign legal entity***".

The BiH/FBiH Law on Concessions does not provide a precise provision on how these issues are to be addressed in practice. In addition, it often happens in practice that the concession is awarded to a foreign legal entity, which is then required to establish a local legal entity that will "take over" the concession and execute the awarded concession contract. On the other hand, the Law on Concessions of RS (Article 5 and Article 39) comprehensively regulates this area, but does not allow physical persons or a group of physical and legal entities to be designated as concessionaires.

In practice, negative consequences come down to putting the foreign legal entity that was awarded the concession in a difficult situation and raising many practical concerns, in particular:

- potential annexing of the already awarded contract (annexing initial concession contracts is very common in practice, because such initial contracts are usually very general and require further refining at later stages),
- in the process of "transferring" concessions from a foreign legal entity to a domestic legal entity owned by it (At which stage is it required to establish a domestic legal entity? At which stage should the local legal entity be considered the concessionaire? Etc.).

BiH, FBiH and RS: RECOMMENDATION

In BiH and FBiH, it is necessary to precisely define the time period in which a (foreign) legal entity, after having been awarded concession/having signed the concession contract, should establish a local legal entity and to precisely define the term "concessionaire". A good example of this can be found in the RS Law on Concessions (Article 5 and Article 39). The definition of the term "concessionaire" should include the possibility for physical entities to appear as concessionaires, as well as a group of physical and/or legal entities as concessionaires.

In addition, it is necessary to provide a foreign legal entity with a possibility to become a concessionaire, without being required to establish a "local" legal entity that would be executing the awarded concession contracts on its behalf, and to prescribe the possibility of establishing a business unit/branch of a foreign legal entity that would be executing the concession contract concluded with a foreign person.

CONCESSION AWARDING PROCEDURE IS NOT PRECISELY DEFINED

BiH, FBiH and RS: OPEN ISSUE

The concession awarding procedure, especially the part related to the public call/tender, is not comprehensively and precisely defined at the levels of BiH and FBiH. This particularly refers to the part of procedure from the approval of the public call to the concession award (Articles 21 through 25 of the Law on Concessions of BiH and Articles 24 through 28 of the Law on Concessions of FBiH). This leaves room for a large number of practical problems that may emerge in the period between the public tender approval and the concession award to a particular entity.

In addition to the above, the Laws on Concessions, (under the terms of Articles 21 through 25 of the BiH Law on Concessions and the Articles 12 through 24 of the RS Law on Concessions and Articles 24 through 28 of the FBiH Law on Concessions) must also conform to the applicable Law on Public Procurement in procedural terms, given that the concession contract generates a financial interest through the development of infrastructure and/or providing services of exploitation of natural resources. On the other hand, the conceding party usually requires a first-class insurance instruments when awarding a concession, such as large bank guarantees.

BiH, FBiH and RS: RECOMMENDATION

It is necessary to define each step in the concession award process, as well as the responsibilities of all parties involved in this process, in BiH and FBiH (required set of documents, receiving institution, decision maker, deadlines, etc.). It is necessary to harmonize the laws on concessions with the BiH Law on Public Procurement.

EXCLUSION OF CONCESSIONS FROM THE PPP LAWS

BiH, FBiH and RS: OPEN ISSUE

Considering that the BiH/FBiH Draft Laws on PPP regulate the relations between public and private partners and that they set out the subject matter, principles, conditions and competencies in a PPP, as well as the requirement to maintain a register of PPP contracts, this creates a collision with the current recommendations on the concessions laws, as they insist on maintaining separate concessions registers, i.e. this creates a collision also with some of the concession laws.

BiH, FBiH and RS: RECOMMENDATION

Taking into account the fact that similar matters are treated in the BiH/FBiH/RS Laws on PPP in the same way as in the respective concession laws, it is necessary, as in the case of many concession laws, to harmonize them, resolve the issue of conflict of competences and numerous other pertinent issues, as well as to apply the PPP practice from the region and the EU. It is also necessary to pay particular attention to the protection of private partners, who, even though protected under the law, often turn out to be the weaker party in a lawsuit instigated for the protection of their rights. This is largely the case because of the tardiness of the judicial system as one of the weakest point of the BiH judiciary in general.

CONCLUSION:

Due to the lack of legal framework governing concessions and PPPs or due to the extent of the required amendments to the current laws on concessions and PPPs, it is reasonable to expect that there will be no improvements in terms of concluding new concession and PPP contracts. Unless these reform processes are significantly accelerated, which includes passing not only the primary, but also secondary legislation and institutional capacity building for the implementation of the said legislation, investments in BiH will further regress and will be limited to primary (direct) investment models, such as land acquisition.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
	CONCESSIONS	
BiH, FBiH and CANTONS Prescribing time limits for the authorities to take action and the application of the transparency principles	It is necessary to legally define and prescribe clear and precise time limits for each of the concession awarding authorities to take action in order to enable investors to make a reasonable estimate of the duration of the concession awarding procedure. Furthermore, it is necessary to ensure the transparency in the work of the Commission for concessions.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament --- • Cantons in FBiH
BiH, FBiH and CANTONS Legal protection in the concession awarding procedures	It is necessary to introduce second-instance ruling procedure in a way that the Commission responsible for awarding concessions at the BiH level functions as an appellate authority dealing with the decisions made by the entity-level Commissions, while the Commission at the Federal level should function as an appellate authority dealing with the decisions made by the Commissions responsible for awarding concessions at the cantonal level. In this way, instituting administrative proceedings or unnecessary delays in concession awarding process would be avoided, while statutory deadlines for deciding in the second instance would be clearly defined.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament --- • Cantons in FBiH
BiH, FBiH and CANTONS Harmonization of the laws on concessions	The harmonization of the legislation must be performed by improving the Law on Concessions at the state level, in order to create a legal framework that would set the boundaries and the level of harmonization among the Entity and Cantonal laws, and be aligned with the international standards and practices. In the Federation of BiH, it is necessary to harmonize all cantonal laws on concessions, primarily with regard to concession objects and competences, in order to create equal conditions for investments and concession awards throughout the FBiH.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament --- • Cantons in FBiH
	PUBLIC-PRIVATE PARTNERSHIP	
BiH and FBiH Adopting laws on PPP	It is necessary to adopt the laws governing the area of PPPs at the level of BiH and FBiH.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
BiH, FBiH and RS Possibility to ask questions for the purpose of clarifying ambiguities in the concession and PPP contract awarding procedures	It is necessary to establish an adequate procedure and method of addressing the competent authorities and filing written and, where possible, oral requests for clarifications and additional information in the regulations governing the area of concessions at the level of BiH, FBiH and RS, as well as in the Law on PPP of RS. This should also be taken into account when drafting the Laws on PPP at the BiH and FBiH levels.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament --- • RS Government • RS National Assembly
BiH, FBiH and RS Defining the term 'concessionaire'	In BiH and FBiH, it is necessary to precisely define the time period in which a (foreign) legal entity, after having been awarded concession/having signed the concession contract, should establish a local legal entity and to precisely define the term "concessionaire". In addition, it is necessary to provide a foreign legal entity with a possibility to become a concessionaire, without being required to establish a "local" legal entity and to prescribe the possibility of establishing a business unit/branch of a foreign legal entity that would be executing the concession contract concluded with a foreign person.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament --- • RS Government • RS National Assembly
BiH, FBiH and RS Concession awarding procedure is not precisely defined	It is necessary to define each step in the concession award process, as well as the responsibilities of all parties involved in this process, in BiH and FBiH (required set of documents, receiving institution, decision maker, deadlines, etc.). It is necessary to harmonize the laws on concessions of BiH, FBiH and RS with the BiH Law on Public Procurement.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament --- • RS Government • RS National Assembly
BiH, FBiH and RS Exclusion of concessions from the PPP laws	Taking into account the fact that similar matters are treated in the BiH/FBiH/RS Laws on PPP in the same way as in the respective concession laws, it is necessary, as in the case of many concession laws, to harmonize them, resolve the issue of conflict of competences and numerous other pertinent issues, as well as to apply the PPP practice from the region and the EU.	• Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Government • FBiH Parliament --- • RS Government • RS National Assembly

CORPORATE LAW

INTRODUCTION

Although progress has been made in the area of corporate law since the last edition of the White Book in 2015/16, the progress achieved, unfortunately, cannot be defined as significant, nor can it be stated that a significant number of recommendations given in the previous White Book editions have been implemented. The greatest progress has been made in the area of business registration in the FBiH, where the software-related obstacle has been overcome, thus enabling the registration of subsidiaries of foreign legal entities, as well as the registration of changes that are important for legal transactions deriving from the companies' Articles of Association and any amendments thereto.

However, despite the progress made, unfortunately, a large number of recommendations has not been implemented yet, and as a result, in practice, we still face the inaccessibility of court registers at some of the courts, non-compliance with statutory deadlines, lack of a pledge registry software platform, lack of a debt-to-equity swap mechanism, and recently, the non-compliance with the with the decisions of courts at higher instances, such as the decision of the FBiH Constitutional Court regarding the constitutionality of the FBiH Law on Notaries provisions.

Bearing in mind that the procedure for registering business entities in the FBiH is crucial for attracting new foreign investments, we emphasize that, in order to simplify and unify the procedure, it is of utmost importance to establish a one-stop shop scheme, which would enable the parties in the FBiH to register companies in one place, as it is already the case in RS, and which would be based on the interoperability principle of public authorities participating in the registration process and encompass all the registration procedures necessary for a company to become fully operational.

Furthermore, in order to facilitate faster and free movement and disposal of capital, in addition to simplifying the procedure for registering business entities, it is necessary to adopt a set of new laws in the field of liquidation of companies, as soon as possible. In this regard, the recommendations referring to this area have been made in accordance with the drafts of the new FBiH Law on Bankruptcy Procedure and the FBiH Law on Liquidation Procedure, respectively, the adoption of which has already been taking a long period of time.

BUSINESS REGISTRATION

SUSPENSION OF THE BUSINESS REGISTRATION PROCEDURE*

FBiH and RS: OPEN ISSUE

The FBiH Law on Registration of Business Entities, Article 55, paragraphs 2 and 3, and the RS Law on Registration of Business Entities Article 13, paragraph 5 and 6, provide that, if a competent registration court suspects the existence of a fact that is critical for deciding whether the registration application is in compliance with this or other laws or not, and where the establishment of such a fact falls under the jurisdiction of another court, the registration procedure will be suspended pending the final decision of that court. Taking into account the time needed for the completion of the civil procedure, an unfounded suspension of the registration procedure may cause irreparable damage and costs for clients, and hinder daily business operations of the company.

FBiH and RS: RECOMMENDATION

Since the FBiH Law on Registration of Business Entities and the RS Law on Registration of Business Entities do not specify the facts that are decisive for the suspension of registration procedure before a court registry, this open issue could be solved by introducing a precise definition of the reasons for which the registration procedure may be suspended, which would provide greater legal certainty.

INTRODUCING CONSULTATION APPOINTMENTS WITH REGISTRATION JUDGES*

FBiH and RS: OPEN ISSUE

Currently, there is no possibility of scheduling a formal consultation appointment with registration judges, even though this is often the simplest and the fastest way of providing clarifications and additional information necessary for fast and efficient completion of the registration procedure. Consultation appointments with registration judges are common practice in most courts. However, many registration judges do not allow consultations.

FBiH and RS: RECOMMENDATION

It is necessary to introduce a requirement for all court registration departments and judges in BiH to schedule consultation appointments at the request of the parties involved.

E-REGISTERS OF BUSINESS ENTITIES*

FBiH and RS: OPEN ISSUE

The establishment of the E-registers of business entities at the Entity level and in Brcko District is a step forward when it comes to availability of data from the registers and it facilitates access to the information needed through a very simple data search engine. Unfortunately, it is evident that the current Entity-level E-registers have not been fully aligned with the court register data yet, and therefore, their reliability is still questionable. In practice, this means that the reliable data on business entities can be obtained exclusively from the competent courts. In addition, the digitization of court registries has not been fully implemented yet, since the extracts from the E-register of business entities cannot be used as valid public documents. An additional problem is the practice applied by some registration courts, where they require parties to present a proof of legal interest (or reference to the case) before accessing the files or receiving certified transcripts or copies thereof, which is not in accordance with the law or the principle of public access to the court registers.

FBiH and RS: RECOMMENDATION

Improving and updating of the E-register should be aimed at ensuring that the entire data search on business entities is performed electronically. This method of searching for, and obtaining data would save the time and money otherwise needed for obtaining data through a court register. The electronic register of business entities should include all important information related to the businesses, as well as the steps that need to be taken in the registration procedure, the amount of court fees payable and other useful information. It should be possible to submit requests for extracts from the register electronically and to receive such extracts in electronic form with the force of public documents.

INTRODUCING ONE-STOP SHOP REGISTRATION PROCEDURE IN THE FBiH

FBiH: OPEN ISSUE

The process of registering new companies in the FBiH is currently taking place before several authorities that either do not cooperate with each other at all or their cooperation is at an unsatisfactory level. The founders (or their proxies) are required to initiate each of the steps necessary in the registration process themselves and physically submit numerous document to each of the authorities individually, in several different places. The registration authorities do not act on the principle of trust in the work of other public authorities and as a result, they seek to re-inspect the documents that have already been received by another registration authority, which based on such documents, issued its decision on registration. This practice significantly extends the process of registration of new companies, as well as the registration of changes that occurred in the existing ones, and creates additional administrative costs for investors, thus making the FBiH extremely unattractive for investments.

FBiH RECOMMENDATION:

Adopt an adequate legislative framework for the establishment of a One-Stop Shop registration system in the FBiH, which would significantly speed up and simplify the process of business registration in the FBiH. This system already exists in RS and has proved to be very efficient. The One-Stop Shop registration system would be based on

the principle of interoperability of public authorities participating in the registration process. The application for a business registration would be filed in one place together with all the necessary initial documentation, while all the further steps and the exchange of documents would be carried out among the competent authorities *ex officio*. In doing so, the One-Stop Shop registration system should cover all the steps in the registration process, i.e. all the procedures necessary for the company to become fully operational and able to conduct its business activities (including VAT registration, if necessary).

REGISTRATION COURTS' PROCEDURES WITH REGARD TO THE ACCEPTANCE OF THE FORM OF COMPANIES' FOUNDING ACTS

FBiH: OPEN ISSUE

In its judgement No. U-15/10 dated 2 December 2015, the FBiH Constitutional Court has found that certain Articles of the FBiH Law on Notaries, one of which is Article 73 governing the legal transactions that require notarization, are not in accordance with the Constitution of FBiH and that such articles shall no longer be in force as of the date of the judgement's publication in the FBiH Official Gazette. In the grounds of the judgement, it is stated that the implications of this Constitutional Court decision are extended to the provisions of special laws that prescribe a mandatory notarization of certain legal transactions, which have the legal basis in the FBiH Law on Notaries. One of these special laws is the FBiH Law on Registration of Business Entities stipulating that the companies' founding acts must be notarized. Given that, after the aforementioned judgement of the FBiH Constitutional Court, the courts apply different registration procedures, where some of them act in accordance with the judgement and accept the founding acts merely containing certified signatures, while others keep insisting on the notarized founding acts, it creates an issue of unequal treatment by the courts across the FBiH territory and hence legal uncertainty.

FBiH: RECOMMENDATION

It is necessary to render a decision on a unified procedure at all 10 registration departments/courts in the FBiH to eradicate the different practice of the registration judges, pending the enforcement of the amendments to the FBiH Law on Notaries and the FBiH Law on Registration of Business Entities.

STATUTORY DEADLINES IN THE BUSINESS ENTITIES REGISTRATION PROCEDURE*

FBiH: OPEN ISSUE

The FBiH Law on Registration of Business Entities lay down urgency and uniformity of the procedure for registering business entities in the register, as well as its applicability to all businesses established in BiH, either by domestic or foreign legal entities and individuals. These laws stipulate the obligation of competent registration courts in the FBiH to issue a decision on registration within 5 days after the application was duly filed. However, in practice, these statutory deadlines are disregarded and the procedure for registering or amending information in the registry takes longer than the prescribed timeframes. One of the key reasons for delays in the procedures of registering or amending information in the registry is the principle that the case assigned to a registration judge, in the event of his/her prolonged absence (due to illness, vacation, seminars, training, etc.), cannot be automatically reassigned to another judge. The case may be reassigned to another judge only upon written request submitted by the applicant to the Court Administration, which then makes a decision on whether the request will be approved and the case reassigned to another judge. This procedure only causes even longer delays in the procedure, which is most certainly already overdue due to the absence of the judge.

FBiH: RECOMMENDATION

The work of the registration courts in FBiH must be organized in a way that would provide continuous registration services. In the event that the registration judge to whom the case was originally assigned is absent for more than three days, it is necessary to introduce a mechanism that allows forwarding the case automatically to another judge.

REGISTRATION OF BUSINESS ENTITIES IN CASES WHEN THE AUTHORIZED REPRESENTATIVE IS A FOREIGNER*

RS: OPEN ISSUE

The latest amendments to the RS Law on Registration of Business Entities RS, Article 32, paragraph 1, items a), b) and v) prescribe a set of mandatory documents that are to be filed when establishing a business entity or modifying information relevant for its legal transactions. Item v) of the said Article stipulates the obligation to file a BiH residence permit if the person authorized to represent the business entity is a foreign person. This provision is incompliant with the regulations governing the employment and residence of foreigners in BiH. Bearing in mind that the residence permit for foreign entities conducting business activities in BiH is issued mostly on the basis of work permit, it is practically impossible for foreigners to set up a company on the territory of RS without appointing a local citizen or a person holding the residence permit as an authorized representative of such company. Namely, given that the employer, i.e. the company is to file an application and take part in the procedure for issuing the work permit with the competent authorities, while at the same time, it is only yet to be established, it becomes practically impossible for it to obtain the work permit. The above described also applies to other grounds for obtaining a residence permit by foreigners in BiH based on their work with or without a work permit, which also requires the existence of a formally incorporated company. In addition, the same obligation is stipulated by Article 45, item b) in case of a procuration registration, if the procurator is a foreign person. However, in accordance with the practice applied by the registration courts and the Agency for Intermediary, IT and Financial services (APIF), the requirement to submit a Certificate of Approved Residence on the Territory of BiH is considered met by obtaining and filing a Residence/Change of Address Registration Certificate (so called 'White Card'). To obtain this Certificate, a foreign citizen should visit BiH before applying for the registration of his/her business entity and register a place of residence in accordance with the regulations governing the stay of aliens in BiH.

RS: RECOMMENDATION

It is necessary to harmonize the RS Law on Registration of Business Entities with the regulations governing the stay of aliens in BiH or to delete Article 32, paragraph 1, item v) in the part which provides for mandatory submission of the Certificate of Approved Residence on the territory of BiH in the event that the legal representative is a foreigner, in the business registration procedure. The above applies also to the provision of Article 45, item b).

LAW ON COMPANIES

INTRODUCING A DEBT-TO-EQUITY SWAP MECHANISM *

FBiH and BD: OPEN ISSUE

The FBiH Law on Companies does not cover the issue of debt-to-equity swap mechanism. Namely, the said Law, in Article 130, paragraph (1), item d) provides for the possibility of increasing the share capital by converting the creditors' claims into the debtors' share capital only in case of debts incurred until 30 September 2013, based on the "contributions to health insurance, unemployment insurance, taxes, debts to employees, and supplied water, electricity, gas and other utilities", all as provided for in the Law on the Financial Consolidation of Enterprises in the FBiH. Likewise, the BD BiH Law on Enterprises does not provide for the possibility of converting the creditors' claims into the share capital, and in accordance with this Law also, the share capital can be increased "only by issuing new shares".

Unlike the FBiH and BD BiH Laws, the RS Law on Companies, owing to Amendments No. 100/17, stipulates that the share capital in companies of all legal forms can be increased in the manner prescribed thereby, as well as by converting the creditors' claims into the shares, with no limitation to the amount of the share capital, in accordance with the law governing the restructuring and reorganization of the debtor in the bankruptcy proceedings. The Amendments to the RS Law on Companies explicitly provide for the possibility of converting claims into shares of limited liability companies, i.e. shares of joint stock companies, with the limitation that on an annual basis, the

conversion can be made up to a maximum of half of the company's share capital that existed at the time when the company's general assembly made the decision to do so.

FBiH and BD: RECOMMENDATION

A debt-to-equity swap model should be introduced into the FBiH Law on Companies, without limiting the amount of claims stipulated by the Law on the Financial Consolidation of Enterprises in the FBiH, while the BD BiH Law on Enterprises should be amended to provide for additional options for increasing the share capital, except the one that refers to issuing of new shares. In addition, the regulations governing the registration of business entities should define the procedure for debt-to-equity swap, or specify the provisions referring to bankruptcy and reorganization within the laws on companies/enterprises that apply.

The introduction of the debt-to-equity swap mechanism into the FBiH and BD BiH would enable additional consolidation of the companies, while taking into account the pronounced illiquidity and a large number of accumulated financial problems of the companies. In addition, the creditors would have the opportunity to settle their claims against the companies by swapping its debts to equity. This method of settling debts would not be an additional financial burden for such companies, which is of particular importance. Therefore, the debt-to-equity swap option is a good solution for settling the companies' debts because it, *inter alia*, enables the companies to settle their debts without damaging their liquidity. This way, the creditors would be given a discretionary right to initiate the aforementioned procedure for the debt-to-equity swap, thus enabling an effective system for the protection of their interests.

FINANCING THE PURCHASE OF OWN SHARES*

FBiH and BD: OPEN ISSUE

The FBiH Law on Companies, in Article 225, prohibits a joint-stock company from financing a purchase of its own shares, forbidding it to provide and guarantee advance payments, loans and credits for the sale of its shares. This prohibition is not explicitly stipulated in the case of limited liability companies, however, by applying the provisions of this Law to limited liability companies accordingly, it can be concluded that the said prohibition applies also to this type of companies. A similar state of play is also in BD BiH, while the RS Law on Companies makes a distinction between limited liability companies and joint stock companies when it comes to this matter. This imprecisely regulated prohibition of financing the purchase of shares, especially in the FBiH, creates legal uncertainty as to the permissibility of undertaking certain legal transactions, particularly when acquiring/purchasing companies.

FBiH and BD: RECOMMENDATION

Financing the purchase of shares should be more precisely regulated in the FBiH Law on Companies and the BD BiH Law on Enterprises with a clear and precise formulation of whether the prohibition applies exclusively to joint stock companies or is also applicable to limited liability companies. Along with the terms "advance payments", "loans" and "credits", the term "security" which is to be provided to third parties for acquiring shares of the company should also be defined. In addition, a clear wording of what is meant by direct, and what by indirect funding, would additionally contribute to the creation of legal certainty.

RESERVE FUND*

FBiH and RS: OPEN ISSUE

The provisions of the FBiH Law on Companies, which prescribe the obligations of joint stock companies, include, *inter alia*, their obligation to establish a reserve fund. Specifically, a joint stock company is obliged to have a reserve fund that is to be established from profit and other sources in accordance with the said Law and other regulations. The reserve fund amounts to at least 25% of the share capital of a joint stock company. The aforementioned provision defining the obligation to establish a reserve fund is not contained in the part of the FBiH Law on Companies defining the obligations of limited liability companies. However, if we take into account the provision that states that the provisions of the Law referring to joint stock companies apply also to limited liability companies unless otherwise specified thereby, we can conclude that the obligation to establish a reserve fund also applies to limited liability companies. This is also the case in the RS Law on Companies, where the statutory reserves are set at 5% of

the total company's annual profit until they cumulatively reach at least 10% of the share capital.

FBiH and RS: RECOMMENDATION

The FBiH and RS Law on Companies should clearly define the obligations related to the establishment of a reserve fund for limited liability companies without calling for the *mutatis mutandis* application of provisions that prescribe obligations exclusively for joint stock companies. This would create legal certainty and prevent different interpretations of the *mutatis mutandis* application of the provisions related to one type of company.

ACQUISITION OF SUBSIDIARY COMPANIES BY THE FOUNDING/PARENT COMPANY

FBiH: OPEN ISSUE

The FBiH Law on Companies, in Article 234, paragraph 1, item g stipulates that the General Assembly of a joint stock company decides on merging with, and acquiring of other companies by the joint stock company or its merging with, or acquiring by other companies. Considering that the FBiH Law on Companies, in Article 303, paragraph 1, stipulates that the provisions of the said Law that refer to joint stock companies also apply to limited liability companies, unless otherwise specified thereby, this means that the above Article 234 point g also applies to limited liability companies. Referring to the aforementioned provision and interpreting it in the manner that the legislator allowed the acquisition of subsidiaries, the affiliated companies have been submitting an application for acquisition to the competent courts so far. Considering that different courts, or even more symptomatically, different judges within a single court, have been treating the acquisition of the subsidiary companies by their parent company, or denial thereof, differently, we are of the opinion that this matter requires a unified solution that would leave no room for legal uncertainty. Specifically, this is a matter of increasing the share capital of the successor company due to the acquisition of a subsidiary by its founding company/owner, where, in practice, we also encounter the interpretation by the courts that the acquisition of a subsidiary by its founder is not allowed at all (irrespective of the increase in the share capital of the successor company).

FBiH: RECOMMENDATION

Since the FBiH Law on Companies leaves room for various interpretations regarding the possibilities and requirements for the acquisition of subsidiaries by their founders (judging by the diversity of judicial practice), this open issue would be solved by precisely defining the requirements and limitations, if any, when it comes to the acquisition of a company by its founder and/or by unifying the position of the courts/judges in the FBiH and publishing this common position, which would create greater legal certainty.

LIQUIDATION OF COMPANIES

FRAGMENTED AND CONTRADICTORY LEGISLATION GOVERNING THE LIQUIDATION PROCEDURE*

FBiH: OPEN ISSUE

The liquidation procedure is governed by the FBiH Law on Liquidation Procedure and the FBiH Law on Companies. Certain issues that are not covered by the FBiH Law on Liquidation Procedure are governed by the FBiH Law on Bankruptcy Procedure, except for the provisions related to (i) restructuring and reorganization of debtors, (ii) assembly and board of creditors, (iii) refutation of legal actions and (iv) main hearings. However, these regulations are often contradictory, and certain issues are regulated in different ways, which in practice leads to legal uncertainty and inconsistent practice of courts and judges in conducting liquidation proceedings. For example, the Law on Liquidation Procedure prescribes the obligation of the liquidator to publish the instigation of liquidation proceedings in the Official Gazette, while the Law on Companies requires a public notice on the instigation of liquidation proceedings to be published in daily newspapers, at appropriate intervals. As a result of these inconsistent regulations, some courts and judges arbitrarily assess whether the instigation of a specific liquidation proceedings should be published only in the Official Gazette or possibly in newspapers, or both. Furthermore, the subsidiary application of the Law on Bankruptcy Procedure on the issues that are not regulated by the Law on Liquidation Procedure or the Law on Companies often results in the imposition of unnecessary and inappropri-

ate duties upon the liquidator in the liquidation proceedings, which ultimately results in a longer procedure and higher costs. For example, in practice – modelled after bankruptcy proceedings - all existing bank accounts of the company must be closed and a single account opened specially for the purposes of the liquidation procedure, which entails costs of opening and closing the said accounts, as well as the obligation to inform the debtors about the change of account. In practice, the latter one can be extremely problematic in case that the company has a large number of clients/debtors that need to be informed thereof, or in case of customers who are accustomed to a certain payment procedure.

FBiH: RECOMMENDATION

Adopt a new law on liquidation procedure in the FBiH to regulate the liquidation procedure in a unique and detailed manner, and either repeal the provisions of the Law on Companies governing this issue or harmonize the new law with it, so that they complement each other.

POINT IN TIME AS OF WHICH LIQUIDATION PROCEDURE IS TO BE CONSIDERED INSTIGATED*

FBiH: OPEN ISSUE

In the liquidation procedure, the exact point in time when the liquidation is instigated is an important issue because the law provides for giving rise to certain obligations and calculating different deadlines therefrom. However, none of the current regulations governing the liquidation proceedings specifically defines when the liquidation procedure is to be considered instigated: whether it is from the moment when the court renders the decision; or from the moment making an annotation in the commercial registry; or from the moment of publishing the decision in Official Gazette, or from some other moment.

FBiH: RECOMMENDATION

The latest draft FBiH Law on Liquidation Procedure regulates certain legal consequences of instigating a liquidation procedure, however, it should also specify the moment when the liquidation procedure is to be considered instigated, that is, it should stipulate that all the legal consequences and obligations are tied to the date when the decision on instigating the liquidation procedure was made.

RESPONSIBILITY OF THE COMPANY'S MANAGEMENT BOARD MEMBERS DISMISSED DURING THE LIQUIDATION PROCEDURE*

FBiH: OPEN ISSUE

The FBiH Law on Companies and the FBiH Law on Liquidation Procedure do not require any of the discharged management board members to cooperate with, or provide support to the company's liquidator unless the person appointed as a company's liquidator is also a management board member. Furthermore, the aforementioned laws do not provide for the accountability of the discharged management board members for the liabilities arising during the liquidation proceedings as a result of their actions or failures to act prior to the discharge, or as a result of their failure to deliver a complete set of information or documentation to the company's liquidator.

FBiH: RECOMMENDATION

Notwithstanding the fact that the latest FBiH draft Law on Liquidation Procedure stipulates that that the provisions of the FBiH Law on Bankruptcy Procedure apply to the liquidation procedure ***mutatis mutandis***, and that the latest FBiH draft Law on Bankruptcy Procedure requires the participation of the management board members, as well as the compulsory measures in case they fail to do so, the new FBiH Law on Liquidation Procedure should impose a legal requirement on the discharged company's management board to provide the necessary cooperation and support to the company's liquidator pending the completion of the liquidation proceedings. In addition, given that neither the aforementioned draft Laws nor the current FBiH Law on Companies prescribe that the discharged management board members should be held responsible for damages or liabilities of the company or the liquidator arising from their actions or failures to act prior to the discharge, or from a failure to deliver a complete set of information or documentation to the company's liquidator, this should be regulated by the new FBiH Law on Liquidation Procedure.

ALIGNMENT OF THE LAW ON LIQUIDATION PROCEDURE WITH THE NEW LAW ON BANKRUPTCY*

RS: OPEN ISSUE

In 2016, the RS adopted a new Law on Bankruptcy which superseded the former RS Law on Bankruptcy. As the RS Law on Liquidation Procedure refers to the *mutatis mutandis* application of the provisions set out in the (old) RS Law on Bankruptcy, this might create ambiguities and confusion in their implementation, because the provisions of the aforementioned law are no longer in effect.

RS: RECOMMENDATION

It is necessary to amend the RS Law on Liquidation Procedure, so that Article 16 provides for a *mutatis mutandis* application of the provisions set out in the (new) RS Law on Bankruptcy or to provide for a *mutatis mutandis* application of the provisions governing the bankruptcy procedure, in order to avoid any ambiguities in the future.

LAW ON PLEDGES

REGISTERING A PLEDGE ON SHARES IN LIMITED LIABILITY COMPANIES AND ACCESS TO INFORMATION ON SHARE PLEDGES

BiH: OPEN ISSUE

The BiH Framework Law on Pledges governs the issue of establishing a pledge on the state level. The law is primarily related to the pledge on property that is considered movable property, but the legal practitioners and theorists have adopted the view that this law also applies to the establishment of a pledge on shares in companies with limited liability. Given that the establishment (and subsequent search) of pledges in the BiH Pledge Registry requires, among other things, entering a 13-dig tax number held by the pledger, as well as the pledger's address in BiH; foreign entities that do not have the 13-digit tax number and address in BiH have no possibility of registering a pledge. This practically prevents foreign entities to establish a pledge on shares in limited liability companies registered in BiH, given that the registration in the BiH Pledge Registry is one of the preconditions for the establishment of a pledge.

An additional problem for creditors in BiH is a very limited set of search options within the Pledge Register. Registered liens can only be searched based on: (i) its registration number; (ii) the serial number of the specific property, provided that the pledged property has been assigned such a number; and (iii) the tax number (or the ID number) of the debtor. However, there is no possibility to search the Pledge Register only on the basis of keywords, which greatly complicates its use and the verification of priority liens registered on property.

BiH: RECOMMENDATION

It is necessary to amend the BiH Law on Pledges (and the pertaining bylaws, above all the Rulebook on Pledges) in order to provide for the possibility of establishing a pledge on the shares owned by foreign persons, as well as to make appropriate changes in the BiH Pledge Register that would enable the registration of such pledges. It is also necessary to upgrade the Pledge Register software to make it more user-friendly.

REGISTERING A PLEDGE ON SHARES IN LIMITED LIABILITY COMPANIES AND ACCESS TO INFORMATION ON SHARE PLEDGES

FBiH and RS: OPEN ISSUE

Given that the registration courts keep records of shares in limited liability companies, it would be logical and practical if the information related to encumbrances on the shares, if any, in these companies (e.g. pledges) would also be registered and kept in the commercial registries. Although there is no legal basis for such a registration, there is no obstacle either, as no legal provision prohibits this type of registration. However, in practice, courts usually reject requests for registration of encumbrances on shares. This results in less legal certainty given that the potential buyers of shares cannot be adequately informed by examining the records of the possible encumbrances on shares.

The above issues are not present in relation to the establishment and registration of pledges on shares at the entity level, as the entity securities registries perform registration of pledges on

shares. However, the problem in relation to the shares is that third parties are deprived of the possibility to obtain relevant information related to the pledges on shares (such information can only be obtained by the owner of shares only), which is contrary to the purpose of the pledge, which, among other things, entails public access to the information on pledges.

FBiH and RS: RECOMMENDATION

It is necessary to amend the entity laws on registration of business entities in a way that they specifically prescribe the procedure for registration of pledge on shares, which would be conducted by the registration courts. The amendments should provide for the obligation of the pledger, whose shares have been pledged, to register the pledge in the registration court, and the penalties for failure to meet this obligation.

In addition, the relevant regulations governing the operations of the securities registries should provide for the possibility to access the information related to the pledges on shares by any third party, without any restrictions that are currently in place (a registry excerpt that contains this information is currently obtainable only by the shareholder who has pledged his/her share).

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
	BUSINESS REGISTRATION	
FBiH and RS Unclearly defined reasons that can lead to the suspension of the business registration procedure r	In the entity-level laws on registration of business entities, precisely define the circumstances under which the suspension of the business registration procedure may occur.	• FBiH Government • FBiH Parliament --- • RS Government • RS National Assembly
FBiH and RS The necessity of introducing consultation appointments with registration judges	Introduce a requirement for all court registration departments and judges in BiH to schedule consultation appointments at the request of the parties.	• Municipal Courts in FBiH --- • Basic Courts in RS
FBiH and RS Unreliability of E-register of business entities	It is necessary to update the E-register to match the corresponding court register of business entities, and to ensure that that the entire data search on business entities is performed electronically. Enable submitting requests for register extracts electronically and receiving the extracts with the force of public documents in an electronic form.	• FBiH Ministry of Justice • Municipal Courts in FBiH --- • RS Ministry of Justice • Basic Courts in RS • APIF
FBiH Lack of One-Stop Shop registration system in the Federation of BiH	Adopt an adequate legislative framework for the establishment of a One-Stop Shop registration system in the FBiH, which would significantly speed up and simplify the process of business registration in the FBiH. The One-Stop Shop registration system should be based on the principle of interoperability of public authorities participating in the registration process.	• FBiH Government • FBiH Parliament
FBiH Unequal registration courts' procedures with regard to the acceptance of the form of companies' founding acts	Render a decision on a unified procedure at all 10 registration departments/courts in the FBiH to eradicate the different practice of the registration judges, pending the enforcement of the amendments to the FBiH Law on Notaries and the FBiH Law on Registration of Business Entities. .	• HJPC BiH
FBiH Non-compliance with the statutory deadlines in the business entities registration procedure	Introduce mechanisms in the registration courts that will allow automatic forwarding of cases to another judge in the event that the registration judge to whom the case was originally assigned is absent from work.	• Municipal Courts in FBiH
RS Incompatibilities in the procedure of registering a business entity in case when the authorized representative is a foreigner	Harmonize the RS Law on Registration of Business Entities with the regulations governing the stay of aliens in BiH or delete the provisions which provides for mandatory submission of the Certificate of Approved Residence on the territory of BiH in the event that the legal representative or procurator is a foreigner.	• RS Government • RS National Assembly

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
LAW ON COMPANIES		
FBiH and BD Inability to carry out a debt-to-equity swap	Introduce a debt-to-equity swap into the FBiH Law on Companies and the BD BiH Law on Enterprises, without a limitation to only some of the claims, thus enabling an additional consolidation of the companies.	• FBiH Government • FBiH Parliament --- • BD BiH Government • BD BiH Assembly
FBiH and BD Incompatibilities in the regulations on financing the purchase of own shares	Financing the purchase of shares should be more precisely regulated in the FBiH Law on Companies and the BD BiH Law on Enterprises with a clear and precise formulation of whether the prohibition applies exclusively to joint stock companies or is also applicable to limited liability companies.	• FBiH Government • FBiH Parliament --- • BD BiH Government • BD BiH Assembly
FBiH and RS Doubts regarding the establishment of a reserve fund in limited liability companies	The FBiH and RS Law on Companies should clearly define the obligations related to the establishment of a reserve fund for limited liability companies without calling for the ***mutatis mutandis*** application of provisions that prescribe obligations exclusively for joint stock companies. This would create legal certainty and prevent different interpretations of the law.	• FBiH Government • FBiH Parliament --- • RS Government • RS National Assembly
FBiH Unequal practice of the registration courts in terms of acquisition of subsidiaries by its founding company	Precisely define the requirements and limitations, if any, when it comes to the acquisition of a company by its founder in the FBiH Law on Companies; and/or have a unified position adopted and published by the courts in FBiH in terms of this matter to eliminate the possibility of different interpretations and create greater legal certainty.	• FBiH Government • FBiH Parliament • Municipal Courts in FBiH
LIQUIDATION OF COMPANIES		
FBiH Fragmented and contradictory legislation governing the liquidation procedure	Adopt a new Law on liquidation procedure in the FBiH to regulate the liquidation procedure in a unique and detailed manner, and either repeal the provisions of the Law on Companies governing this issue or harmonize the new law with it, so that they complement each other.	• FBiH Ministry of Justice • FBiH Government • FBiH Parliament
FBiH Unclear point in time as of which liquidation procedure is to be considered instigated	The new FBiH Law on Liquidation Procedure should specify the moment when the liquidation procedure is to be considered instigated, that is, it should stipulate that all the legal consequences and obligations are tied to the date when the decision on instigating the liquidation procedure was made.	• FBiH Ministry of Justice • FBiH Government • FBiH Parliament

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH Absence of responsibility of the discharged management board members during the liquidation procedure	The new FBiH Law on Liquidation Procedure should impose a legal requirement on the discharged company's management board to provide the necessary cooperation and support to the company's liquidator pending the completion of the liquidation proceedings. In addition, the discharged management board members should be held responsible for damages or liabilities of the company or the liquidator arising from their actions or failures to act prior to the discharge, or from a failure to deliver a complete set of information or documentation to the company's liquidator.	• FBiH Ministry of Justice • FBiH Government • FBiH Parliament
RS Alignment of the Law on Liquidation Procedure with the new Law on Bankruptcy	It is necessary to amend the RS Law on Liquidation Procedure, so that Article 16 provides for a ***mutatis mutandis*** application of the provisions set out in the (new) RS Law on Bankruptcy or to provide for a ***mutatis mutandis*** application of the provisions governing the bankruptcy procedure, in order to avoid any ambiguities in the future.	• RS Ministry of Justice • RS Government • RS National Assembly
LAW ON PLEDGES		
BiH Shortcomings in the establishment of a lien on the shares in a limited liability company	Amend the BiH Law on Pledges and the Rulebook on Pledges in order to provide for the possibility of establishing a pledge on the shares owned by foreign persons, as well as to make appropriate changes in the BiH Pledge Register that would enable the registration of such pledges. Upgrade the Pledge Register software to make it more user-friendly.	• Ministry of Justice of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
FBiH and RS Inability to register a pledge on shares in limited liability companies and access to information on share pledges	Amend the entity laws on registration of business entities in a way that they specifically prescribe the procedure for registration of pledge on shares, which would be conducted by the registration courts. The relevant entity regulations governing the operations of the securities registries should provide for the possibility to access the information related to the pledges on shares by any third party, without any restrictions that are currently in place.	• FBiH Government • FBiH Parliament • Municipal Courts in FBiH --- • RS Government • RS National Assembly • Basic Courts in RS

TAXES

INTRODUCTION

The total tax burden in BiH is 23.7% of the profit generated and it is significantly lower than the average levied in the European and Central Asian countries. However, BiH is still twice as worse than the aforementioned countries in terms of the number of annual payments (33 procedures) and the required time (411 hours per year).

In the ranking by ease of paying taxes, BiH ranks 139 out of 190 countries in total[4]. The inconsistency and complexity of the taxation system, ambiguous laws and the subjectivity of the controlling authorities in the interpretation and enforcement of the laws are still the main problems facing foreign investors in BiH.

Unfortunately, there has been no improvement in the area of taxes since the publication of the last White Book.

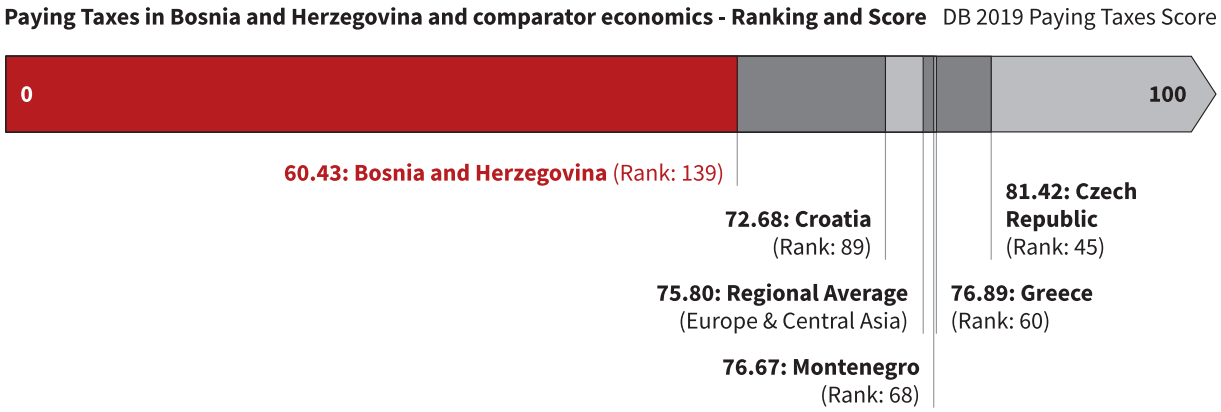
According to 'FIC Business Barometer', frequent changes in laws and unpredictable tax policy are among the key factors adversely affecting the business operations of foreign companies.

In order to facilitate business operations of enterprises engaged in business activities across the country, the FIC promotes the need for harmonization of tax regulations at the state level, as well as the reduction of the number of administrative procedures for tax payment aiming to disburden the business sector. The latest legal provisions do not go in that direction.

In addition to taxes, the business operations of foreign investors in BiH are made even more difficult and burdened by numerous charges and fees payable at different government levels. Specifically, there are numerous specific fees payable at the state, entity, cantonal and municipal level, which creates problems and high costs for investors operating across the country.

It is therefore necessary also to harmonize the regulations on fees and charges, and the number of required payment of fees and charges should be reviewed and reduced.

Below is a list of specific tax problems facing FIC members, as well as the list of corresponding recommendations.



4 "Doing Business 2017", World Bank report

CORPORATE INCOME TAX

APPLICATION OF INTERSTATE DOUBLE TAXATION AGREEMENTS IN BIH*

BiH: OPEN ISSUE

The current Laws on Corporate Income Tax in BiH stipulate that the provisions of the International/ Interstate Double Taxation Agreements entered into by BiH take precedence over the provisions of the said Laws. The Double Taxation Agreements are published in the BiH Official Gazette, in the official languages in use in BiH. The Ministry of Finance and Treasury of BiH has published a list of concluded Double Taxation Agreements and uploaded the Agreements published in the BiH Official Gazette. The published Agreements are used by the Ministry of Finance and Treasury of BiH when responding to the requests for interpretation, as well as by tax authorities during inspection controls. Several issues have been identified in the implementation of the International/Interstate Double Taxation Avoidance Agreements:

- The list of Double Taxation Agreements published on the website of the Ministry of Finance and Treasury of BiH is not updated on a regular basis and the notices of such Agreements ceasing to have effect are not transparently published,
- It is not known which agreements are currently in the negotiation phase or which have been approved and pending ratification. Given that double taxation remains one of the higher costs in practice, we consider it important to know in advance which agreements can be expected to come into force in the upcoming period,
- The Agreements are signed in the language of the Contracting States and in English. Most of the final provisions set out in the Agreements stipulate that in case of discrepancies in the translation and interpretation, the version in English will prevail. Since the Agreements are published in the Official Gazette in the languages that are in official use in BiH, there are often differences in the translation, which can lead to misinterpretation and misapplication of the Agreements in practice. Specific examples include the Agreements concluded with the Czech Republic and the United Arab Emirates, as well as the Republic of Serbia, where the meaning of the provision stipulating taxation method was changed due to a translation error.
- The procedure for obtaining an interpretation from the Ministry of Finance and Treasury of BiH takes from several weeks to several months, especially in case of complex issues, which inhibits business activities and investments.
- During the inspection controls, tax inspectors disregard the opinions issued by the Ministry of Finance and Treasury of BiH with regards to the application of the interstate agreements and in most cases act contrary to the issued opinion. Such behaviour of the inspectors during the inspection procedures raises doubts among taxpayers and creates business risk, which is particularly pronounced in the area of royalties. Inspectors use exclusively the texts of the Agreements, without taking into account the particulars set out in the OECD Model Tax Convention. The OECD Model Tax Convention constitutes an integral part of the Agreements and without it, it is not possible to adequately interpret the provisions of the Agreements.
- The Ministry of Finance and Treasury of BiH has published an Instruction on how to initiate a joint bargaining procedure in accordance with the Double Taxation Agreements that are in force in BiH, however, in practice, it is not clear either how to initiate the procedure or which steps to take in order to implement the joint bargaining procedure in practice.

BiH: RECOMMENDATION

- The Ministry of Finance and Treasury of BiH should publish all effective Double Taxation Agreements, including those that have been adopted but not yet ratified, those that are currently in the adoption procedure, and those that are no longer effective (including their effective and termination dates). All bilateral agreements should be available to all taxpayers in all languages in which they have been signed.
- A Rulebook or another piece of secondary legislation should be adopted by the Ministry of Finance and Treasury of BiH to define

the procedure for submitting requests and required information, as well as the procedure for issuing interpretations of the Agreements, and introduce a reasonable deadline for a response.

- The Ministry of Finance and Treasury of BiH should draft a manual explaining the basic principles of the application and interpretation of international agreements and the OECD guidelines, so that the users, i.e. the taxpayers could better understand and apply the international agreements. This would result in a smaller number of requests for opinions and interpretations by the Ministry.
- Translation of the OECD Model Tax Convention, accompanying comments and interpretations into one of the official languages in BiH in order to facilitate its implementation by taxpayers, tax inspectors and other authorities.
- Publish interpretations and opinions of the Ministry of Finance and Treasury of BiH (while ensuring the protection of confidential data).
- Draft and publish an interpretation or guidelines on how to implement the joint bargaining procedure in practice.

CLARIFICATION AS TO WHICH INCOMES AND EXPENDITURES ARE INCLUDED IN THE TAX BASE*

FBiH: OPEN ISSUE

Article 7, paragraph 9 of the FBiH Law on Corporate Income Tax stipulates that transactions that are not made for business purposes with the aim of making profit shall not be included in the tax base. Considering that the Law does not define the "transactions that are not made for business purposes" or the meaning of "doing business with due diligence", the legislator has left room for subjective interpretation and disputes among inspection authorities and taxpayers, because any expenditure made for business purpose by the taxpayers can be interpreted by the inspection authorities as a non-business expenditure. This problem has been clarified to a certain extent by Article 19 of the Rulebook on application of the FBiH Law on Corporate Income Tax, where paragraphs (1) and (2) stipulate that any expenditures which cannot be linked to revenues, expenditures incurred for the owner's private purposes and expenditures paid for another legal entity shall not be recognized.

However, the Rulebook introduces the concept of price dumping, prescribing that any under-priced sale shall be considered a dumping price and as such non-deductible for corporate income tax purposes. Such a provision puts most of the taxpayers in a disadvantageous position as they try different business strategies, sometimes even those involving disadvantageous contracting, to improve their financial results in the short, medium or long term. In an ideal case, every sale and each project is profitable, however, business conditions often impose a need for conscious intervention through lower prices in order to conquer a new market, establish cooperation or obtain references.

FBiH: RECOMMENDATION

It should be precisely defined what types of expenditures are not considered business expenses in terms of determining the tax base. The provisions referring to price dumping in the Rulebook on application of the FBiH Law on Corporate Income Tax should be abolished as there is no economic justification, and such a restriction is not prescribed by the FBiH Law on Corporate Income Tax.

TAXATION OF INCOME DERIVED FROM SERVICES PAYABLE BY AN RS RESIDENT TO A RESIDENT OF THE COUNTRY THAT HAS NOT SIGNED A DOUBLE TAXATION AGREEMENT WITH BOSNIA AND HERZEGOVINA

RS: OPEN ISSUE

Article 45 paragraph (2) of the RS Law on Corporate Income Tax stipulates that the tax levied at source (withholding tax) should also be levied on income derived from services paid by an RS resident to a resident of the country that has not signed a double taxation agreement with Bosnia and Herzegovina. The problem with the application of the said provision refers to the opinion of certain authorized persons from the competent institutions that all income payments for the services rendered by a non-resident are subject to the withholding tax irrespective of the place where the service was rendered. It is not clear whether the

legislator's intention has been to tax each income derived from services, including those that were rendered by a non-resident outside of BiH, or the Rulebook should be amended to include the place of rendering services, i.e. to prescribe that a non-resident is required to pay the withholding tax on the income paid by the resident on the basis of services rendered on the territory of RS.

RS: RECOMMENDATION

The payment of withholding tax on income derived from services paid by an RS resident to a resident of the country that has not signed a double taxation agreement with Bosnia and Herzegovina should be precisely defined.

AMORTIZATION / DEPRECIATION

FBiH: OPEN ISSUE

The FBiH Law on Corporate Income Tax prescribed depreciation rates that are tax deductible for the purpose of reducing the corporate income base. The Rulebook on application of the FBiH Law on Corporate Income Tax first specifies that the depreciation rates are maximum, while in the following paragraph it stipulates that the temporary differences cannot be carried forward. Neither the Law nor the Rulebook define temporary differences. According to the FBiH Ministry of Finance, the paragraph stipulating that the rates are maximum should be disregarded. We are of the opinion that such vague legal provisions have brought about significant legal uncertainty, and that the novelty in the regulations governing the corporate income tax imposes an (unasked-for) increase in the taxpayers' expenses, thus directly reducing their annual budget.

FBiH: RECOMMENDATION

It needs to be clearly defined whether the depreciation rates are maximum or not. Our recommendation is to keep maximum rates, as this is already the usual practice of calculating depreciation. The provision that does not allow carrying forward the temporary differences referred to in Article 42, paragraph (4) of the Rulebook on application of the FBiH Law on Corporate Income Tax should be abolished. Although the current Article 42, paragraph (4) provides for a short-term reduction of the tax base, we are of the opinion that the existing provision of the Rulebook, because of the legal uncertainty it is causing, can do more harm that it can bring benefits.

UNEQUAL TAXATION PRACTICE OF THE BUSINESS UNITS HEADQUARTERED IN THE OTHER BiH ENTITY AND BRCKO DISTRICT*

(I) FBiH and RS: OPEN ISSUE

Article 49 of the FBiH Law on Corporate Income Tax stipulates that every taxpayer shall submit its tax return and the supporting documentation to the relevant unit of the Tax Authority within 30 days after the expiration of the prescribed deadline for the submission of financial statements. Business units of the business entities headquartered in RS, BD BiH and abroad are required to submit the income statements together with their tax return. Legal entities headquartered in RS, BD or abroad performing their business activities through several business units in different parts of the FBiH face the problem of drawing up the balance sheet and submitting the tax balance and tax returns to the relevant unit of the Tax Authority separately for each registered business unit. The Income Statements are required to be drawn up by the legal entity together with all other financial statements, while its subsidiary, i.e. business unit, which has no legal personality, capital or assets, may make an overview of incomes and expenses related to the given subsidiary, if it chooses to do so.

(I) FBiH and RS: RECOMMENDATION

Consider the possibility to have the ministers of finance reach an understanding and agree that taxpayers, who perform business activities through their business units on the territory of the other BiH entity or BD, submit a single tax return based on the headquarters of the taxpayer, and that the allocation of revenues from the tax paid is made according to the share of the business units in total profits generated by the legal entity. In this way, the harmonization of regulations and tax treatment of business units would be achieved throughout the country, and it would facilitate business operations.

(II) FBiH: OPEN ISSUE

According to Article 9, paragraph (2) of the FBiH Law on Corporate Income Tax, legal entities head-

quartered in RS, BD or abroad, performing their registered taxable activity through a business unit situated in the FBiH, shall not be recognized general and administrative expenses that are not directly attributable to their business activities. The above provision is ambiguous, vague and discriminatory. Namely, the business unit is an organizational part of the company, and therefore, it has no legal personality; it has a place of business and its representatives; and it deals with third parties on behalf of and for the account of a company. For this reason, it is unavoidable and natural to attribute part of general and administrative expenses of the legal entity to its branch office, i.e. business unit according to an established model of costs distribution for a specific place of business.

(II) FBiH: RECOMMENDATION

Amend the above-stated Article of the FBiH Law on Corporate Income Tax and prescribe that part of the general and administrative expenses of the legal entity is included in the tax base of its business unit situated in the FBiH, and clearly define the terms and conditions for determining the portion of such expenses in the Rulebook on application of the FBiH Law on Corporate Income Tax.

(III) FBiH and RS: OPEN ISSUE

Article 3, paragraph (3) of the Law on Accounting and Auditing in FBiH stipulates: „Provisions of this Law shall apply to business units and plants of legal entities headquartered outside the Federation, if the business units and plants are considered liable to corporate income tax in the Federation". The FBiH Ministry of Finance has issued a Clarification on the preparation and submission of financial statements specifying that the aforementioned business units are also required to prepare and submit the financial statements. Article 3, paragraph (3) of the RS Law on Accounting and Auditing stipulates that the provisions of the said Law shall apply to the organizational units of legal entities headquartered outside RS, if the legal entity generates income in RS through such organizational units.

(III) FBiH and RS: RECOMMENDATION

The provisions of the Entity Laws on Accounting and Auditing should be amended in such a way that the business units or plants of the legal entities headquartered in FBiH/RS would be required to keep record of their revenues and expenditures as a basis for assessing the corporate income tax base, rather than being required to prepare and submit their financial statements, given that they are not independent legal entities.

PAYMENT OF DIVIDENDS ABOLISHES THE RIGHT TO TAX EXEMPTION ON THE BASIS OF INVESTMENT*

FBiH: OPEN ISSUE

Pursuant to Article 36, paragraph 6, subparagraph a) of the FBiH Law on Corporate Income Tax, a taxpayer loses the right to tax exemption if it makes a dividend payment from the profit that is exempt from corporate income tax during and, up to three years from the last year it used tax incentives set out in this Article. If the taxpayer is able to make investments from its own funds, and if in addition, it has sufficient funds to make a dividend payment, we do not see the purpose of this restriction. On the other hand, such a provision may be a constraint to new investments.

FBiH: RECOMMENDATION

Paragraph 6 and Paragraph 7 of Article 36 of the Law on Corporate Income Tax should be deleted because they are restrictive to new investments.

DIFFERENT REGULATIONS OF THE TAX TREATMENT OF ALLOWANCES FOR BALANCE SHEET ASSETS OF BANKS IN THE ENTITIES AND BRCKO DISTRICT*

FBiH, RS and BD: OPEN ISSUE

A taxpayer headquartered in one BiH entity that performs its business activities also in the other BiH entity is exposed to the risk of double taxation arising from non-deductible expenses/revenues based on the impairment adjustments and provisions, due to different tax treatment of the assets impairment.

Pursuant to the provisions of Article 16 of the FBiH Law on Corporate Income Tax:

(1) Expenses incurred by financial institutions based on the allowance for impairment of the balance sheet assets and provisions for losses on off-balance sheet items shall be recognized, if the impairment can be objec-

tively proved, regardless of whether they are assessed on an individual or group basis, which were made by the financial institutions in accordance with the accounting rules and regulations of the supervisory authorities. Revenues from impairment allowance and provisions shall be included in the tax base;

(2) Expenses arising from impairment allowances for balance sheet assets assessed on a group and historical cost basis (latent losses – IBNR) shall not be a tax deductible expense. Revenues from impairment of IBNR shall be excluded from the tax base.

Pursuant to Article 22, paragraph (1) of the RS Law on Corporate Income Tax, expenses from indirect write-offs of loans shall be recognized to financial institutions, other than insurance companies, that are, in accordance with the internal regulations of the financial institution, reported in the income statement in the accounting period, up to the amount prescribed by the RS Banking Agency for B, C, D and E loan categories.

The above provisions are contrary to:

- the provisions of the RS Law on Accounting and Auditing, because the revenues and expenses related to their indirect write-of are recorded in the income statement according to the International Accounting Standards, and not according to the regulations of the RS Banking Agency;
- Decisions of the RS Banking Agency prescribe the asset classification by A, B, C, D and E categories, as well as the calculation of the provisions pursuant to these categories, however, such provisions are not recorded in the balance sheet and income statements, but are used for calculating capital adequacy and monitoring the banks' asset quality in accordance with the standards and methodologies of the RS Banking Agency.

Since Article 10 of the BD BiH Law on Corporate Income Tax has not changed since 2011, the banks and other authorized credit organizations operating on the territory of the BD BiH are still required to check whether they have to additionally increase the tax base on the basis of unrecognized (excessive) provisions for credit losses, however according to a completely different methodology. For these credit organizations operating on the territory of BD BiH, the deduction (against income) allowed for the purpose of increasing provisions account is up to 20% of the tax base.

FBiH, RS and BD: RECOMMENDATION

The regulations governing the corporate income tax in the Entities and BD BiH should be harmonized in the area referring to the tax treatment of the allowance for impairment of balance sheet assets of banks to ensure equal tax treatment for revenues/ expenses impairments for tax purposes and the application of the international accounting standards.

TRANSFER PRICES*

(I) FBiH and RS: OPEN ISSUE

Transfer prices have arisen as a requirement of tax jurisdictions to protect their tax revenues by adjusting incomes/expenditures among affiliated parties that have arisen as a result of subjective conditions and as such could lead to a reduction in tax liabilities in a particular jurisdiction. FBiH and RS have introduced the obligations arising from transfer pricing, which are in compliance with the international practice however, these obligations do not preclude scrutinizing the relationship between the two entities operating within the same tax jurisdiction. We are of the opinion that this introduces unnecessary expenses for developing a Study on transfer pricing for the business entities operating in the same jurisdiction. In addition, in the case of two affiliated business entities operating within the same jurisdiction and making profit, the transfer pricing effects are in most cases neutral and therefore, the cost-benefit scrutiny of such transactions either by the taxpayer or the Tax Authority, is not justified.

(I) FBiH and RS: RECOMMENDATION

The FBiH Law on Corporate Income Tax should stipulate that transfer prices are not to be set between the two affiliated business entities if both of them operate within a single tax jurisdiction and make profit. Alternatively, the Law should stipulate that the taxpayers are required to submit a report on their affiliated parties operating in the same jurisdiction, in order to give the Tax Authority an insight into the overall operation of the company within the jurisdiction concerned. In RS, the Law should prescribe the possibility to setoff positive adjustments against the negative ones on the

basis of transfer prices set between the legal entities operating on the territory of RS.

(II) FBiH and RS: OPEN ISSUE

The FBiH Law on Corporate Income Tax and the RS Law on Corporate Income Tax stipulate that a special rulebook will provide for the guidelines and instructions on how to document and prove the transfer pricing. These by-laws have been adopted, however, we are of the opinion that it is not enough to define this area with a couple of instructions, and that referring to the international guidelines, in particular the OECD Transfer Pricing Guidelines, is also necessary because proving transfer pricing is a very complex process and as such, it should be supported by adequate guidelines. We believe that by applying the OECD Guidelines, which are generally considered the most comprehensive document in this area, the transfer pricing testing process would be facilitated for both tax inspectors and taxpayers.

(II) FBiH and RS: RECOMMENDATION

The Rulebook on transfer pricing should make reference to the OECD Transfer Pricing Guidelines as the most comprehensive guidelines for transfer pricing documenting and testing procedures. The OECD Transfer Pricing Guidelines should be translated into one of the official languages used in BiH. In documenting transfer pricing, the objective should not be creating additional administrative burden for the taxpayers. Therefore, the legal regulations should define what is considered to be the minimum set of documents for such transactions.

(III) FBiH: OPEN ISSUE

The FBiH Law on Corporate Income Tax stipulates that the term 'affiliated parties' means any two parties one of which operates or is likely to operate in accordance with the guidelines, requests, proposals or wishes of the other, or both of which operate or are likely to operate in accordance with the guidelines, requests, proposals or wishes of a third party, regardless of whether guidelines, requests, proposals or wishes have been communicated or not.

(III) FBiH: RECOMMENDATION

This definition leaves room for subjective interpretations by taxpayers and tax inspectors of who could be considered an affiliated party. Our recommendation is to precisely define the method of determining whether a party operated in accordance with the guidelines, requests, proposals or wishes of the other party or a third person.

(IV) FBiH and RS: OPEN ISSUE

It is a common practice throughout the world not to test all transactions with affiliates, but only those that go beyond a certain threshold.

(IV) FBiH and RS: RECOMMENDATION

The Entity-level Laws on Corporate Income Tax should define the threshold below which transfer pricing should not be tested (this can be a fixed amount or a reference to the substantiality of the transaction for the scrutinized company).

(V) FBiH and RS: OPEN ISSUE

A large number of tax jurisdictions throughout the world allows for the conclusion of transfer pricing agreements with tax administrations, which provides business security both for the taxpayers and for the tax administration. These are the so-called Advanced Pricing Agreements (APAs). Such agreements reconcile the functions, risks and assets that are to be assumed by the contracting affiliates, and define what is to be considered market compensation for a specific period.

(V) FBiH and RS: RECOMMENDATION

Concluding APAs should be enabled, as it would significantly facilitate the business of both taxpayers and the tax inspectorates.

PERSONAL INCOME TAX

TAX TREATMENT OF FOREIGN NATURAL PERSONS WHO EARN INCOME FROM RESIDENT LEGAL ENTITIES

FBiH: OPEN ISSUE

The FBiH Law on Personal Income Tax and the FBiH Law on Social Security Contributions, as well as the implementing regulations in FBiH govern the tax and social contributions treatment earned by residents and non-residents on the territory of the FBiH. These regulations apply to full-time employees as well as to independent contractors, paid by a resident legal entity.

The aforementioned legislation inaccurately describes the tax treatment of foreigners providing services to local legal entities and, as a result, they face daily concerns about the method of reporting personal income, as well as their personal income tax liabilities and social contributions. The main issues related to reporting the tax liabilities and contributions are as follows: recognition of foreign revenue; time of registration; which tax form to use in case of the requirement to report foreign revenues on a monthly basis; applicability of the double taxation principle; certificate of paid tax by the relevant tax authority, etc. The greatest difficulty is the lack of an adequate form for reporting and paying the applicable income tax and social contributions, as well as the unspecified procedure for applying tax exemptions on the basis of interstate double taxation agreements and social security agreements.

FBiH: RECOMMENDATION

The FBiH Ministry of Finance and the FBiH Tax Authority should prescribe:

- the forms for reporting and taxation of foreigners' income under the secondment/delegation agreements, as well as any other income earned during their stay in BiH,
- application of tax exemptions under the interstate agreements (SCC and PIT).

In the event that verifying or accepting certificates issued in other countries in relation to personal income taxes and contributions paid in these countries is beyond the scope of the jurisdiction of the Tax Authority, authorities responsible for verifying such certificates should be clearly defined.

COMPLICATED PROCEDURE FOR PAYING TAXES AND CONTRIBUTIONS*

FBiH: OPEN ISSUE

The procedure of paying public revenues which an employer or a natural person, as a taxpayer required to pay contributions, taxes and fees, has to pay when paying or receiving salary is rather complex. There are numerous types of public revenues and different government levels levying public revenues. Employers have to pay mandatory social security contributions, personal income taxes, and fees for their workers onto different bank accounts, depending on the type of income, the employer's seat, or the worker's place of residence. A large number of procedures and different payment orders are both time-consuming and costly. The FBiH Ministry of Finance supported by the USAID, has launched a project to simplify the public revenue payment procedures by reducing the number of the required payment slips from the current 10 to five with the ultimate objective to reduce this number to a single payment slip. This way, the employers' overall bank provision costs and the time necessary to fill out all the payment orders will be reduced by 44% on average.

FBiH: RECOMMENDATION

Implement a simpler way of transferring public revenues that the employer pays with the payment of salaries to its employees, in a way that would reduce the number of payment orders without violating constitutional and legal provisions determining the affiliation of public revenues or their allocation criteria, in any way. This activity is compatible with the FBiH Government's commitment to generate a more favourable climate for local and foreign investments. The Ministry of Finance of FBiH needs to amend bylaws in order to create a legal framework for the accomplishment of these goals and USAID will design and developed the software for the allocation of revenues from collective accounts to the accounts of end users.

INCOMPATIBILITY OF THE LAW ON PERSONAL INCOME TAX AND THE LAW ON SOCIAL SECURITY CONTRIBUTIONS*

RS: OPEN ISSUE

As of 1 September 2015, a new Law on Personal Income Tax has come into force in RS, stipulating that the personal income is an income generated by natural person from employment, while an income generated by natural person from dependent personal services provided to a client constitutes other income. The RS Law on Personal Income Tax stipulates that personal income taxpayer is a resident and a non-resident who earns his/her personal income in RS.

A resident, within the meaning of this Law, is a natural person who:

1) has a permanent residence on the territory of Republika Srpska,

2) continuously or with interruptions, resides for 183 or more days on the territory of Republika Srpska over the period of 12 months commencing or ending in the relevant tax year or

3) has a permanent place of residence and centre of life interests in Republika Srpska.

A non-resident, within the meaning of this Law, is a natural person who is not considered a resident within the meaning of paragraph 2 of this Article.

The RS Law on Social Security Contributions prescribes that contribution payer is a resident of RS. A resident, within the meaning of the RS Law on Social Security Contributions, is a natural person who, within the meaning of the regulations governing pension, disability and health insurance or unemployment insurance, holds either mandatory insurance, mandatory insurance under specific circumstances or voluntary insurance. These laws provide a different definition of the term 'resident', leading to different interpretations by contribution payers. Given that these Laws refer to the same natural person and the same income, the definition of the term 'resident' should be the same. Another problem is also created by the requirement to calculate and report the social security contributions, because every natural person who generates income subject to contributions payment must be registered in the Single System for Registration, Control and Collection of Contributions, and if a natural person is a non-resident, s/he must have a work permit in order to be registered in the Single System. This is another reason for introducing the same definition of the term 'resident' in both Laws.

RS: RECOMMENDATION

The RS Law on Social Security Contributions should be amended so that Article 9, paragraph (1) reads:

„A resident, within the meaning of this Law, is a natural person who:

1) has a permanent residence on the territory of Republika Srpska,

2) continuously or with interruptions, resides for 183 or more days on the territory of Republika Srpska over the period of 12 months commencing or ending in the relevant tax year or

3) has a permanent place of residence and centre of life interests in Republika Srpska".

In this way, the provisions of the RS Law on Personal Income Tax and those of the RS Law on Social Security Contributions would be harmonized, as they would define the term 'resident' in the same way, which would in turn ensure an equal treatment by tax officials when it comes to payments to foreigners (natural persons) and would not create dilemmas among taxpayers on how to proceed in cases where the payment is to be made to a foreigner who has not registered his/her residence in RS and does not have a work permit.

VALUE ADDED TAX (VAT)

RELEASING LEASING COMPANIES FROM THE OBLIGATION TO CHARGE VAT ON THE INTERESTS ARISING FROM FINANCIAL LEASING CONTRACTS

BiH: OPEN ISSUE

In the course of 2017 there were frequent discussions on the status of leasing market in BiH, the possibilities of amending certain tax laws and providing assistance in resolving the accumulated problems in order to contribute to the improvement of conditions in the leasing market, which has been in constant decline for several years, thus threatening the survival of the existing leasing companies in BiH. In order to prevent further windups of the existing leasing companies in BiH, it is necessary to exclude the interests, which the leasing companies/banks charge in accordance with the Laws on leasing and decisions of the competent agencies when calculating financial leasing, from the VAT taxable amount. Namely, the legislation which is currently in force treats interests and contract handling costs as an integral and inseparable part of the leasing companies' fees, as such is subject to VAT, although it is separately presented and charged to clients.

Levying VAT on the interest charged by the leasing companies directly increases the cost of their services by 17%, while companies, under these circumstances, are struggling to achieve competitiveness in the market of financial services where the interests charged by companies from other

sectors (banks, microcredit organizations, etc.) are exempt from VAT, which makes their services at the onset 17% cheaper than leasing services.

In the process of aligning their legislation with the European one, the neighbouring countries have adopted new regulations regarding tax treatment of interests charged and separately presented by leasing companies.

Croatia has enforced a legal provision regarding exclusion of the interests and contract handling costs from the tax base for leasing fees, which is incorporated in Article 42, paragraph (6) of the Croatian Rulebook on Value Added Tax and reads:

„In the case of financial leasing or rental, the tax base shall not include interests and similar financing costs provided that they are charged and presented separately from the delivery fee for the leased item."

This matter is regulated in the same way in Slovenia as well, where Article 39, paragraph (5) of the Rulebook on VAT reads:

"In financial leasing, interests and other financing costs do not have to be included in the tax base for goods, if the purchase of the goods and the financing approval are agreed and separately charged."

Accordingly, in both examples of countries that have aligned their laws with the European regulations, there is a clear provision on the exclusion of financial lease interests from the tax base, i.e. from the taxable leasing services fee.

According to the legislation which is currently in force in BiH and neighbouring countries, financial institutions charging interests on their services are exempt from paying VAT either by virtue of tax exemption of their business activities or by exclusion of interests from the taxable base, while the BiH leasing companies are the only ones required to charge VAT on the interests, which makes them extremely uncompetitive on the market. The difficult position of leasing companies in the country is also reflected in the leasing market. According to the RS Banking Agency data, in the first half of 2017, no legal entity registered for performing leasing activities in the register of leasing companies, while the Agency's licence for performing leasing activities were held by 4 business units of the leasing companies headquartered in FBiH. According to the FBiH Banking Agency data, there are six leasing companies registered in FBiH. In recent years, many leasing companies have merged with their parent companies, mainly banks, due to poor business results.

The difficult situation on the leasing market is also indicated by the fact that only few years ago, the share of leasing companies in the total sales of vehicles on the BiH market was 20%, whereas in recent years, this share dropped to 5-7%. The ITA BiH should consider excluding financial leasing interests from taxable leasing fees, in order to equalize the competitive position of BiH leasing companies with the position of leasing companies headquartered in Croatia and other countries, and create legal conditions for their equal position in the financial market.

BiH: RECOMMENDATION

Article 20, paragraph (10) of the BiH Law on VAT, which already states: "The following shall not be included in the [tax] base: amounts of interest that are calculated by the seller, that is, the supplier of services, on the amount owed by the purchaser if, from contracts or other documentation on the payments, it can be determined which part of the payments concerns interest" should be amended to provide a clearer definition of the interests concerned. Accordingly, paragraph 10, item 3) should read:

„(10) The following shall not be included in the base:

(3) amounts of interest that are calculated by the seller, that is, the supplier of financial leasing, rental or other services, on the amount owed by the purchaser if, from contracts or other documentation on the payments, it can be determined which part of the payments concerns interest, i.e. provided that the interests and pertaining contract handling costs are charged and presented separately from the leasing delivery fee."

VAT REFUND TO PERSONS WHO DO NOT HAVE REGISTERED BUSINESS IN BIH*

BiH: OPEN ISSUE

Article 53 of the Law on VAT of BiH provides an option for a refund of the input tax calculated on sale of goods and provision of services by BiH tax-

payer or tax calculated on goods imported into BiH for foreign legal entities that do not have a registered business in BiH. According to the current practice of the Indirect Taxation Authority (ITA) and the jurisprudence of the Court of BiH, VAT refund is approved only to "carriers, persons exhibiting goods at fairs, airliner and the like". The aforementioned persons are specified in Article 93 of the Rulebook on the Implementation of the Law on VAT in brackets, whereas Article 53 of the Law on VAT provides for a much wider options of applying the VAT refund compared to the Rulebook on the Implementation of the Law on VAT. According to the available information, a certain number of countries that apply reciprocity in terms of VAT refund do not approve VAT refund to BiH taxpayers because of this restrictive policy of BiH in connection with the VAT refund to foreign taxpayers.

BiH: RECOMMENDATION

Given that the VAT in BiH is not applied according to the institutional, but rather functional principles, when deciding on the requests for VAT refund submitted by taxpayers who do not have registered business in BiH, the ITA should interpret Article 93 of the Rulebook on the Implementation of the Law on VAT in the context of Article 53 of the Law on VAT, in the sense that this right is not applicable only to the foreign taxpayers performing a specific business activity (institutional approach), but to all foreign taxpayers, in accordance with the other requirements prescribed by the Law on VAT and its implementing regulations.

ISSUANCE OF OPINIONS BY ITA BiH*

BiH: OPEN ISSUE

Article 50 of the BiH Law on Indirect Taxation Procedure and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions by ITA define a timeframe for submitting an application for issuance of an opinion, prescribing that such an application cannot be filed once a particular action has already been taken i.e. once the VAT return has already been filed. This deprives the taxpayers to obtain an opinion from ITA, i.e. to hear ITA's position regarding resolution of certain dilemmas at the moment when they occur, because certain actions have already been taken. The ITA's opinions and positions are not published on the BiH ITA website, and often opinions issued by different ITA departments (sectors) are dissimilar, causing dilemmas and misleading taxpayers. In addition, there is no possibility of appeal in the cases when ITA deems that a taxpayer does not meet the requirements for issuing an opinion and instead of issuing a legally binding opinion, it issues a document merely informing the taxpayer on the legal provisions. Likewise, the right to appeal is not provided in the cases when the ITA issues an opinion that the taxpayer considers not to be well-founded.

BiH: RECOMMENDATION

Article 50 of the Law on Indirect Taxation Procedure and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions by ITA 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 is to begin, be it complete or partial. Issued opinions, including a summary of the questions, should be published on the ITA website, without disclosing any personal data of the taxpayer who received the opinion. This would help achieve one of the ITA's functions, whose work should be transparent and it would also result in better-informed taxpayers and a consistent application of tax laws.

The requirements for issuing a legally binding opinion by the ITA BiH should be specified in detail, which would minimize the possibility of arbitrary interpretation of the requirements that need to be met in order to receive the said opinion, and the Law on Indirect Taxation Procedure should be amended to prescribe the right to appeal and institute administrative proceedings, in case that the issued opinion is not well-founded.

DOUBLE TAXATION ISSUE

BiH: OPEN ISSUE

The BiH Law on VAT does not comply with the Council Directive on the EU's common system of VAT (EU legislation), although Article 23 of the BiH Law on Indirect Taxation System stipulates that the VAT in BiH shall be compliant to the EU standards. The principle related to the place of taxation of services in the EU has been modified long ago. Due to the non-compliance of the Law on VAT, the taxpayers in BiH and those abroad are faced with the problem of double taxation. Double taxation of foreign taxpayers is aggravated

by the fact that the ITA does not approve the VAT refund to foreign taxpayers, unless they are "carriers, persons exhibiting goods at fairs, airliner and the like", and consequently, this double taxation has real effects hindering the BiH taxpayers' business because their products and services become more expensive by the VAT rate levied in BiH.

BiH: RECOMMENDATION

It is vital to adopt a new Law on VAT in BiH that will be in compliance with the EU regulations in order to avoid double taxation or non-taxation.

CORRECTING ERRONEOUSLY CALCULATED OUTPUT VAT*

BiH: OPEN ISSUE

In practice, it happens that a VAT payer based in the area covered by an ITA regional centre charges VAT on a transaction that it considers VAT-liable, whereas the same transaction is not treated as VAT-liable under the Law on VAT by the competent ITA regional centre during the inspection. According to the tax practice of the ITA, the taxpayer who charged VAT on a transaction which is not considered taxable under the Law on VAT does not have the option to correct such an error in favour of its customer.

BiH: RECOMMENDATION

Given that VAT in the chain of taxpayers must be neutral according to the principles of the VAT system, the ITA should enable taxpayers to update incorrectly calculated VAT, provided that the error is corrected in favour of the customer pursuant to Article 55, paragraph (11) of the Law on VAT, and prescribe a detailed procedure for such a correction.

TREATMENT OF VAT IN CASE OF BAD DEBT PURCHASE*

BiH: OPEN ISSUE

The ITA treats the purchase of bad debts as a financial service that is not exempted from VAT and that the person required to charge VAT is the person purchasing the bad debts. According to the Judgement No. C-93/10 rendered by the EU Court of Justice, a legal entity that, at its own risk, purchases defaulted debts at a price below their face value does not effect a supply of services for consideration within the meaning of the Directive on the EU's common system of VAT and does not carry out an economic activity falling within the scope of that directive when the difference between the face value of those debts and their purchase price reflects the actual economic value of the debts at the time of their assignment.

BiH: RECOMMENDATION

The ITA should accept the legal opinion of the EU Court of Justice at least insofar as the EU legislation does not differ from the BiH regulations. The definition of taxpayer and economic activities provided in the Directive on the EU's common system of VAT and the one provided in the BiH Law on VAT are very similar. Therefore, the tax treatment in BiH could be the same as in the EU, provided that the legal opinion of the EU Court of Justice is accepted.

EXCISE DUTIES

ABOLITION OF EXCISE DUTIES PAYMENT IN ADVANCE*

BiH: OPEN ISSUE

According to the Law on Excise Duties in BiH, Article 23, paragraph 5, a taxpayer must pay the excise for tobacco products when taking the excise stamps. Paying excise in advance hinders the business of tobacco companies in BiH and negatively affects their liquidity. Namely, by making the advance payment, they freeze their working capital, because they have to wait for the refund of the invested money for up to two months after they pay the excise and the pertaining VAT to the state. Producers of other excise goods do not have to pay excise duties in advance, but immediately before consumption. The Law does not provide a 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

The ITA Board of Directors should initiate a procedure for making amendments to the Law on Excise Duties in BiH, according to which excise on tobacco products will be paid through delayed

payment with a specified deadline. Taking into account an approximate average of two months from the time of taking over the excise stamps to the actual sale of tobacco products, we suggest the following two options:

1) to prescribe a 60-day period for paying excise duties for tobacco products, which would start running as of the day the excise stamps were taken over, or

2) to prescribe a 30-day period for paying excise duties for tobacco products, which would start running as of the time when the goods leave the excise warehouse.

Amending Article 23 of the BiH Law on Excise Duties would not endanger the budget in any way, and the collection of excises would be secured by a mechanism of bank guarantees presented by the companies to the ITA. The proposed amendments would contribute to a more effective operating of tobacco companies in BiH, which as large taxpayers, significantly contribute to the long-term stability of the state budget.

REMOVING PRICES FROM EXCISE STAMP ON TOBACCO PRODUCTS *

BiH: OPEN ISSUE

Pursuant to Article 25, paragraph 5 of the Law on Excise Duties, tobacco products must be labelled with excise stamps specifying the retail price. Numerous European and neighbouring countries do not have this practice of specifying the prices on the excise stamps. The price specified on excise stamp causes the following adversity: the market is flooded with cigarette packs showing "wrong price", because the Law allows changing of the price (provided that the corresponding excise duty has been paid) even though the excise stamp shows the price before the price increase.

BiH: RECOMMENDATION

The ITA Board of Directors should initiate a procedure for making amendments to the Law on Excise Duties, in particular its Article 25, paragraph 5, according to which tobacco products will be labelled with control excise stamps, while the prices will be published in the Official Gazette. Such amendments would bring the following benefits:

- avoiding confusion caused by outdated excise stamps after introducing new prices;
- retail prices published in the Official Gazette are also a guarantee that the requirement is binding, while restoring the trust in the taxation regularity of the tobacco sector;
- flexibility in the use of stamps in the tobacco products production.

These amendments would improve the process of administering excise products and ensure the legislative compliance with the EU and neighbouring countries.

DECELERATING GROWTH IN EXCISE DUTIES ON TOBACCO PRODUCTS*

BiH: OPEN ISSUE

In July 2018, the ITA Steering Board adopted a decision proposing an amendment to the BiH Law on Excise Duties referring to a three-year moratorium on increasing excise duties on tobacco products. This long-awaited decision was made after the devastating results of the aggressive growth rate of excise duties on tobacco products imposed by the 2009 Law which is currently in force. By adopting this Decision, for the first time in nine years, the decision-makers expressed their will to stop the counterproductive excise policy that caused a 51% decline in the licit market (according to the ITA data on issued stamps in the period 2010-2017) and the stagnation of state revenues. Multiple negative effects are reflected in the following:

- BiH has lost € 770 million of tax revenue since 2010 to date;
- High excise duties affect the price of legally marketed products, which makes illegal products more attractive to consumers (an average cigarette pack in BiH costs four and a half times more than 20 cigarettes made from illegally marketed tobacco).
- BiH is unnecessarily the regional leader in the pursuit of the EU directive's goal, without taking into account the purchasing power of the population, the overall economic trends and the fact that it is not an EU member state;
- The neighbouring countries opted for a gradual increase in excise rates that is appropriate to the standard of their citizens (Serbia, Macedonia, Kosovo and Albania).

- The best example is Montenegro, whose government initiated the process of reducing excise duty rates on tobacco products in 2018, in order to prevent further decline in tax revenues and ensure their stability. This extraordinary decision was preceded by alarming results of previous consecutive excise increases. In the first half of 2018, a market decline of 60% was registered and a decline of 25.6% compared to the same period of the previous year.

BiH: RECOMMENDATION

We propose the adoption of an amendment to the current BiH Law on Excise Duties with respect to cigarettes as soon as possible, in order to enforce the three-year moratorium immediately. In this way, it would be possible to expect the stabilization of the market and the reduction in the volume of illegal trade. The three-year moratorium would also enable the development of excise growth rates which would be appropriate for the living standard and purchasing power of the population, as well as the current situation in the country. If the amendment to the Law is not adopted in a timely manner, BiH will soon reach a minimum excise duty of € 90.00 per 1,000 cigarettes. This threshold prescribed by the relevant EU directive is binding on the EU Member States. The countries that have recently become EU Member States, such as the neighbouring Croatia, were given a transition period of four years to reach a minimum excise duty of € 90.00 per 1,000 cigarettes. In any case, we propose enforcing a three-year moratorium for the purpose of developing a new excise policy.

REFUND OF EXCISE DUTIES PAID ON EXPORTED EXCISE PRODUCTS

BiH: OPEN ISSUE

The BiH Law on Excise Duties provides for taxation of different goods by excise duty. According to Article 4 of the BiH Law on Excise Duties, non-alcoholic beverages are also considered excise goods. This excise duty is calculated and paid at the initial turnover of goods in BiH, i.e. at the time when the beverage producer sells the goods to the first-hand buyer. Any buyer who permanently exports such goods outside the customs territory of BiH, pursuant to Article 31, paragraph (3) of the BiH Law on Excise Duties, is entitled to a refund of the excise paid at the initial turnover of goods. However, in practice, despite a clear legal provision, the ITA deprives the exporter of the right to refund, justifying this, *inter alia*, by the fact that the exporter is not the person who paid the excise duties to the account of ITA, although it is clear that the payment obligation rests exclusively with the producer.

BiH: RECOMMENDATION

This practice of ITA puts BiH exporters in an unfavourable position compared to their competitors from other countries, since their goods are most often burdened with double duties – the ones levied in BiH and the other levied in the country of import. Bearing in mind that one of the principles of indirect taxation is that the goods are taxed at the place of consumption, as well as that the Law clearly stipulates the obligation to refund the excise duty on the export of the excise product, the BiH Law on Excise Duties should additionally stipulate that any exporter is entitled to an excise duty refund, regardless of who actually paid the excise duty. Consequently, the ITA should change its practice and consistently implement the legal provisions authorizing exporters of excise products (soft drinks) to receive a refund.

PARA-FISCAL CHARGES

ELIMINATION OF PARA-FISCAL LEVIES[5]

FBiH and BD: OPEN ISSUE

Fees and charges including those referred to as “para-fiscal charges” are often indicated by businessmen and investors as widespread, burdensome by nature, and as an impediment to the development of the BiH economy. Fees and charges are present in all countries (e.g. construction permits, natural resource concessions) and they have been accepted as part of business. Nevertheless, in BiH, there are numerous “para-fiscal charges” that are, in effect, fees charged without having provided a specific service, permit or licence in return. They are, in essence, taxes (e.g.

5 This recommendation comes from the USAID FAR project – Fiscal Sector Reform Activity in BiH and it is compliant with the EU Reform Agenda for BiH that requires elimination of para-fiscal levies which are an obstacle to business and economic development.

general water charge and special fee for protection against natural disasters in FBiH - imposed on all employers at a rate of 0.5% of the total net wages). Another significant problem related to fees and charges is the way in which they are imposed and enforced.

The USAID FAR project, in cooperation with the Ministries of Finance, have either already developed, or is in the process of drafting framework laws aimed at regulating these fees and charges.

Since June 2017, the RS Law on Tax System has introduced a system where all fees and charges (i.e. all tax and non-tax revenues in RS) must be included and published in the Registry of tax and non-tax revenues. If a fee or charge is not included in the register, it cannot be charged. This Law also stipulates that any subsequent fees and charges can be introduced or changed exclusively by amending the laws and that they cannot be imposed by decisions of lower-level government authorities.

In the course of 2018, 45 different fees and charges were abolished as a result of this Law enforcement. These charges were initially included in the Registry only to be removed at a later stage because of the lack of legal grounds for their maintenance and because the RS Ministry of Finance did not legalize them.

The intention is to introduce a similar system to the BD BiH in 2019. A draft legislation has been developed for this purpose, and the process of its adoption has been initiated.

In FBiH, the USAID FAR project has drafted a framework law, and the consultations with the BiH Ministry of Finance, several cantonal ministries of finance and the Association of Municipalities and Cities are currently in progress. There is strong support for the adoption of a law similar to the one which in force in the RS, while respecting the competencies of the FBiH, cantons and municipalities. After the adoption of the regulatory and framework laws, it is essential that they undertake the obligation to apply the following principles when introducing and modifying all future fees and charges:

PRINCIPLE	DESCRIPTION
Legality	The principle of legality means that any collection of fees or charges is imposed, prescribed, levied or abolished by virtue of law.
Equivalence	The principle of the equivalence of each individual fee or charge levied means that the amount of fee or charge corresponds to the value received in the public goods or services for which the payment is made.
Rationality	The principle of the rationality of each individual charge or fee levied means that the levying costs of a fee or charge cannot be higher than the amount of such fee or charge.
Fair tax base assessment	The principle of a fair tax base assessment means that the base for calculating fees and charges must not derive exclusively from the taxpayers' total income, so as not to put the process of creating a more favourable business environment at risk.
Fair identification of taxable persons	The principle of a fair identification of taxable persons means that there must not be any discrimination among legal and natural persons – taxpayers liable to pay fees or charges.

FBiH and BD: RECOMMENDATION

It is necessary that FBiH and BD BiH, following the RS model, adopt their respective framework laws stipulating that all fees and charges should be published in the corresponding registry of fees and charges and adopted and prescribed by the relevant laws. Each new proposal to modify and introduce a certain fee/charge should take into account and apply the above principles.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
CORPORATE INCOME TAX		
BiH Application of interstate double taxation agreements in BiH	Make all double taxation agreements publicly available (in the local languages and in the language they have been originally signed). Adopt a Rulebook defining the procedure for submitting requests for information, as well as the procedure for providing interpretation of the agreements. Publish a set of guidelines explaining the basic principles of application and interpretation of interstate agreements and the OECD guidelines. Introduce the practice of publishing the interpretations and opinions of the BiH Ministry of Finance and Treasury.	• Ministry of Finance and Treasury of BiH
FBiH The Law on Corporate Income Tax is not clear as to which incomes and expenditures are included in the tax base.	The Law on Corporate Income Tax should precisely define what types of expenditures are not considered business expenses for the purpose of assessing the tax base. The provisions referring to the price damping in the Rulebook on application of the FBiH Law on Corporate Income Tax should be abolished, as they are not economically justified.	• FBiH Ministry of Finance • FBiH Government • FBiH Parliament
RS Unclearly prescribed taxation of income derived from services payable by an RS resident to a resident of the country that has not signed a double taxation agreement with Bosnia and Herzegovina	The RS Law on Corporate Income Tax should precisely define the liabilities for withholding tax on the income derived from services payable by an RS resident to a resident of the country that has not signed a double taxation agreement with Bosnia and Herzegovina.	• RS Ministry of Finance • RS Government • RS National Assembly
FBiH Unclear provisions on amortization/depreciation rates	Clearly define whether the amortization rates are maximum or. It is recommended to keep maximum rates, as this is already the usual way of calculating depreciation/amortization. Abolish the provision prohibiting to carry forward the temporary differences referred to in Article 42, paragraph (4) of the Rulebook on application of the FBiH Law on Corporate Income Tax.	• FBiH Ministry of Finance

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH and RS Unequal taxation practice of the business units headquartered in the other BiH Entity and Brcko District	Ministers of Finance should reach an agreement that taxpayers, who perform business activities through their business units on the territory of the other BiH entity or BD BiH, submit a single tax return in the place where the taxpayer is headquartered. • Amend the FBiH Law on Corporate Income Tax and prescribe that part of the general and administrative expenses of legal entities is included in the tax base of their business units in FBiH. • Amend the Entity-level Laws on Accounting and Auditing in such a way that the business units or plants of the legal entities headquartered in FBiH/RS would be required to keep record of their revenues and expenditures as a basis for assessing the corporate income tax base; and abolish the obligation of the business units and plants to prepare and submit their financial statements, given that they are not independent legal entities.	• FBiH Ministry of Finance • FBiH Government • FBiH Parliament --- • RS Ministry of Finance • RS Government • RS National Assembly --- • BD BiH Finance Directorate • BD BiH Government
FBiH Payment of dividends abolishes the right to tax exemption on the basis of investment	Paragraph 6 and Paragraph 7 of Article 36 of the FBiH Law on Corporate Income Tax should be deleted because they are restrictive to new investments.	• FBiH Ministry of Finance • FBiH Government • FBiH Parliament
FBiH, RS and BD Different entity-level regulations of the tax treatment of allowances for balance sheet assets of banks in the Entities and Brcko District	The regulations governing the corporate income tax in the Entities and BD BiH should be harmonized in the area referring to the tax treatment of the allowance for impairment of balance sheet assets of banks to ensure equal tax treatment for revenues/expenses impairments for tax purposes and the application of the international accounting standards.	• FBiH Ministry of Finance • FBiH Government • FBiH Parliament --- • RS Ministry of Finance • RS Government • RS National Assembly --- • BD BiH Finance Directorate • BD BiH Government • BD BiH Assembly

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH and RS Transfer Pricing	• The Law should stipulate that transfer prices are not to be set between the two affiliated business entities if both of them operate within a single tax jurisdiction and make profit. • The Rulebook on transfer pricing should make reference to the OECD Transfer Pricing Guidelines. • Precisely define the term "affiliated party", particularly the method of determining whether a party operated in accordance with the guidelines, requests, proposals or wishes of the other party or a third person. • The Law should define the threshold below which transfer pricing should not be tested. • Concluding APAs (Advanced Pricing Agreements) should be enabled, as it would significantly facilitate the business of both taxpayers and the tax inspectorates.	• FBiH Ministry of Finance • FBiH Government • FBiH Parliament --- • RS Ministry of Finance • RS Government • RS National Assembly
PERSONAL INCOME TAX		
FBiH Unclear tax treatment of foreign natural persons earning personal income at resident legal entities	The FBiH Ministry of Finance and the FBiH Tax Authority should prescribe: • the forms for reporting and taxation of foreigners' income under the secondment/delegation agreements, as well as any other income earned during their stay in BiH, • application of tax exemptions under the interstate agreements (SCC and PIT)	• FBiH Ministry of Finance • FBiH Tax Authority
FBiH Complicated procedure for paying taxes and contributions	Amend secondary legislation to reduce the number of payment orders when making the salary payments to the employees without violating constitutional and legal provisions determining the affiliation of public revenues or their allocation criteria.	• FBiH Ministry of Finance • FBiH Tax Authority
RS Nonconformity of the RS Law on Personal Income Tax and the RS Law on Social Security Contributions	Amend Article 9, paragraph (1) of the RS Law on Social Security Contributions in order to harmonize it with the RS Law on Personal Income Tax, so to define the term 'resident' in the same way, which would in turn ensure an equal treatment by tax officials when it comes to payments to foreigners (natural persons) and would not create dilemmas among taxpayers on how to proceed in cases where the payment is to be made to a foreigner who has not registered his/her residence in RS and does not have a work permit.	• RS Ministry of Finance • RS Government • RS National Assembly

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
VALUE ADDED TAX (VAT)		
BiH Necessity of releasing leasing companies from the obligation to charge VAT on interests arising from financial leasing contracts	Amend Article 20, paragraph (10) of the BiH Law on VAT so that the tax base does not include the amounts of interest that are calculated by the seller, that is, the supplier of financial leasing, rental or other services, on the amount owed by the purchaser if, from contracts or other documentation on the payments, it can be determined which part of any payments concerns interest, i.e. provided that the interests and pertaining contract handling costs are charged and presented separately from the leasing delivery fee.	• Ministry of Finance and Treasury of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
BiH VAT refund to persons who do not have registered business in BiH	the ITA should interpret Article 93 of the Rulebook on the Implementation of the Law on VAT in the context of Article 53 of the Law on VAT, in the sense that this right is not applicable only to the foreign taxpayers performing a specific business activity, but to all foreign taxpayers, in accordance with the other requirements prescribed by the BiH Law on VAT and its implementing regulations.	• ITA
BiH Issuance of opinions by the ITA BiH	Article 50 of the Law on Indirect Taxation Procedure and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions by ITA should be amended in such a way that an opinion may be sought even after a specific action has already been taken, i.e. after a VAT return has been submitted. Issued opinions should be published on the official ITA website. Give the right to appeal in cases where ITA has issued an opinion that the taxpayer assessed as lacking legal grounds.	• ITA • Ministry of Finance and Treasury of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
BiH Double taxation issue	It is vital to adopt a new Law on VAT in BiH that will be in compliance with the EU regulations in order to avoid double taxation or non-taxation.	• ITA • Ministry of Finance and Treasury of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
BiH Lack of possibility to correct erroneously calculated output VAT	The ITA should enable taxpayers to update incorrectly calculated VAT, provided that the error is corrected in favour of the customer pursuant to Article 55, paragraph (11) of the Law on VAT, and prescribe a detailed procedure for such a correction.	• ITA
BiH Treatment of VAT in case of bad debt purchase	The ITA should accept the legal opinion of the EU Court of Justice in terms of tax treatment of the purchase of bad debts, given that the definitions of taxpayer and economic activities provided in the Directive on the EU's common system of VAT and the ones provided in the BiH Law on VAT are very similar.	• ITA

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
	EXCISE DUTIES	
BiH Abolition of excise duties payment in advance	Initiate a procedure for amending Article 23 of the BiH Law on Excise Duties, according to which excise on tobacco products will be paid through delayed payment with a specified deadline.	• ITA • Ministry of Finance and Treasury of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
BiH Removing prices from excise stamp on tobacco products	Initiate a procedure for amending Article 25, paragraph (5) of the BiH Law on Excise Duties according to which tobacco products will be labelled with control excise stamps, while the prices will be published in the Official Gazette. Such amendments would contribute to avoiding confusion caused by outdated excise stamps after introducing new prices, and bring other benefits.	• ITA • Ministry of Finance and Treasury of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
BiH Growth rate of excise duties on tobacco products	Adopt amendments to the current BiH Law on Excise Duties as soon as possible, in order to enforce a three-year moratorium on increasing excise duties on tobacco products. As a result, the market would be stabilized and the illegal trade reduced.	• ITA • Ministry of Finance and Treasury of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
BiH Lack of possibility to refund excise duties paid on exported excise products	The practice under which the ITA deprives the exporters of the right to refund excise duties upon their export of the excise product, justifying it by the fact that the exporter is not the person who paid the excise duties to the account of ITA, should be abolished. The BiH Law on Excise Duties should clearly stipulate any exporter is entitled to an excise duty refund, regardless of who actually paid the excise duty.	• ITA • Ministry of Finance and Treasury of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH
	PARA-FISCAL CHARGES	
FBiH and BD Elimination of para-fiscal charges	It is necessary that FBiH and BD BiH urgently adopt their respective framework laws stipulating that all fees and charges should be published in the corresponding registry of fees and charges and adopted and prescribed by the relevant laws. Each new proposal to modify and introduce a certain fee/charge should take into account and apply the following principles: • Legality • Equivalence • Rationality • Fair tax base assessment • Fair identification of taxable persons	• FBiH Ministry of Finance • FBiH Government • FBiH Parliament --- • BD BiH Finance Directorate • BD BiH Government • BD BiH Assembly

SHADOW ECONOMY

INTRODUCTION

Shadow economy is one of the biggest challenges for business development and economic growth in BiH. Being physically invincible and intangible, but then again noticeable due to the national account imbalance and the slowdown in GDP growth, makes this 'sector' very difficult to control and supervise. Unfortunately, there is no reliable data on the shadow economy anywhere in the region. According to some independent research, BiH's shadow economy accounts for about 25.5% of GDP, making it the country with the highest rate of shadow economy in the Central and Southeast Europe region, losing billions of BAM on an annual basis.

Due to the loose legal system, inefficient controlling authorities and judiciary, the country, unfortunately, generates losses in its undertakings and budgets, as a result of the shadow economy. Corruption and shadow economy, which are inseparable, are one of the greatest challenges in the contemporary world, and the former is, in different shapes and sizes, present almost everywhere, even in the economically most powerful, most democratic and most organized countries. However, corruption is particularly dangerous for countries in transition, such as BiH.

Large international and national (local) companies that regularly pay their taxes, legally import goods and register their employees often suffer because of businesses participating in the shadow economy, as they are unable to compete with them.

Although certain economic theories argue that shadow economy may have some short-term positive effects (such as increasing employment, better use of available resources, increasing the overall level of economic activity, etc.), there is no doubt that such a situation inevitably leads to decay and deterioration of the economy in the long run, and ultimately to the degradation of the social value system. Without a proper value system, it will not be possible to arrive at an effective economic or stable social community. Accordingly, what in the short term appears to be a positive outcome or a good option for generating "quick results" or "fast money" by individuals, in the long run leads to the degeneration of the country's economic life, and thus of the lives of its citizens, given that the shadow economy undoubtedly "sponsors" political instability, lack of rule of law, corruption, lack of transparency, unpredictability of the market, and ultimately poverty and unemployment, i.e. all the key factors that adversely affect the economy of a country.

We, as the representatives of serious and responsible companies, expect and demand from the state to set up a system that will combat the shadow economy with an emphasis on regional cooperation. This primarily requires political will as a key factor for achieving tangible results.

The combat strategies must be focused on establishing and strengthening institutional capacities – in particular at the judicial and law enforcement bodies, improving the legislative framework and promoting and implementing preventive activities. It is also important to work on raising public awareness of this issue and promote the participation of the entire society in the fight against the shadow economy, as well as to establish mechanisms for implementation, coordination and evaluation of the strategy.

These combat strategies should be designed in different areas, for different manufacturing sectors and different types of businesses, with the aim to appropriately address the specific factors, both economic and social, that are encouraging the shadow economy.

INFORMAL EMPLOYMENT (undeclared work)

FBiH, RS and BD: OPEN ISSUE

Informal employment or undeclared work involves engaging workers without a formal contract, primarily for the purpose of evading mandatory taxes and contributions arising from an employment. According to the International Labour Organization (ILO), one out of four workers in Bosnia and Herzegovina is undeclared and the reason for this situation rests with high taxes/social and health insurance contributions arising from employment that are discouraging new hires and higher

employment incentives. The aggregate rate of mandatory contributions to be borne by employers in the FBiH is 41.5%, in RS, it is 33%, while in BD BiH it accounts for 36.5% or 31.5%, depending on the Entity law applied by the employers. The absence of an employment contract is not only an indication of undeclared work and tax evasion, it also indicates an inefficient labour market, lack of effective protection of both employees and employers, and the low level of employers' trust in the judicial system. The largest number of undeclared workers has been detected in the construction sector, trade, tourism and catering, carriers business, insurance agencies, bookmakers and casinos, but also among craftsmen.

FBiH, RS and BD: RECOMMENDATION

In addition to reducing taxation on labour and para-fiscal charges, which employers are required to pay, and for the purpose of encouraging them to register their workers, it would be necessary to take the following measures with a view to combat undeclared work and increase the employment rates:

- Set up an IT system with the aim of reducing informal employment through cross-networking of competent institutions and increasing transparency of the labour inspectorates' activities. The access to this IT system should be granted to the labour inspectorates, the central registry of mandatory social and health insurance, misdemeanour courts, other inspectorates, registries of companies, ministries of internal affairs;
- Strengthen the penal policy with respect to the employers who fail to register their workers (introduce the possibility of initiating criminal proceedings against an employer acting in the above-described manner), and enact an enforcement procedure under which the fines would be enforceable forthwith and without initiating judicial proceedings against the offenders, by amending the criminal and misdemeanour Laws;
- Further legalise the forms of flexible employment (e.g. leasing of workers).
- The FBiH Government to adopt a decree prescribing the minimum number of employees required for performing specific economic activities.

UNREPORTED CASH TRANSACTIONS

BiH, FBiH and RS: OPEN ISSUE

A very important common factor for most types of shadow economy is that cash payments allow the seller not to report the transaction. With only a few exceptions, if an electronic payment was used instead of cash, it would hardly be possible not to register the transaction.

In BiH, the shadow economy related to unreported cash transactions can be divided into two categories, each requiring different measures.

The first component is that part of the shadow economy that can be reduced by promoting electronic payments and limiting the use of cash in consumer transactions. Since cash payments leave no electronic trace, it is relatively easy to avoid reporting them. Cash payments can thus generate shadow economy activity, as they provide an incentive for the merchant not to report a transaction and evade paying tax. This part of the shadow economy is called the "passive shadow economy", because one side of the transaction (the consumer) is "passive" in the sense that he/she does not benefit from not reporting the transaction, and may not even be aware that he/she is contributing to the expansion of the shadow economy through the cash payment.

The second category is the remaining part of the shadow economy, where it is not the cash payment that influences the decision not to report the transaction, but the motivation of both sides of the transaction to benefit from evading tax liabilities or to sell/buy illegal products/services. In this situation, cash payments are (usually) still required to hide the transaction, but it is no longer the source of illegal activity, but rather its consequence. We define this part of the shadow economy as the "committed shadow economy", because in this case both sides of the transaction are "committed" to using cash in order not to report this transaction and to benefit from a lower price stemming from evaded tax payments.

BiH, FBiH and RS: RECOMMENDATION

The most important measure in financial sector would be the reduction of cash payments in circulation. Transfer to non-cash payments would reduce the share of informal economy in BiH. Payments via electronic channels can be encouraged

in sectors that are cash dominant. It is also necessary to analyse the possibility of subsidizing POS to small and medium size companies as well as the introduction of fiscal incentives for electronic payments. As government is the biggest payer/payee in the country it should lead by example by transferring all kinds of payments from and to Government to electronic means and promoting the use of Government platforms.

Here are some examples of concrete measures that can be considered:

a) POS Receipt Lottery

The idea of receipt lotteries is to reduce the levels of shadow economy by limiting unreported transactions through the increased issue of fiscal receipts in business-to-consumer transactions. Specifically, consumers are provided with an incentive to ask for a receipt, as it may also serve as a free of-charge ticket in VAT lotteries, therefore giving its holder a chance to win attractive prizes. In the longer perspective, this measure aims to get consumers used to asking for fiscal receipts. It is often assumed that, after a certain period of time, people will develop such a habit (e.g. by making asking for receipts socially acceptable and desirable, or by raising awareness of the benefits of combating the shadow economy), and will therefore continue to demand fiscal receipts even without such an additional monetary incentive.

Extending the scope of the fiscal receipt lottery by allowing the registration of POS slips will provide participants with the incentive to double their chances of winning – with one purchase they will be registering two separate participation tickets, namely the fiscal receipt and the POS slip. The extension of the scope of the lottery would additionally contribute to raising consumer's awareness about the benefits of electronic payments in the fight against shadow economy and to creating the culture among consumers to pay electronically. Introducing the POS slips to the classic receipt lottery creates an additional incentive for citizens to participate and at the same time its realization does not involve any additional funding on behalf of the Government.

Examples from other markets:

Serbia: Serbian citizens sent a total of 8,565,007 envelopes in the "Take a receipt and win" prize game. The total value of the sent fiscal receipts is estimated at 70 billion dinars, of which the direct budget revenue exceeds 9 million EUR. On average, every citizen of Serbia sent 1.2 envelopes, and according to the organizers' estimates, 25 to 40% of the population participated in the prize competition. After the end of the first cycle of the prize game the National Bank of Serbia, published the results of the effect of the lottery on the promotion of electronic payments in Serbia – 18.5% increase in number of electronic transactions and 17.5% growth in the total volume of transactions (compared to Q1 2016).

Bulgaria: 30 million BGN was the fiscal effect of the Bulgarian Fiscal receipt lottery in 2016 organized by the Bulgarian National Revenue Agency and the Ministry of Finance. Approximately 51 million fiscal receipts have been registered throughout the 12 months of the campaign. The project was continued in 2018. This time the Government upgraded the initiative by including POS slips.

b) Purchase with Cash-Back

A service which enables the customer to withdraw cash, as a service auxiliary to the sale of goods, by using payment card at merchant who possesses a POS terminal at its premises. Cash is withdrawn upon authorization of the relevant sum by the customer in question through his/her payment card, which authorization would cover the actual purchase of goods as well as the cash "withdrawal". PWCB service has been introduced in a number of jurisdictions, including Bulgaria, Poland, Czech Republic, Serbia, Sweden, United Kingdom, and the United States. In average, the maximum amount of cash which may be withdrawn using PWCB service in the aforementioned jurisdictions is from EUR 40-125.

Benefits of the measure:

For the Government

- Leads to an increase in use of electronic payment (cards) and more successful combat against shadow economy.
- Shift from ATM to POS transactions – customer needs to make a purchase if they want to withdraw the money
- Further modernization and development of financial market
- Drives forward financial inclusion, esp. in rural areas.

For customers:

- More convenient means of cash withdrawal, wider cash access network, save time
- Cash withdrawal is now brought closer to customers at no extra cost

For the merchants

- Increased security of daily income and reduced costs connected with the cash transfer to the bank.
- Competitive advantage, increase customers loyalty
- Commission from acquiring bank for providing this service – new revenue source

For Society

- Contributes to the financial education for people who have little exposure to modern payment forms.
- Create new positive habit of customers – decrease ATV of cash withdrawal due to wider cash withdrawal network
- Further development of cash withdrawal network, especially in small towns where consumers have difficult access to cash.

Why PWCB is beneficial for BiH?

- Many rural areas where maintaining ATMs is not seen as profitable by banks and people need access to some "pocket money".
- Average cash withdrawal is 20% of average net salary – this may be due to not well developed ATM network and lack of habit to purchase with a card.
- Large number of financially excluded persons.

c) Introduction of Cap for Cash Payments

This regulation defines a certain monetary value (threshold) for a single transaction above which consumer cash payments are not allowed. Consequently, consumer cash transactions above the introduced threshold should disappear and be replaces with additional electronic payments, thus reducing the levels of cash in circulation.

Important to consider:

- Differentiated thresholds for C2B and B2B transactions.
- Consider step-by-step approach.
- Combine this measure with the obligation of retailers to operate POS in order to ensure having well-developed acceptance infrastructure

Other EU member states examples:

Belgium	• No cash transactions allowed for real estate transactions • Maximum of 3,000 EUR for goods and services transactions • If the amount of the sale exceeds 3,000 EUR, only 10% can be paid in cash. The remaining amount should be paid by card, cheque, bank transfer, etc. • A purchase cannot be split in different invoices. • There is no limit for transactions between private individuals e.g. person A buys a second hand car from person B. The transaction, regardless of the amount, can be in cash.
Bulgaria	• Domestic transactions above 5,000 EUR should be carried out via bank transfer or deposit on a payment account.

France	• Cash payments for goods and services in France have been limited to a maximum of 1,000 EUR (previous threshold was 3,000 EUR). • The rule applies both for consumers to businesses and business to business transactions. • The cash limitation DOES NOT apply to transactions between private individuals, which remain unhampered by limits. Neither does it apply to non-residents, who can settle in cash up to 15,000 EUR provided it is not a business to business transaction, in which case the 1,000 EUR limit applies.
Romania	• Cash payments made or received by professional entities may be realized only if the amount falls under a daily threshold of RON 5,000 (1,126 EUR) per person. Such professional entities include, among others, legal entities, authorized natural persons and freelancers. • Cash payments between professional entities and natural persons pursuant to certain operations such as assignment of receivables, repayment of loans, delivery of goods or rendering of services may be made only if the amount falls under a daily threshold of RON 10,000 (2,245 EUR) per person. This threshold is not applicable for the collection of payments in instalments, undergone by professional entities. • Cash payments between natural persons pursuant to the transfer of ownership of goods or rights, the delivery of services, the granting or the repayment of loans may be made only if the amount is under a daily threshold of RON 50,000 (11,224 EUR) per transaction. • Operations other than those mentioned above must be made via non-cash payment instruments. • If the amount due exceeds the threshold, the payment cannot be divided into smaller amounts in order to meet the relevant requirements. • If professional entities have more than one cashier's desk, or their branches or secondary offices have an independent cashier's desk, the thresholds apply per each cashier's desk. The thresholds apply to both Romanian and foreign currency payments.

SHADOW ECONOMY IN THE TOBACCO AND TOBACCO PRODUCTS TRADE

BiH, FBiH and RS: OPEN ISSUE

Losses in the BiH state revenues caused by the continuous increase in excise duties and the growth of illicit trade in tobacco products have increased to more than 500 million BAM in 2018 only, and to 1.3 billion BAM over the last three years[6]. The share of illicit tobacco trade on the market accounts for as high as 54%, and as such is by far the highest in the region. Translated into the context of infrastructure projects, only in 2018, BiH suffered tax revenue loss sufficient to fund 30 kilometres of highway. Illicit trade in tobacco and tobacco products is evident at every corner. Citizens are provided with unrestricted supplies of illicit products at green markets, street stalls and even in some tobacco shops selling non-taxable products. Unfortunately, the authorities have not focused on combating tobacco smuggling in a proper and systematic way, and this is an obvious problem as smuggling occurs in public places and open markets. The illicit products are by far cheaper, and therefore more affordable, than the legal ones. Due to the excessive excise duties on cigarettes, a pack of legally sold cigarettes is two to two and a half times more expensive that the illicit one. Arguing that high excise duties on tobacco products have an effect on reducing smoking is hardly plausible in a reality where the cigarettes and tobacco black market is an available alternative to consumers. In addition, illicit products do not undergo quality control and as such pose a danger to consumers. The consequences of this situation, inadequate excise policies and the insufficient suppression of illicit trade have a negative impact on the state and the state budget dedicated to public expenditure, lawful businesses, the entire supply chain, including production, distribution and sales, and the citizens in two ways: firstly, because the money which would raise the standard of living is lost, and secondly, because the consumers are exposed to uncon-

6 Indirect Taxation Authority, Department for Macroeconomic Analysis

trolled products. In order to combat the shadow economy, as part of the economic reforms, the Entity governments, at a joint session that was held back in October 2017, adopted the Action Plan of Priority Measures to Combat Shadow Economy with a special emphasis on tobacco excise duties. This initiative of the FBiH Government and the RS Government was the starting point for initiating the process of amending the BiH Law on Excises Duties in order to remedy the tobacco market and mitigate the effects of the booming black market.

BiH, FBiH and RS: RECOMMENDATION

Addressing the issue of tobacco black market requires the willingness of the competent authorities, including law makers and the implementing agencies and institutions, to review and address this issue systematically and at its source. BiH needs a set of comprehensive activities aimed at combating the shadow economy and illicit trade, including increased control of illegal trade by market and tax inspectorates, police check-ups at border crossings, traffic points and open markets, as well as other measures that will lead to significant tax revenue returns. Therefore, a comprehensive police and inspection action at all levels in the country is needed to cut off illegal supply and sales channels. Furthermore, neighbouring countries have successfully implemented campaigns aimed at conjoining all competent authorities in the fight against black market, as well as raising public awareness of its consequences.

First and foremost, it is necessary to amend the current excise policy in order to enable partial stabilisation of the market. BiH has been increasing excise duty rates on tobacco products for a decade in order to align its regulations with the EU Directive on minimum excise duty rates ignoring the purchasing power of its population and the fact that the said Directive is not binding on non-EU countries. Adopting amendments to the Law on Excise Duties on Tobacco and Tobacco Products in line with the BiH Council of Ministers' proposal to impose a three-year moratorium on further increase of the excise duty rates, and taking a set of comprehensive measures by the responsible authorities are the only way for bringing the consumers back to the legal trade flows and achieving tax revenue growth.

We propose the following set of measures that will effectively contribute to reducing illicit tobacco trade:

- The competent ministries of finance should make an analysis of state revenues lost due to the illicit tobacco trade (i.e. products on which excise duties and VAT were not paid),
- The Indirect Taxation Authority should introduce the practice of regular reporting on the status and trends of excise revenues, and provide support to the ministries (finance, trade, internal affairs, etc.) regarding the measures taken with respect to excise products, inform the public on the excise duty rates and excise duty schedules in neighbouring countries, and strengthen their cooperation with law enforcement agencies,
- The law enforcement agencies should intensify the control at the state border crossings in order to prevent illegal imports of tobacco and tobacco products, and improve their cooperation (Customs, SIPA, Border Police, Market Inspectorates, etc.)
- The competent ministries of agriculture should better regulate the entire tobacco growing chain in the country (from farmers to buyouts), and introduce subsidy policies,
- The competent ministries of trade should calculate the effects of illicit trade in tobacco products on the overall economy and propose measures for combating illicit trade,
- Establish closer cooperation with the OLAF.

SHADOW ECONOMY IN THE PETROLEUM PRODUCTS TRADE

FBiH, RS and BD: OPEN ISSUE

Illicit trade and abuse of petroleum products is present on the BiH market in various forms and on a large scale. Besides the smugglers who deliver fuel using illegal channels and sell it on the BiH market, oil companies face additional problems resulting from an inadequate regulatory framework governing the petroleum products market.

Another problem is related to the import and distribution of base oils ('excise duty dilution' and other misuses). Since base oils are exempted from excise duties, they are often mixed with diesel fuel, which reduces the price of the latter and distorts the market competition.

A special aspect of the shadow market in the segment of petroleum products is unrecorded sales at petrol stations and direct theft from the end customers by calibrating the pump machine flow meters so that they display a flow rate that is lower than the actual one.

FBiH, RS and BD: RECOMMENDATION

The competent institutions should take appropriate measures to prevent the shadow economy in the petroleum products market, primarily for the purpose of protecting consumers, environment and ultimately the trustworthy oil companies that have invested significant resources in the development of their business in BiH, but in the first place for the purpose of collecting state revenues by bringing the market protection and fair competition to the fore. In this regard, it is necessary to take the following measures:

- Enhance overall surveillance by competent inspection authorities and conduct inspection measures for closing down the petrol stations that committed illicit actions for a certain period of time (up to 3 years),
- Introduce marking of petroleum products.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH, RS and BD Informal employment (undeclared work)	The following measures should be taken with a view of combating undeclared work: • Reduce mandatory tax and contribution rates arising from employment; • Set up an IT system through cross-networking of competent institutions with a view to a comprehensive fight against undeclared work; • Strengthen the penal policy with respect to the employers who fail to register their workers; • Further legalise the forms of flexible employment (e.g. leasing of workers); • The FBiH Government to adopt a decree prescribing the minimum number of employees required for performing specific economic activities.	• FBiH Government • FBiH Parliament • FBiH Labour Inspectorate --- • RS Government • RS National Assembly • RS Labour Inspectorate --- • BD BiH Government • BD BiH Assembly • BD BiH Labour Inspectorate
BiH, FBiH and RS Unreported cash transactions	The most important measure in financial sector would be the reduction of cash payments in circulation. Transfer to non-cash payments would reduce the share of informal economy in BiH. Payments via electronic channels can be encouraged in sectors that are cash dominant. It is also necessary to analyse the possibility of subsidizing POS to small and medium size companies, as well as the introduction of fiscal incentives for electronic payments.	• BiH Council of Ministers • BiH Ministry of Finance and Treasury • Indirect Taxation Authority --- • FBiH Government • FBiH Ministry of Finance --- • RS Government • RS Ministry of Finance
BiH, FBiH and RS Shadow economy in the tobacco and tobacco products trade	First and foremost, it is necessary to amend the current tobacco excise policy in order to enable partial stabilisation of the market. In addition, implement a set of comprehensive activities aimed at combating the shadow economy and illicit trade, including increased control of illegal trade by market and tax inspectorates, police checkups at border crossings, traffic points and open markets, as well as other measures that will lead to significant tax revenue returns.	• BiH Council of Ministers • BiH Ministry of Finance and Treasury • Border Police • Indirect Taxation Authority • SIPA --- • FBiH Government • FBiH Ministry of Finance • FBiH Ministry of Agriculture, Water Management and Forestry • FBiH Ministry of Trade • FBiH Market Inspectorate --- • RS Government • RS Ministry of Finance • RS Ministry of Agriculture, Forestry and Water Management • RS Ministry of Trade and Tourism • RS Market Inspectorates

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH, RS and BD Shadow economy in the petroleum products trade	To prevent the shadow economy in the petroleum products market, it is necessary to take the following measures: • Enhance overall surveillance by competent inspection authorities and conduct inspection measures for closing down the petrol stations that committed illicit actions for a certain period of time (up to 3 years); • Introduce marking of petroleum products.	• Market Inspectorates in the FBiH, RS and BD

THE RULE OF LAW

INTRODUCTION

It is indisputable that BiH has made significant progress in terms of judicial system reform over the last decade by adopting a series of procedural and substantive laws, which was necessary for the normal functioning of a democratic state and for meeting the requirements of the EU Stabilization and Association Agreement (SAA) that, *inter alia*, call for the strengthening of judicial institutions and the rule of law. In this respect, the endorsement of the BiH 2015-2018 Reform Agenda in 2015 reemphasized the need to implement further reforms in the rule of law area.

The objectives set out within the implementation framework of the aforementioned Reform Agenda included, *inter alia*, improving of compliance with the standards of professional ethics and integrity of judicial office holders by prescribing objective criteria for their appointment, as well as improving disciplinary responsibility of judicial office holders by adopting new rules of disciplinary procedure and introducing new disciplinary measures. In addition, the necessity to have court decisions made within a reasonable period of time was also pointed out, as well as to improve the procedures for the sale of seized property and enhance the role of court bailiffs in order to reduce the burden on courts within the enforcement proceedings.

Moreover, as a result of the long-standing practice which entails plans for resolving the oldest court cases first, which the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH) introduced in 2011 aiming to reduce a large number of backlog cases, the courts resolved more than 800,000 long-pending backlog cases over the period between 2011 and 2017. In 2017 alone, the Courts in BiH resolved 150,000 backlog cases, and additional 56,129 backlogs in the first quarter of 2018, thus implementing 36 percent of the plan so far. The plan was to resolve 157,131 backlog cases by the end of 2018. The relevant indicators also show that increasingly large number of cases are settled by a court settlement[7].

However, although the number of backlog cases is decreasing, from the perspective of foreign investors in BiH, there is still a lack of tangible increase in the case processing efficiency in the courts throughout BiH, i.e. the improvement of the BiH judicial system, which is, *inter alia*, caused by the ineffective implementation of individual goals aimed at the improvement of the rule of law in BiH.

Bearing in mind the importance of an efficient judiciary as a guarantee of legal security for foreign investors, and in line with the currently pursued reforms, below are certain deficiencies identified in the area of the rule of law in BiH and pointed out by the FIC members.

SPECIALIZATION OF COURTS AND JUDGES (in commercial cases)*

FBiH and RS: OPEN ISSUE

Adoption of an increasingly large number of laws governing different areas, and their complexity, suggests that there is a growing need for specialization of judges in certain areas of law, as well as the appointments of judges who have acquired their previous work experience and specialization in different economic fields (e.g. financial sector, information technology, etc.). 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 for judges.

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

Moreover, some cases require familiarity with the concepts that surpass the legal sphere and require additional training for their optimal resolution (e.g. some commercial disputes require the knowledge of certain economic concepts or market conditions, as well as the matters relating to the competition, banking products, etc.).

In other words, improving investment-friendly business environment cannot be fully achieved if

7 According to the HJPC data, there were 1,620 court settlements in all courts across BiH in the first quarter of 2018.

the investors, who – given their business activities and often high-value commercial disputes, need an effective resolution of their disputes – lack the confidence that their case will be resolved efficiently and soundly by judges who have, through their specialization, achieved the appropriate level of expertise to deal with such cases.

Furthermore, assigning cases to individual judges is performed automatically, in accordance with Article 8 of the Rulebook on Automatic Case Management System in Courts, which ***inter alia*** stipulates that the cases should be assigned according to the specialization of judges following the principle of uniform random allocation of cases based on the pre-determined parameters set by the Court President in his/her decision on the assignment of cases; however, the said Rulebook does not specify the type of information that should be used for determining these parameters (e.g. experience in a particular type of cases, training, etc.), which is essential for ensuring proper automatic assignment of cases to judges holding appropriate specialization.

Yet no adequate measures have been taken, nor has an adequate training and specialization system been established for all the judges, particularly those adjudicating in commercial disputes. All this is on a rather voluntary basis and up to the judges to decide at their own discretion which training courses to attend, while no judge is put under scrutiny in case of, for example, rendering a wrong decision although s/he has attended the training course on the particular subject matter and might have received all the information necessary for proper decision making.

FBiH and RS: RECOMMENDATION

When it comes to commercial cases, improving of specialisation of courts and judges is closely related to the issue of effective case management. In this regard, foreign investors support the conclusions presented in the World Bank's feasibility study from December 2016 entitled '***Improving commercial case management in the Federation of Bosnia and Herzegovina***' (hereinafter referred to as the Feasibility Study), based on which the existing commercial case departments need to be reorganized and strengthened.

Specifically, when it comes to court's specialization, it is necessary to implement changes related to periodic rotations of judges in and out of those departments. These changes could be effected through a review of the rules on the delegation of cases.

In this regard, it is also necessary to revisit the internal organization of courts through a review of responsibilities between judges and legal associates with the aim to effectively delegate administrative work, all through strengthening the managerial role of Presidents of commercial departments.

According to the Feasibility Study, it is necessary to establish incentive mechanisms to boost performance within the commercial departments by designing a rewards programme, which requires a set of minor legislative changes, and which would be in accordance with the relevant ethical rules, all with the help of benchmark analysis of good EU practices.

As it is necessary to review the method of appointment, oversight and sanctions for expert witnesses and bankruptcy trustees, it would also be desirable to explore the possibilities of introducing a more robust scrutiny over the work of judges in order to optimize their responsibility in day-to-day decision-making processes, especially when deciding on multimillion-worth disputes. In practice, it is not known that a judge was held in any way responsible for the damage caused to the parties, i.e. investors, which should in no way be justified by the fact that the judge is independent in his/her work, impartial and autonomous in making his/her decisions irrespective of their consequences in case of unlawful decisions. This is true, however, it raises the question of how it is possible that no one is responsible for the damage caused to the parties due to mistakes that cannot be subsumed under the foregoing.

In this context, the experience of other EU countries could be used to define the legal nature of disciplinary proceedings against judges, since the current legislation is not clear whether disciplinary proceedings against judges fall under civil or criminal law (i.e. it is not clear whether they should be subject to criminal or civil procedural law). It is also necessary to clarify if a disciplinary action can be called for against Court Presidents.

Finally, strengthening the role of the FBiH Supreme Court with respect to issuing legal opinions would be of great importance for improving effectiveness in commercial cases.

Regarding the specialization of judges, the high complexity of commercial cases calls for a higher degree of specialization of judges to enable them to better identify certain legal specificities of such cases. In this regard, it is necessary to ensure targeted training for judges by identifying specific areas of commercial law (e.g. intellectual property, personal data protection, competition law, taxes, public procurement, finance and banking) that require more systematic training approach.

One of the ways to implement this recommendation could be to have the Judicial and Prosecutorial Training Centre (CEST) develop a training programme that would be compulsory for each judge serving in the commercial departments of municipal/district commercial courts, with a focus on the above-identified branches of commercial law at different specialization levels (e.g. basic, intermediate, advanced, etc.) supported by experts from each of the mentioned branches. In order for the CEST to be able to compile a training programme tailored to commercial cases, a Training Needs Assessment should be conducted using, ***inter alia***, a problem-solving approach to analyse the usual complaints or consult with the business sector in BiH. Such training courses should then be mandatory for all judges and legal associates serving in the commercial departments/commercial courts. In relation to the above, there is also the question of whether there is a need for the Entity-level Judicial and Prosecutorial Training Centres to be converted into judicial academies.

Records could be kept of such training courses for the purpose of assigning cases to judges who have attended particular courses, and based on the level they have successfully completed. Having regard to Opinion No. 19 of the Consultative Council of European Judges (CCJE) - 'The Role of Court Presidents' (which states: '***Judicial training and education is often organised and managed by central judicial institutions and as a result, court presidents often perform a limited role in this area. Presidents should advise the judicial training institutions on the needs for specific training courses. They should make use of the specialised expertise and knowledge of their training institutes concerning training and development. Moreover, presidents play an important role in encouraging the judges to participate in relevant training courses and to create the conditions for this***'), we are of the opinion that court presidents and chief prosecutors, as well as judicial office holders should be enabled to attend primarily the training programmes that correspond to their specific schedules in the courts and prosecutor's offices and the types of cases which have been assigned to them. Taking into account the current capacities of courts, this can be ensured by clearly defining a set of rules based on which the court presidents make decisions on assigning the cases where parameters for automatic assigning of cases to judges are set within the case management system. The main assigning criteria should primarily be the judges' previous professional experience and the training programmes they have attended.

On the other hand, it should be prescribed that the attendance of judges at these training courses is mandatory and that the judges are obliged to attend them instead of having their attendance dependent on the court presidents' discretionary decision. An additional concretization of this proposal would be an amendment to the procedural laws that will require commercial department judges to be accredited by training as of 2018.

It should be proposed to the HJPC to start evaluating the work of judges in actual fact and to have them either adequately rewarded, or sanctioned for their ignorance, negligence or, worse, for possible abuse of office or acceptance of gifts or other benefits. If the performance of judges is already monitored on an individual basis and if there is already a track record of confirmed, abolished or recast decisions, how come that nothing happens even though the percentage of abolished or recast decisions is disproportionate to the number of correct ones?

Judges should be appointed in such a way as to ensure that they have significant/relevant work experience in particular industries or business areas, for instance, finances, banking, and the like. This would significantly improve the judiciary and facilitate faster and fair trials. In that sense, one of the solutions for improving the specialization of judges would be to consider the need for introducing the requirement of a minimum years of relevant work experience in the commercial sector, if to be assigned to such cases.

THE RIGHT TO TRIAL WITHIN A REASONABLE TIME*

FBiH and RS: OPEN ISSUE

One of the rights guaranteed by the Constitution is the right to a fair trial the key element of which is the right to a decision, i.e. the right trial within a reasonable time. It is this element in particular, i.e. the breach of the right to trial within a reasonable time - that is the main issue faced by the judicial system in BiH. Specifically, in everyday practice, we see the inefficiency of the judiciary, long-lasting trials, as well as the failure to comply with court decisions, even though, there are numerous legal documents in BiH that are aimed at ensuring the right to trial within a reasonable time, as is the case with the Laws on Civil Procedure (hereinafter referred to as: LCP) in RS and FBiH, respectively. Although at first glance it seems that there are control mechanisms with respect to the proceedings duration and exercising the right to trial within a reasonable time, we witness a non-compliance with these provisions on a daily basis. This is particularly true of labour disputes and enforcement proceedings that have been pending for years, although they should have been resolved expeditiously, as prescribed by the law. Efforts to remedy such situations in practice and to improve the methods of conducting the proceedings resulted in the enactment of the Rulebook on timeframes for handling the cases in the courts and prosecutors' offices in Bosnia and Herzegovina, the Rulebook on referential criteria for the work of judges and expert associates in BiH Courts, the 2014–2018 Action Plan of the High Judicial and Prosecutorial Council of BiH and the 2014 – 2018 Strategic Plan of the High Judicial and Prosecutorial Council of BiH. All of these documents provide for instruments that should result in lawful, proper and timely resolution of court cases where any violation of the parties' right to trial within a reasonable time would be reduced to a minimum. Unfortunately, all of them lack the specific sanctions in case of unreasonable duration of proceedings. Law theorists have been warning, and the practitioners confirmed that without specific sanctions, it will not be possible to make effective improvements aimed at shortening unreasonably long court proceedings. Therefore, all previous pieces of legislation, strategies and action plans on this subject are, in effect, only a dead letter.

Due to the long waiting time for the final settlement of the court proceedings and the breach of the right to a fair trial with respect to having a decision rendered within a reasonable time, the parties face enormous amounts of statutory default interests that can be largely avoided by more efficient and timely work of the judiciary. The best example that could be used for illustrating the negative aspects associated with the breach of this right and the inefficiency of the judiciary is the legal mechanism of counter-enforcement as defined in the entity-level laws on enforcement proceedings, where, for instance, in case of a motion for counter-enforcement pursuant to Article 54, paragraph 1, item 1 in conjunction with item 3 of the FBiH Law on Enforcement Procedure, the Law prescribes a deadline which, in most cases, cannot be met, thus making this legal mechanism purposeless. This is, indeed, a major issue in the situations where multi-million amounts have been paid upon a verdict that is subsequently abolished or recast and where the parties are not in a position to use the counter-enforcement mechanism to recover the funds thus paid within the shortest possible time.

The consequence of such a state of affairs is also the fact that in practice, a significant number of judges mostly focus on examining whether the lawsuit or the response to the lawsuit meets the formal requirements for the continuation of the proceedings without delving into a deeper analysis of the case, its possible complexity, its eligibility for mediation or court settlement and planning the future course of the proceedings.

FBiH and RS: RECOMMENDATION

For the purpose of expediting court proceedings, it will be necessary to adopt a concrete package of measures which will, on one hand, introduce specific sanction measures in case of breaching the right to trial within a reasonable time, and on the other hand, disburden judges enabling them to handle disputes quickly and efficiently. One possible measure is the establishment of the legal mechanism of protecting the right to trial within a reasonable time. If truth be told, this legal mechanism is already largely used in the decisions rendered by the BiH Constitutional Court. In a significant number of its decisions, the BiH Constitutional Court found that the right to trial within a reasonable time had been breached and ordered

an appropriate indemnification to be paid to the party whose right had been breached[8].

However, we are of the opinion that the request for protection of the right to trial within a reasonable time should be incorporated into the legislation of the Entities and Brcko District in a manner similar to that applied in the neighbouring countries. Thus, in Montenegro, this legal mechanism was introduced back in 2007 through a special Law on Protection of the Right to Trial within a Reasonable Time. The Republic of Serbia followed by adopting its Law on Protection of the Right to Trial within a Reasonable Time in 2015, while the Republic of Croatia introduced this legal mechanism in 2013 under the Law on Courts. The introduction of this legal mechanism, either through a special law at the entity and Brcko District level, or within the current laws on courts, would significantly expedite the decision-making processes with regard to the protection of the parties' rights to trial within a reasonable time, or disburden the BiH Constitutional Court.

Similarly to the legal arrangements in the neighbouring countries, this legal mechanism should contain the following major components:

- the authority deciding on the requests for protection of the right to trial within a reasonable time should be the president of the court where the breach occurred;
- the time period in which the president of the court is to decide on the request for protection of the right to trial within a reasonable time should not exceed 60 days[9];
- legal remedies to protect the right to trial within a reasonable time would be a complaint aimed at expediting the proceedings and an appeal and motion for just satisfaction;
- the procedure in case of merits of the request: at this point various issues should be considered, starting from defining the time period in which the court should resolve the case, which is subject to a breach of the right to trial within a reasonable time, to removing the trial judge from the case and assigning the case to another judge, etc.;
- compensation in case of merits of the request: when determining this compensation one should primarily take into account the abundant practice of the BiH Constitutional Court, as well as the legislation in force in the neighbouring countries[10];
- the actual procedure for determining a breach of the right to trial within a reasonable time is, by its nature, an expedited procedure and the court would be merely verifying the merits of the request, i.e. whether the right to trial within a reasonable time has been breached or not, without relying on the merits of the dispute in which such a breach occurred. The procedure for the protection of the right to trial within a reasonable time could be subject to the extra-contentious procedural law, and the verdicts could be made in the form of decisions.

In addition, it would be worthwhile to increase the competences of the HJPC in terms of supervising the lawfulness and the efficiency of judges in conducting judicial proceedings, by, *inter alia*, prescribing sanctions against judges in case of missing the legally prescribed deadlines for proceeding in court cases (e.g. the deadline for scheduling preparatory hearing in civil cases, and the like). On the other hand, the level of responsibility of court presidents should be increased in terms of supervising the work of judges and administrative staff, particularly when it comes to their efficiency in resolving cases.

With regard to exercising the right to a fair trial, the HJPC adopted a programme to eliminate the case backlogs, however, this measure has produced only partial results, because it covers only specific cases identified as old and backlog cases, and it does not constitute a systemic solution to the problem of court efficiency in resolving cases.

8 The Human Rights Commission of the BiH Constitutional Court found that there was a breach of the right to a trial within a reasonable time, inter alia, because four months elapsed from the preparatory hearing until the main hearing was scheduled and 'the respondent failed to provide any reasoning for such court's conduct or any reasons that could justify the postponement of the main hearing' contrary to the deadlines prescribed by law.

9 This time period is also prescribed in the Serbian and Croatian laws.

10 This compensation cannot exceed 35.000 Kuna (approx. EUR 4,540) in Croatia, while in Serbia, it ranges from EUR 300 to EUR 3,000, and in Montenegro this range is between EUR 300 and EUR 5,000.

The process would be significantly accelerated also by fully assigning technical tasks to the administrative staff. There is no reason for judges to supervise technical assignments, such as scheduling hearings, verifying addresses, collecting official information and documents, forwarding submissions to the parties, or reminding parties to the responsibilities they have neglected. These tasks normally fall under the responsibilities of administrative staff, and therefore, we are of the opinion that, for instance, a judge should not necessarily issue an order for exchanging each and every submission among parties, because it is often the case in practice that the submissions, which have not been subject to prior court examination (save for the law suits, enforcement motions, etc.) are submitted late, even at the very hearings, for which reason the judge has not had the opportunity to take over the case filed and issue an order for its dispatch. On the other hand, if this is not feasible for the reasons of maintaining their independence and discretionary right to manage cases, we believe that it would be possible to introduce a rule that each submission filed creates a requirement for the Court Registry office to forward the case to the judge immediately, instead of forwarding it only after the judge makes a record of the case i.e. sets the date of its submission to the judge. In this way, the judges would have to react promptly to each submission filed and issue appropriate orders.

Also worth considering is the possibility of recruiting more judicial associates in the courts who would assist the judges in conducting judicial proceedings within the legal limits and under the supervision of the judges (by drafting decisions, researching case law and regulations, etc.). Recruiting judicial associates is certainly more cost effective than appointing additional judges.

Moreover, a judge could make a list of questions and activities on which the future of the case depends. For instance, a judge may examine whether a case is, by its nature, eligible for mediation and request the parties to make a statement on this matter when submitting their response to the lawsuit. Furthermore, according to the current jurisprudence, judges could rank the cases according to their complexity using the following criteria: a simple case (there are no controversial facts between the parties, no preparatory hearing is needed, etc.), a fairly complex case (there are more than two controversial legal issues; a counterclaim has been filed; there are more than three parties involved, etc.), a very complex case (a number of complex legal issues; several expert witnesses involved; numerous evidence, etc.).

Finally, when it comes to controlling the time spent on processing a case, it must be taken into account that any violation of the statutory deadlines can only be justified in 'exceptional circumstances', where an increase in the number of cases or an insufficient number of judges is not considered 'exceptional circumstances'.

Although different in nature, all of the above-mentioned legal mechanisms and concepts, applied either alone or cumulatively, can lead to the assurance of a reasonable case processing and enable effective control of trials within a reasonable time.

ARBITRATION*

FBiH and RS: OPEN ISSUES

A stable and predictable arbitration regime, as a part of broader framework for the rule of law, is one of the factors that foster foreign investments. Namely, the complex commercial disputes require reliable and flexible mechanism for dispute resolution that reflects the autonomy of the parties' will, and ensures arbitrators' competence, confidentially of procedures, and facilitates the recognition of awards in case of their judicial enforcement through enforcement proceedings before the national courts. This comes from the fact that foreign investors often lack confidence in national courts and prefer alternative dispute resolution and in that sense, see clearly regulated and predictable arbitration regime as a way to reduce the risk for their investments and one of the possible ways to ensure an adequate legal protection system.

The relevant legal reforms in BiH have not been focused on the detailed regulation of the arbitration so far. The present legislative framework provides for a very wide and general framework for arbitration regulating only its main aspects. Arbitration procedure is defined as a special procedure under the entity laws on civil procedures, and the statutory provisions on arbitration come down to nineteen articles covering formal validity of an arbitration agreement, the composition of an arbitral tribunal, the challenge of arbitrators, court involvement in the procedure, limited pro-

cedural aspects, and rendering and setting aside the arbitral award. In this sense, BiH falls within the group of 8% of countries regulating the arbitration procedure within the Law on Civil Procedure (LCP) or some other related law, which, as a result, is not adequately regulated.

As a consequence of the lack of an appropriate legal framework in the form of a coherent legal act on arbitration procedure, a significant number of matters is not regulated or is insufficiently regulated, leading to legal gaps and leaving room for inconsistent interpretations. At the same time, the official commentaries on the civil procedure laws very rarely refer to these issues, while there is a significant lack of practice relating to arbitration procedures in BiH and it is, therefore, rather impossible to predict with certainty how a particular legal situation would be treated in practice.

As an illustration of the above stated, below we point out only some of the issues related to the arbitration, which are, due to confusing regulation, subject to different interpretations and which, as such, contribute to legal uncertainty.

a) Dispute arbitrability

The issue of dispute arbitrability is regulated under relevant provisions and principles of civil procedure, which can lead to incorrect and inconsistent interpretations. An illustrative example of this is the application of the provisions governing the exclusive territorial jurisdiction of the court that, if consistently applied, would lead the conclusion that arbitral tribunals do not have the jurisdiction to deal with legal issues that are placed within the exclusive territorial jurisdiction of certain national courts. In fact, contrary to the above, the purpose of the provisions on exclusive territorial jurisdiction is to determine territorial jurisdiction among the courts in a country, rather than to decide on the arbitrability of a specific legal matter in arbitration.

b) Appointing arbitrators

Pursuant to the entity-level LCPs, a party may file a motion to the competent court for declaring the arbitration agreement terminated if: (i) an arbitrator is not appointed in due time, (ii) appointed arbitrators cannot agree on the appointment of the chairperson, (iii) the parties cannot agree on an arbitrator they have to appoint jointly, (iv) the appointed arbitrator cannot, or will not act as arbitrator. The current regulations are very restrictive contrary both to the UNCITRAL Model Law on International Commercial Arbitration, and to the comparative provisions in general. In this sense, the UNCITRAL Model Law provides that in these types of situations, the competent court shall take the necessary measures, unless the arbitration agreement itself provides for another appointing procedure. The Model Law does not take a radical stand as to have the agreement terminated merely because the arbitrators' appointment procedure is facing obstacles.

c) Choice of applicable law

The provisions of the entity-level LCPs stipulate that in the absence of the parties' agreement on the applicable law, arbitrators can decide which law to apply. However, from the wording of the provision it is not clear whether this means that the arbitrators are free to decide on substantive and/or procedural law. The relevant laws on civil procedure do not differentiate domestic from international arbitration, and without clear guidelines, the question is whether an arbitral tribunal should resort to private international law in case of an international dispute and if so, should it apply the private international law rules of BiH, or "the conflict of laws rules which it considers applicable" as provided by the UNCITRAL Model Law.

d) Interim measures

An interesting aspect of an arbitration procedure in BiH concerns the issuance of interim measures. Specifically, pursuant to the Law on Civil Procedure, filing an interim measure prior to the statement of claim requires the party to start civil proceedings before the court within the legally prescribed deadline. There are no guidelines or practical examples as to how this issue would be treated in the event that there is an arbitration agreement and the parties' consent to resolve their dispute within an arbitration procedure. Furthermore, a request for an interim measure can also be filed with the statement of claim, or in the course of the litigation. The provisions of the entity-level Laws on Civil Procedure do not specify if the arbitral tribunal may grant interim measures. Even though there are no formal obstacles for applying these provisions governing the interim measures by analogy to the arbitration proceedings, given the overall restrictive regulation of the interim measures in the BiH legal system, it is more likely that it

will be interpreted that the tribunal has no power to grant interim measures, and that this issue is reserved for courts only.

FBiH and RS: RECOMMENDATION

Bearing in mind the above, it is necessary to modify the legal framework in order to create a stable and predictable arbitration system that the foreign investors will trust. In this sense, we propose amendment to the entity-level LCP provisions which would precisely regulate this matter, or the adoption of a special Law on Arbitration in accordance with the provisions of the UNCITRAL Model Law with adjustments to the BiH legal system to the extent necessary or appropriate.

REAL ESTATE RECORDS*

FBiH and RS: OPEN ISSUES

In FBiH, maintaining land-registry records on real property rights falls under the competence of the land registry offices that are part of the municipal courts, while cadastral records (containing information on the holders) are maintained by the responsible administrations in charge of property and cadastral affairs at the municipal level. In RS, the land-registry and cadastral records are maintained by the RS Authority for Geodetic and Property Affairs, and the Law on Land Survey and Cadastre stipulates the establishment of the real estate cadastre records that would consolidate the cadastral and land-registry records.

Below we point out some controversial issues related to the real estate records in BiH, which cause significant problems to the investors when implementing their projects in the context of resolving property relations.

a) Real estate data inconsistency

Real estate data maintained in the Land Registry and those maintained in the Cadastre are often inconsistent, both in terms of real estate identification, i.e. the identification of land plots according to the old and new survey, and in terms of surface areas and descriptions, as well as the title holders. For example, the real estate cadastre data are not relevant for establishing a lien on real estate, because such liens are registered in the Land Registry, not the cadastre. In a situation where a lien creditor acquires a real estate by an order awarding it the ownership in an enforcement procedure, such an order contains the real estate identification data recorded in the Land Registry, which the Cadastre does not want to process because the cadastre-related identification data are missing, although the identification of the real estate is done in the Cadastre using old and new survey. The inconsistency between land-registry and cadastral records hinders the implementation of investment projects because obtaining urban, construction and use permits and finally, the registration in the Cadastre and Land Registry requires reconciliation of these records, which takes time. Since 2012, FBiH and RS have been implementing the Real Estate Registration Project (RERP) funded by the World Bank, aimed at harmonizing the cadastral and land-registry records; however, it is necessary to speed up the implementation of this project.

b) Lack of land registers

In some of the geographical areas in BiH, land registers have been established or restored which makes any acquisition or transfer of real property rights impossible for the real estate for which there is no land register established. This also threatens legal certainty, because it is neither possible to determine the actual situation regarding the ownership and encumbrance on such properties, nor is it possible to market such properties in a lawful manner.

c) Keeping real estate records at different authorities

In FBiH, keeping cadastral records is the responsibility of the municipal administrations, while keeping land registers falls under the competence of the courts, where we have different real estate identification data under the old and new surveys, as well as different title holders registered. The reason for this is the inconsistency of these sets of data. We are of the opinion that that it would be appropriate to keep both cadastral and land registry records within a single register, thus ensuring uniformity and consistency in the registration of all changes relating to real estate records.

d) Consolidation of e-Land Register

The FBiH and RS Land Registry web portals provide access to a digitalized Land Registry database that is purely informative, and the displayed land registry files do not have probative force of an authentic instrument. In addition, unlike the RS's,

the FBiH e-Land Registry has not yet been finalized to cover the entire territory of FBiH.

On the other hand, the weakness of the RS e-Land Registry is the fact that it does not contain any information on registered encumbrances, but merely an indication that a real estate is encumbered, although this is an important fact for the investors. Furthermore, it often happens that these web portals contain outdated land registry files, which leads to legal uncertainty as to their contents.

FBiH and RS: RECOMMENDATION

We are of the opinion that it would be necessary to speed up the implementation of the Real Estate Registration Project in order to harmonize the land-registry records with the cadastral ones, as soon as possible. It is necessary to commence the establishment of land registries for all areas where they have not been established yet.

Based on the principle of trust in the land registers, it is necessary to ensure that all actualities related to real estate are promptly recorded in order to ensure an up-to-date management of the land registry records.

As part of the land registry reform that is aimed at creating a more efficient land administration system and fostering the development of a more efficient real estate market, it has been proposed to harmonize the e-land registers in both BiH entities in order to provide a more detailed overview of those records and to thus facilitate the investments.

ENFORCEMENT PROCEEDINGS*

FBiH and RS: OPEN ISSUES

The provisions of the Law on Enforcement Procedure (LEP) in the FBiH and RS, respectively, as well as the institutional structures often slow down the enforcement of court decisions. Although the current Laws on Enforcement Procedure stipulate that enforcement is an expedite proceeding, and that the remedies filed against an enforcement decision do not suspend the enforcement thereof, when it comes to enforcement proceedings against real estate and movable property of the defendants, we are witnessing contrary court practice. Namely, in most of the cases, the courts wait for the enforcement decisions to become final, before instigating the other procedural actions, such as seizure and assessment of movables, or assessment and sale of immovable property. Furthermore, we are also witnessing non-compliance or avoidance of the application of the exemption set out in Article 12, paragraph 5 of the Laws on Enforcement Procedure of the FBiH and RS, respectively, where the courts do not want to allow the settlement under an enforcement order before a decision on the objection lodged against the enforcement order is rendered in cases when the enforcement is to be effected by charging the legal entity's bank account in favour of another account holder, as the judgement creditor/claimant, although the Law clearly provides for such a possibility. The avoidance to apply this statutory provision causes delays in enforcement proceedings on a daily basis and increases the debt of the judgement debtor, i.e. the claim of the judgement creditor due to the statutory default interests that are accruing in the meantime. Below we present the actual open issues that, in the investors' opinion, cause inefficient enforcement of court decisions.

a) Unnecessary stay of enforcement actions in the enforcement proceedings

Such a case-law leads to legal uncertainty for the claimants and often causes damages to judgement creditors because, in this way, the judgement debtors/defendants are given an opportunity to sell or otherwise dispose of their property in the meantime, thus preventing the collection of debts by the judgement creditors/claimants. This problem is particularly pronounced in the enforcement against movables, where the claimant acquires judicial lien on the seized movables only after a court bailiff made an inventory thereof. As a result of this improper application of the FBiH and RS LIPs, as well as the tardiness of the courts in terms of rendering decisions upon the legal remedies lodged against enforcement decisions, it may take several years between the time of rendering the enforcement decision and the time of inventory and assessment of movables, during which period the defendant/judgement debtor is free to dispose of property that is subject to the proposed enforcement, i.e. it is free to sell it, thus hindering or preventing the collection of debts by the claimant.

b) Work of court bailiffs

The Laws on Enforcement Procedure of FBiH and RS, respectively, entrusts court bailiffs with significant powers, such as seizure, assessment and sale of movables, handover and evacuation of real estate, etc. However, in practice there are various problems related to the work of court bailiffs, especially when it comes to seizure and assessment of movables, as bailiffs are typically unqualified to make an assessment of the seized property, or generally to identify the property that should be seized, often unreasonably requiring the involvement of court experts to identify the moveable property subject to seizure and make the assessment thereof. This unnecessarily increases the costs, and extends the duration of the proceedings. This is particularly evident in the enforcement procedures against industrial equipment and vehicles, when bailiffs, as a rule, seek the involvement of court experts.

Furthermore, court bailiffs are often very inefficient as some of the actions are significantly delayed or even suspended in case the defendant/judgement debtor files an objection. The number of bailiffs is also an issue as it does not meet the needs of the judicial system, especially taking into account the number of cases requiring their involvement. In RS, the LEP allows the involvement of contractual enforcement officers holding the same powers as the court-appointed bailiffs, however, this applies only to the cases initiated in connection with the collection of municipal debts, and therefore, the appropriateness of such a solution is debatable as it does not accelerate the actions pursued by the court bailiffs related to the debt collection in commercial enforcement cases.

Currently, bailiff perform their tasks under the supervision and control of judges. In other countries (court) enforcement officers/bailiffs are far more independent of courts in performing their tasks. Delegating the powers to bailiffs (while ensuring their proper training and opportunity to gain experience) would reduce the burden on the judges and enable them to focus exclusively on legal issues. In this respect, the powers and responsibilities of bailiffs should be clearly defined and described in relation to the powers and responsibilities of the judges.

Although the Entity-level laws provide for different enforcement options – one being to entrust it to an ex officio bailiff, the other to contract an independent court enforcement officer (this applies in RS and BD), neither of these Entities adopted a separate law/regulation governing the rights and obligations of court bailiffs. The proposed amendments to the LEPs (providing for a legal framework for court bailiffs/enforcement officers) have never been adopted and consequently, the draft Book of Rules on the Status, Work, Responsibilities and Field Visit Expenses of Court Bailiffs associated with the proposed amendments to the LEPs could not have been adopted.

FBiH and RS: RECOMMENDATION

The provisions relating to the assessment and seizure of movables in the Entity-level Laws on Enforcement Procedure should be amended to provide for inventory and seizure of movables immediately after rendering an enforcement decision, regardless of possible remedies filed.

It is necessary to consider models for improving the efficiency and quality of court bailiff services and provide specialized training and education to bailiffs to enable them to independently carry out the seizure and make assessments of movables.

It is necessary to amend the current legislation in line with the Recommendation Rec (2003) 17 of the CoE's Committee of Ministers on enforcement. Specifically, the status, requirements and working conditions for court bailiffs should be regulated by a separate law (or regulation) to ensure the security and transparency of the enforcement proceedings as much as possible. Such a law or regulation should cover the legal status, qualifications required for performing the duties of a court bailiff, code of ethics, rights and obligations of court bailiffs, their professional development and performance evaluation, as well as other work-related issues.

In the Federation of BiH, it is necessary to adopt a rulebook implementing the provision of Article 46.a of the FBiH Law on Courts stipulating that a person is required to pass a professional exam in order to become a court bailiff. This rulebook should provide for an exam-taking programme covering legal, technical and economic topics, the appointment method, and the responsibility for organizing and taking the exams. At the same time, the RS Law on Courts should include a similar provision supported by similar implementing legislation.

It is also necessary to introduce the construct of private enforcement officers who will be incentivised and trained to quickly and efficiently carry out enforcement procedures in accordance with the enforcement decisions rendered by the courts, or to increase the number of court bailiffs significantly. In other words, it would be desirable to insist on introducing a legal option for the claimants to choose one or more enforcement officers from the list of private enforcement officers independently, to engage them, work with them and to in direct contact with them.

Finally, it would be preferable to consider the option of merging the cases that involve the same debtor(s) and claimant(s) and the same object of enforcement, or the same debtor(s), but different claimant(s) or object(s) of enforcement.

PUBLIC DISCLOSURE OF SOURCES OF LAW AND JURISPRUDENCE*

BiH, FBiH and RS: OPEN ISSUE

The Official Gazettes in BiH, RS, FBiH and the FBiH Cantons are not freely available to the public, but only to subscribers on a chargeable basis, which is contrary to the practice of the EU Member States. In FBiH, this problem is particularly pronounced in relation to the official gazettes of the Cantons, because official publications are published by a different publisher in each Canton and not in a single Canton, save for the Sarajevo Canton, are the official gazettes available on the Internet immediately after their publication. In this way, access to official sources of the relevant laws is very difficult or almost impossible, which creates legal uncertainty, as businesses, not being able to access the official sources of law, often rely on the unofficially published laws and regulations, which in practice often leads to partial application of the rules, since such unofficial sources often do not contain the relevant amendments to the laws and regulations, or differ from their official counterparts.

Access to the database of court decisions of Judicial Documentation Centre containing relevant court decisions regarding the interpretation and application of legal institutes is not freely available either, and the database search is often hampered by poor indexation of search terms, or incompletely or incorrectly entered database search terms.

BiH, FBiH and RS: RECOMMENDATION

We believe that the current practice of charging the access to the official gazettes should be abolished in line with the practice of the EU Member States, and that all official gazettes should be made available on the Internet by creating an electronic database of online regulations.

We are of the opinion that this recommendation could be implemented through the public administration reform project and the establishment of an e-government system at the state level, as well as at the entity and cantonal levels, by linking cantonal, entity- and state-level official gazettes with the e-government system, which would enable uploading all laws and regulations in one place, and also allow users free access to them via the Internet.

The existing Judicial Documentation Centre database of court decisions should be improved to enable easier and safer search of the relevant case law (e.g. to enable more efficient indexation of terms with respects to the court that rendered the verdict, according to the nature of the legal issue, and the like), and make it publicly available free of charge.

REGULATING INTERNATIONAL LEGAL ASSISTANCE IN CIVIL MATTERS

BiH, FBiH and RS: OPEN ISSUE

A growing volume of cross-border transactions, which entails a more dynamic movement of goods, people and services, requires a higher degree of cooperation among countries, especially in the judicial sector. In this regard, international legal assistance is an efficient and tangible form of such cooperation in cases where a national court requests a court/competent authority abroad to conduct certain procedural actions needed within a particular case (the most common forms of providing international legal assistance involve the delivery of judicial and non-judicial acts in BiH and abroad; conducting and taking procedural actions abroad; recognition or enforcement of court decisions rendered by foreign courts, etc.).

The forms of international legal assistance existing in BiH are regulated by numerous multilateral and bilateral international agreements and very generally in the entity-level laws governing civil procedure in the Federation of BiH and RS.

Accordingly, in addition to national legislation, judges should be familiar with the majority of international instruments governing the civil commercial matters. However, it is noticeable that there is still insufficient knowledge or established practice of their application.

Bearing in mind the foregoing, it can be concluded that there is legal uncertainty for foreign natural and legal persons whose possible requirements related to international legal assistance in BiH cannot be adequately met.

In practice, parties face difficulties in using international legal assistance in civil and commercial cases when there is no international treaty in place, or when an international treaty does not contain implementing provisions (e.g. if a party in BiH should be delivered a foreign document referring to a particular litigation-related action). The current national procedure for providing international legal assistance is only partially regulated in the Law on Civil Procedure before the Court of BiH, the entity-level LCPs and the Brcko District LCP. Given that national legislation does not contain provisions governing the content of the request for international legal assistance, the courts have sought legal assistance through court orders or similar forms, instead of a request, which, in most cases, returned with a protest note. The current entity-level laws stipulate that international legal assistance should be provided only through diplomatic channels, which take the longest when it comes to communication with other countries for the purpose of providing legal assistance.

BiH, FBiH and RS: RECOMMENDATION

It is necessary to introduce the option of providing international legal assistance in civil and commercial cases through a systematically arranged mechanism for its provision. In this regard, it is necessary to amend and/or modify the existing provisions of the entity-level LCPs governing the international legal assistance to be able to implement it in practice, or to regulate it in more detail by a set of implementing regulations that would regulate this matter in a unified way throughout BiH.

Such amendments to the LCPs or such implementing regulations that would include general and special forms of international legal assistance in civil and commercial cases would facilitate a better cooperation among judges, regulate the delivery of judicial and non-judicial acts from abroad to BiH and vice versa, and prescribe a detailed procedure for providing international legal assistance, especially through a letter of request (content, language and the like).

RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS

BiH, FBiH and RS: OPEN ISSUE

A foreign court decision is equated with the decision of a national court and produces a legal effect equal to the one of the national court's decision in BiH only if recognized by the national court, in which case it is equated with the decision issued by the national court.

Specifically, the recognition and enforcement of foreign decisions in BiH is regulated by numerous laws and implementing regulations, both at state and entity level, including, ***inter alia***, the Law on Resolving Conflict of Laws with Regulations of Other Countries in Certain Matters (Articles 86 to 101), the Laws on Enforcement Procedure of the FBiH and RS (Article 19), and the Laws on Bankruptcy Procedure of the FBiH and RS (Articles 202 to 228). While the recognition procedure is conducted in accordance with the provisions of the entity Laws on Extrajudicial Procedure, where the provisions of the entity Laws on Civil Procedure and the Law on Resolving Conflict of Laws with Regulations of Other Countries in Certain Matters[11] apply ***mutatis mutandis***, a foreign court decision which has acquired the status of enforcement document within an enforcement procedure can be enforced in BiH only after having been recognized as such in a special enforcement procedure in BiH. In this regard, the jurisdiction of the cantonal court/district court to decide on the recognition of decisions of foreign courts, foreign arbitrations, or foreign judicial settlements is prescribed by the Law on Courts in the FBiH and the Law on Courts in RS.

It is obvious from the above-mentioned regulations that the recognition and enforcement of foreign decisions in BiH is extremely complicated to achieve in practice due to the contradictory and conflicting norms. Taking into account that the

11 Other relevant regulations are also the Decree with Force of Law on the Recognition and Enforcement of Federal Laws Applied in BiH as a Republic regulation (Official Gazette of R BiH No. 2/92), bilateral and international treaties (e.g. New York Convention on the Recognition and Enforcement Foreign Arbitral Awards, The Hague Conventions, etc.

most common cases of recognition of foreign court decisions relate, *inter alia*, to commercial litigation and commercial arbitration disputes, and court decisions related to payments arising from the contractual obligations of domestic and foreign legal entities, below are the recommendations of the FIC members on how to improve the practice recognition and enforcement of foreign court decisions.

BiH, FBiH and RS: RECOMMENDATION

In order to protect companies which encounter payment difficulties[12], create a single judicial space from the EU perspective, and taking into account that most foreign decisions end with recognition anyway, it is necessary to regulate the recognition and enforcement of foreign court decisions in a unified way, *inter alia*, by facilitating the verification of foreign court decisions, i.e. the exequatur procedures for certain commercial cases following the EU model.

In addition, for the purpose of making the procedure efficient, it would be desirable to consider the possibility of partial recognition of foreign court decisions, which has not been regulated by national laws when it comes, for instance, to the recognition of a foreign decision that relates partly to real estate located in Bosnia and Herzegovina and partly to another matter.

ADOPTING A NEW LAW ON INTERNATIONAL PRIVATE LAW

BiH: OPEN ISSUE

The Law on Resolving Conflict of Laws with Regulations of Other Countries in Certain Matters (LRCL) from 1982 is currently in force in BiH as the main source of international private law and it has been taken over from the SFRY and the Republic of BiH. However, this Law has not been fully adapted to the contemporary international legal system that is constantly evolving. In addition to the aforementioned internal sources, the provisions on international private law are contained in the international treaties/agreements in force in BiH.

Taking into account that significant and numerous changes have occurred in BiH since the adoption of the LRCL, which was almost 40 years ago, the current provisions of the LRCL are largely outdated and require some modernization. Higher international mobility of people and the development of modern technologies have led to an increase in internationally-owned situations. Therefore, there is a need for a set of regulations that, following the aforementioned social and technological development, will, in a modern way, regulate private legal situations with an international character.

BiH: RECOMMENDATION

The adoption of a new Law on International Private Law of BiH would make it much easier for the judges and legal practitioners to deal with situations featuring an international character. The new Law would seek to avoid conflicts of jurisdiction between national and foreign courts, as well as referring to a law different from the one that would be applicable in other countries associated with the subject matter of the proceedings.

Following the example of the Republic of Croatia where such a law has already been enacted, the Law on Private International Law would contain rules on determining the law applicable to the private legal relations with an international character, rules on the jurisdiction of courts and other authorities for hearing legal matters and rules for the recognition and enforcement of foreign decisions and public documents dealing with such private law relations.

For the needs of the BiH business sector, this Law should preferably prescribe also the laws applicable to intellectual property rights, liens, and other rights in securing claims on intellectual property rights, the rights of competition, and, where appropriate, the laws applicable to other relevant areas of commercial law.

It would also be useful to introduce other legal tools, such as, *inter alia*, exemption clause (according to which the applicable law shall not apply if there is a stronger link with another law), the rule of direct application (in any situation where necessary, regardless of the applicable law), the possibility to obtain information on foreign law from other bodies, expert witnesses and specialized institutions when determining the content of the foreign law, as well as the extended application of the BiH law to the situations in which the content of a foreign law cannot be determined, the possibility for parties to agree on jurisdiction and applicable law in civil and commercial matters.

12 For example, in practice, there is often an issue related to the conversion of interest in a commercial dispute which prevents the enforcement of court decisions, and the like.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH and RS Lack of specialization of courts and judges in commercial cases	It is necessary to ensure a higher degree of specialization of judges in commercial departments of municipal courts in the Federation of BiH and the District Commercial Courts in RS, to enable them to better identify certain legal specificities of commercial cases. In this regard, it is necessary to ensure professional development of judges in specific areas of commercial law, such as intellectual property, personal data protection, competition law, taxes, public procurement, finance and banking.	• HJPC BiH --- • CEST FBiH --- • CEST RS
FBiH and RS Failure to abide by the right to trial within a reasonable time	Adopt a concrete package of measures to sanction any breach of right to trial within a reasonable time and to disburden judges enabling them to handle disputes quickly and efficiently. Some of the possible measures are: introducing the legal mechanism for protecting the right to trial within a reasonable time in the entity-level legislation following the models applied in the countries in the region; increasing the competences of the HJPC in terms of supervising the lawfulness and the efficiency of judges; fully assigning technical tasks to administrative staff in order to disburden the judges.	• HJPC BiH --- • Municipal/Cantonal Courts in FBiH --- • Basic/District Courts in RS
FBiH and RS Inadequate regulation of arbitration procedure	Amend the entity-level LCP provisions or adopt a special Law on Arbitration in accordance with the provisions of the UNCITRAL Model Law in order to create a stable and predictable arbitration system that the foreign investors will trust.	• FBiH Government • FBiH Parliament --- • RS Government • RS National Assembly
FBiH and RS Inconsistency of real estate records	Speed up the implementation of the Real Estate Registration Project (RERP) in order to harmonize the land-registry records with the cadastral ones. Establish land registries for all areas where they have not been established yet. Harmonize and update the e-land registers in both BiH entities in order to provide a more detailed overview of those records and thus facilitate the investments and incentivize real estate market development.	• Municipal Courts in FBiH • Federal Administration for Geodetic and Real Property Affairs --- • Republic Authority for Geodetic and Property Affairs
FBiH and RS Inefficiency of enforcement procedure	The provisions relating to the assessment and seizure of movables in the Entity-level Laws on Enforcement Procedure should be amended with the aim to speed up the procedure. The status, requirements and working conditions for court bailiffs should be regulated by a separate law or a rulebook to ensure the security and transparency of the enforcement proceedings as much as possible. Introduce the construct of private enforcement officers who will be incentivised and trained to quickly and efficiently carry out enforcement procedures or increase the number of court bailiffs significantly.	• FBiH Ministry of Justice • FBiH Government • FBiH Parliament --- • RS Ministry of Justice • RS Government • RS National Assembly

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
BiH, FBiH and RS Public disclosure of sources of law and jurisprudence	Abolish the current practice of charging the access to the official gazettes and make them available on the Internet by creating an electronic database of online regulations. We are of the opinion that this recommendation could be implemented through the public administration reform project and the establishment of an e-government system. The existing Judicial Documentation Centre database of court decisions should be improved to enable easier and safer search of the relevant case law.	• Council of Ministers of BiH • Public Administration Reform Coordinator's Office • Judicial Documentation Centre --- • FBiH Government • Cantonal Governments in the FBiH --- • RS Government
BiH, FBiH and RS Fragmented regulation of international legal assistance in civil matters	Arrange mechanism for providing international legal assistance in civil and commercial cases in a systematic way. In this regard, it is necessary to amend and/or modify the existing provisions of the entity-level LCPs governing the international legal assistance to be able to implement it in practice, or to regulate it in more detail by a set of implementing regulations in BiH.	• Ministry of Justice of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Ministry of Justice • FBiH Government • FBiH Parliament --- • RS Ministry of Justice • RS Government • RS National Assembly
BiH, FBiH and RS Difficulties in recognizing and enforcement of foreign court decisions	Regulate the recognition and enforcement of foreign court decisions in a unified way, inter alia, by facilitating the verification of foreign court decisions, i.e. the exequatur procedures for certain commercial cases following the EU model. Consider the possibility of partial recognition of foreign court decisions, which has not been regulated by national laws so far.	• Ministry of Justice of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH --- • FBiH Ministry of Justice • FBiH Government • FBiH Parliament --- • RS Ministry of Justice • RS Government • RS National Assembly
BiH Outdated legislation in the area of international private law	Adopt a new Law on International Private Law of BiH that would make it much easier for the judges and legal practitioners to deal with situations with an international character, and that would, in a modern way, regulate private legal situations with an international character.	• Ministry of Justice of BiH • Council of Ministers of BiH • Parliamentary Assembly of BiH

EMPLOYMENT AND EDUCATION

INTRODUCTION

The labour market and workforce are one of the key elements for the investors when making decision in which country to establish or expand their business. According to the FIC Business Barometer, in 2017, 49% of foreign investors hired additional workers, while only 16% of them reduced their number.

Significant improvements have been made in the labour legislation over the past period. As indicated in the previous White Book edition, the adoption of these regulations came as a result of compromise between the economic and social partners, and as such, have in some cases led to insufficiently clear provisions.

It is also important to say that there are positive trends in the sense of a drop in the unemployment rates, given that in 2018, the number of registered unemployed persons in BiH was around 440,000 which is about 40,000 less than in 2016. According to the FIC Business Barometer, nearly 90% of the FIC members will have a need for recruiting highly skilled professionals (mechanical and electrical engineers, developers, managers), as well as factory workers (plant technicians, welders). In addition to the fact that employers face problems in finding workforce, they also face complex legislation in managing their contracts.

Due to frequent changes in the market, as well as the lack of workforce, there is a need for more flexible forms of employment to enable employers to find workers outside of the currently rigid legislative definitions as well, with a special emphasis on the need for agency employment, seasonal work, lifelong learning, and engagement of student population, so that the latter are provided with a set of skills they can apply on the labour market once they leave their educational institutions. It should not be forgotten that Bosnia and Herzegovina is a country with a complex structure and a small market, but also that the issue of availability of trained and qualified workforce is an increasing problem that legislators have to take into account in the upcoming period.

WAGES OF WORKERS ON SICK LEAVE

FBiH, RS and BD: OPEN ISSUE

The laws on health insurance of the BiH Entities and those of Brcko District stipulate different wage compensations payable by the employer to the workers while on sick leave, as well as different periods of time during which such wage compensations are to be borne by the employer. In addition, the application of the aforementioned laws differs between the BiH Entities and Brcko District, as well among different cantons within the Federation of BiH in relation to the reimbursement of the wage compensations paid during sick leave, which the employers receive from the Health Insurance Funds.

Employers are required to:

- pay the workers in RS a wage compensation in the minimum amount of 70% of their net salary for the duration of their sick leave, and in case the sick leave exceeds 30 days, employers are entitled to receive a reimbursement from the competent Fund, with the gross hourly rate in RS being determined by the RS Institute of Statistics on the basis of the average gross hourly rate. The maximum sick leave reimbursement paid to the employer is set to BAM 1,000.00, while the minimum is determined on the basis of the minimum gross hourly rate in RS.
- pay the workers in the Federation of BiH (in most of the cantons) and Brcko District a sick leave wage compensation for the entire duration of their sick leave, where the wage compensations to the workers on sick leave lasting up to 42 days are to be borne by the employers at their own expense, while the wage compensations paid to the workers on sick leave exceeding 42 days are reimbursable by the competent Health Insurance Fund. The minimum amount of the wage compensation is 80% of the worker's salary. In case of a sick leave exceeding 42 days, the employer also pays the same minimum amount of the wage compensation, however, it cannot claim the full amount of the wage compensations paid to be reimbursed by the Fund,

but only 70-80% of the average net salary earned in the Federation of BiH. In Brcko District, these amounts are determined by the Institute of Statistics on the basis of the average gross hourly rate and the maximum reimbursement is set to BAM 1,000.00, while the minimum is determined on the basis of the minimum gross hourly rate in BD.

In this way, employers are at loss, because they pay higher wage compensations than the amounts being reimbursed to them.

FBiH, RS and BD: RECOMMENDATION

Harmonize the regulations in the FBiH cantons, as well as those in the BiH Entities and Brcko District in this area, in particular, in terms of the wage compensations payable by the employer to the employees on sick leave, the time periods during which such wage compensations are to be borne by the employer, and the amounts to be reimbursed to the employers by the Health Insurance Funds for the wage compensations that the employers paid to the workers during their sick leave. In addition, it is also necessary to tighten sick leave policies, and to allow for the sanctioning of any possible abuses.

WAGE COMPENSATIONS TO FEMALE WORKERS ON MATERNITY LEAVE

FBiH, RS and BD: OPEN ISSUE

The FBiH, RS, and BD legislation governing the amount of maternity compensations, and the requirement of the employer to pay compensations to workers on maternity leave is inconsistent. This inconsistency is also present among different cantons within the Federation of BiH since every canton has its own regulations governing this subject matter that significantly differ from the regulations enforced in other cantons.

In FBiH, the Labour Law defines only the right of the worker to receive a wage compensation during maternity leave, while the compensation as such is defined in the cantonal regulations. In practice, employers in almost all cantons pay no wage compensation to the female workers on maternity leave, while the compensations paid by the cantonal governments differ significantly. Thus, in the Sarajevo Canton, women on maternity leave receive a wage compensation in the amount of 60% of the average net salary earned in the Sarajevo Canton, and this compensation is paid by the cantonal government. In the Tuzla Canton, however, the employer is required to pay at least 90% of the average salary that the worker earned over the period of 6 months prior to the maternity leave. The employer is then entitled to a reimbursement by the cantonal government in the amount of 55% of the average salary earned in the Tuzla Canton. On the other hand, in the Herzegovina-Neretva Canton, women on maternity leave have no right to any sort of maternity leave compensation, but only to a one-time financial aid for new-borns in the amount of BAM 400.00.

In BD, female workers on maternity leave receive 100% of their salary paid by the employer, who also pays all the pertaining taxes and social security contributions, the net amount of which (i.e. excluding taxes and contributions) is subsequently reimbursed by the relevant Labour Centre on the basis of the hourly rate earned in the BD.

In RS, female workers on maternity leave are paid their average wage, including pertaining taxes and social security contributions by their employer, whereas the right to receive the net reimbursement (i.e. excluding taxes and social security contributions) from the Child Protection Fund is only given to the employers who have been paying child protection contributions for all of their workers in the period of at least 12 months prior to, and during 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 wage compensations in all cantons in the FBiH, and then harmonize those regulations with the ones in RS and BD, by determining an equal maternity leave compensation in all parts of BiH and defining who will be paying it and for what period of time.

ADEQUATE REGULATION OF EMPLOYMENT IN THE FORM OF SHORT-TERM AGENCY WORK

FBiH and RS: OPEN ISSUE

Over the last few years, the need for more flexible forms of employment, such as short-term agency work (contracted through private employment

agencies) has rapidly increased. According to the latest Report published by the World Employment Confederation, in Europe alone, there are 75,800 agencies, employing around 500,000 employees that recruited 9,441,000 workers in 2018. Out of the 15 most efficient agency national markets in the world, 11 are located in Europe, the most prominent ones being in the United Kingdom, Germany, France and the Netherlands. All available research and experience show that jobs obtained through agency mediation increase the employability, the spectrum of skills, as well as the chances for obtaining a long-term employment contract.

The employment practice in the form of a short-term agency work is recent in BiH. The Labour Law of Republika Srpska defines the possibility of a short-term employment with another employer (*'assignment to another employer')* on a suitable position if (a) the need for the worker's engagement has temporarily ceased (b) the business premises of the employer have been leased or (c) there is a cooperation contract between the two employers.

An employee may be 'assigned to work with another employer' for a period of up to one year, with the possibility to extend this period with the consent of the employee and provided that there is a legal basis for the engagement in question (or a basis for performing the work in question that is defined in the Employer's Labour Rulebook or the specific employment contract).

The engaged worker and the employer to whom the employee has been assigned must sign a fixed-term contract. Such a contract shall not provide for any less employment rights than the one that the employee would have had with the employer who assigned him/her. After the expiration of the assignment for which the employee has been assigned to another employer, the employee shall be entitled to return to his/her original employer.

The FBiH or the BD Labour Laws do not foresee the above-described option at all.

The agency's rules and operating conditions remain completely unregulated, which is why in practice the terms and conditions of such arrangements are still subject to a contract between the Agency and the employer requiring short-term employment services.

FBiH and RS: RECOMMENDATION

The classifications of business activities in the FBiH and RS have affirmed the existence of such agencies' activities and "introduced" them into the legal and economic sphere of BiH. The so-called labour force 'leasing', i.e. assigning workers for a certain period of time to another employer still remains unregulated, and therefore, this type and mode of employment should be explicitly and clearly regulated in the FBiH, RS and BD.

It is particularly important to regulate the following matters so as to ensure that both the worker and the employer are protected:

- mandatory elements of the contract on assigning a worker to another employer for work,
- mandatory elements of the assigned worker's employment contract,
- cases in which assignment is not allowed,
- distribution of the worker's rights and obligations between the Agency and the employer and
- if quotas are to be applied on the number of such 'agency workers' who can be hired by an employer, such quotas should be implemented with the least possible restrictions.

EXTENDING THE POSSIBLE LENGTH OF SHORT-TERM AND OCCASIONAL JOBS IN A CALENDAR YEAR

FBiH, RS and BD: OPEN ISSUE

The legal regulations in both entities in Bosnia and Herzegovina, as well as the regulations of Brcko District, unlike the ones in force in the EU countries, do not recognize, and hence do not allow the engagement of seasonal workers.

The need for seasonal workers is particularly pronounced in the field of agricultural production and other branches of the economy, where during the season (most often from spring to autumn, but often in other seasons), there is a need for seasonal and manual labour. Furthermore, the duration of such an engagement of seasonal workers cannot be fully planned in advance, as it usually depends on weather conditions and other circumstances that are beyond human control.

Engaging workers for performing such seasonal jobs by entering into an employment contract with

them and the consequent payment of all statutory taxes and contributions leads to cost inefficiency and unprofitability of the production and creates an unrealistically high price of the final product which makes it uncompetitive on the market.

The Entity and BD Labour Laws recognize the categories of short-term and occasional jobs, which most often include seasonal jobs, however, such jobs are limited in duration of only 60 days in the FBiH or 90 days in RS and BD over one calendar year. In addition, the Laws prescribe that these contracts are to be concluded for the jobs for which full-time or part-time employment contracts are not to be concluded.

A consequence of the inability to hire seasonal workers, except in the manner descried above (by entering into an employment contract or short-term contract for a period and in the manner prescribed by the applicable labour laws), in practice, often entails unreported (illegal) employment causing damage both to the workers and the State, through the avoidance of applicable taxes and contributions. In addition, it has become increasingly the case that workers leave BiH to take up seasonal jobs in the EU countries.

FBiH, RS and BD: RECOMMENDATION

The duration of contracts for short-term and occasional jobs must be extended, so that short-term and occasional employment can last up to 120 days in a calendar year.

In this way, the unreported (illegal) employment would be significantly reduced and, this would, to a certain extent, prevent BiH labour force to leave BiH for pursuing seasonal jobs.

REGULATION OF FIXED-TERM EMPLOYMENT CONTRACTS

FBiH, RS and BD: OPEN ISSUE

Temporary (fixed-term) employment is another matter that is treated inconsistently in BiH, as the Labour Laws provide for significantly different regulations in this respect.

The differences between the regulations in the FBiH, RS and BD stem from different conditions and requirements for concluding a fixed-term employment contract. To be valid, fixed-term employment contracts in RS and BD must be explicitly justified by one of the prescribed reasons for concluding this type of employment contract, however the sets of these reasons are not standardised.

In RS, a fixed-term employment contract can be concluded only for jobs the duration of which has been fixed beforehand for a justified and objective period of time. Unlike the RS Law, the BD Labour Law sets out a list of reasons for concluding a fixed-term employment contract (for instance, in case of engagement on a specific project, seasonal jobs, replacement of a worker who is temporary absent, in cases of temporary increase in workload and other cases specified in the Collective Agreement and Labour Rulebooks). By contrast, the FBiH Labour Law does not imply the conclusion of a fixed-term employment contract on any justified grounds. The differences between the regulations in force in the FBiH, RS and BD are further reflected in the duration of fixed-term employment. In FBiH, fixed-term contracts may be concluded for a period of up to three years. In RS and BD the overall maximum duration is up to two years. In addition, the RS Labour Law provides for a list of exempted cases in which a fixed-term employment contract can be concluded for a longer period of time (e.g. replacement of an employee who is temporarily absent). The BD Labour Law has another rather specific provision, stipulating that the duration of a fixed-term employment contract that is to be concluded for the first time can be longer than two years.

Another significant difference refers to the period between two fixed-term contracts that is not considered an interruption in the employment status. In the Federation of BiH, this is a period of up to 60 days, in RS – up to 30 days and in BD – up to 15 days. Accordingly, if an employee concludes two or more fixed-term contracts successively or with a time difference of less than 30 or 60 days, such a fixed-term employment contract may only be valid for a period of up to two years in RS and BD and up to three years in the Federation of BiH; otherwise such a contract will, by virtue of law, become a contract of indefinite duration.

The Labour Laws do not contain an explicit provision as to whether one and the same employee can conclude two successive fixed-term contracts with the same employer, but for another job. However, based on the interpretation of the provisions in force, the conclusion would be that such an arrangement is not possible unless the employee's

contract is converted into a contract of indefinite duration (assuming that the legal requirements in terms of the duration of employment have been previously fulfilled).

In the FBiH and BD, it is stipulated that any successive fixed-term contracts lasting more than three years without interruption (as defined under the Labour Laws) are considered to be contracts of indefinite duration. In RS, the Law stipulates that if a fixed-term employment contract is concluded contrary to the provisions of the Labour Law or if the employee remains at work for at least five days after the termination of his/her employment, the contract shall be considered a contract of indefinite duration.

FBiH, RS and BD: RECOMMENDATION

The Labour Laws should be urgently aligned with respect to fixed-term employment contracts, so as to remove the current constraints provided for in the RS and BD Labour Laws respectively, and have the approach adopted in the FBiH applied equally throughout BiH. Introducing amendments to the existing legislation is a simpler procedure than the adoption of a completely new set of laws.

Furthermore, the duration of fixed-term employment contracts and the periods between successive fixed-term employment contracts that do not constitute an interruption in the employment status should be equally regulated in all three administrative units in BiH, in line with the RS regulations, i.e. the period should be 30 days.

ENABLING STUDENTS TO ACQUIRE PROFESSIONAL AND PRACTICAL KNOWLEDGE THROUGH INTERNSHIPS, APPRENTICESHIPS AND TRAINEESHIPS

FBiH, RS and BD: OPEN ISSUE

The 2018 FIC Business Barometer shows that as much as 86% of foreign investors are of the opinion that the key activity for improving workforce in Bosnia and Herzegovina is providing more opportunities to high-school and university students for acquiring professional experience through internships or vocational trainings/apprenticeship during the course of their studies.

Internship is regulated by laws in force in the FBiH, RS and BD. In view of that, employers can hire interns during or after their studies by signing fixed-term contracts with them for a period of up to one year or by entering into student engagement contracts (in case of shorter internship programmes lasting less than three months). In the FBiH, interns are entitled to 70% of the salary tied to the job/position, while in BD, they are entitled to 80% of the pertinent salary or the one agreed with the employer. In RS, however, interns are entitled to full salary. In all three administrative units, internship counts towards the length of service. The businesses/organizations where the internship took place may thereafter employ the former interns, and such contracts are usually fixed-term employment contracts and for short periods of time.

A special form of vocational training or apprenticeship is possible for university students in some professions. However, this type of practical training may be rather short (its duration is different for each profession) and no employment contract is to be concluded, but a student engagement contract. Students are usually not paid for these jobs and no social contributions are payable.

The concept of traineeship (trainee work) is regulated by the relevant legislation in all three administrative units in BiH. Trainees are persons who have completed high school, college or university and have no previous work experience in a particular profession. Furthermore, they are required to take a state exam or acquire work experience in that profession under the applicable laws. Upon completion of the traineeship, the trainee is required to pass a state exam, if such a requirement is provided for by the applicable laws and regulations or labour rulebooks. A fixed-term employment contract is to be concluded with a trainee for a maximum of one year (unless prescribed otherwise, as it is the case with some professions, such as for future attorneys). During his/her traineeship, the trainee is entitled to a monetary compensation of at least 70% of the full salary in all three administrative units, whereas the employer may also opt for a higher amount. Traineeships are counted towards the length of service unless otherwise stipulated by the regulations applicable to specific professions.

FBiH, RS and BD: RECOMMENDATION

In order to improve the quality of the education system, it is necessary to work on the develop-

ment of dual education system, which is a concept applied in most EU member states.

The RS, FBiH and BD laws should define concepts such as shift work, zero hour contracts, or jobs for graduates in terms of student employment.

Jobs for graduates should be regulated by law and a clear distinction should be made between the concepts of traineeship and internship that are to be deployed once formal education is completed. During their studies, students should be recognized and encouraged to engage in volunteering (in the professional areas that are associated with their studies), participate in vocational trainings (apprenticeships) and take up occasional and short-term jobs.

EMPLOYING STUDENTS ON A FULL-TIME AND PART-TIME BASIS

FBiH, RS and BD: OPEN ISSUE

The Labour Laws neither recognize nor prescribe any special provisions referring to full-time or part-time employment of students. It is important to note that the laws applicable in BiH distinguish between (a) full-time students and (b) extramural students. Full-time students follow a generally prescribed curriculum, their primary status is the status of a student, and the cost of their education is mainly covered by the state (provided that the prescribed criteria have been met), while the primary status of extramural students is the status of employed or unemployed persons registered in the employment agencies, who follow a specialized curriculum adapted to their work commitments.

Students who do not have the status of full-time students can be employed and thus enjoy all rights under the current labour legislation, but they have to be registered in an employment agency. On the other hand, students who have the status of full-time students can also be employed, however only for occasional and short-term jobs.

In practice, student centres/services that act as employment intermediaries within public universities usually facilitate the employment of students. Student services are designed solely for the purpose of recruiting full-time students, and all other legal entities are prohibited from providing student intermediation services or assisting full-time students in the process of obtaining short-time or occasional jobs.

In the Federation of BiH, occasional and short-term employment of full-time students can be effected in case of (a) short-term and occasional jobs (as defined by the Collective Agreement or the employer's labour rulebook), (b) jobs that do not require concluding a fixed-term employment contract or a contract of indefinite duration and (c) jobs that do not last longer than 60 days over a calendar year. It can be argued that the rationale behind these regulations is to protect students against their exploitation and to prevent their hiring for the jobs that should be subject to regular employment contracts. Students employed under this employment scheme enjoy most of the labour-related rights that are generally given to all other employees, however, this type of employment does not count towards the length of service.

In RS and BD, the laws regulate short-term and occasional jobs, but with the following limitations: such jobs may last up to 90 days over a calendar year and are neither eligible for contracts of indefinite duration nor for fixed-term contracts. In addition, the work of students based on this type of employment is not counted towards the length of service.

In practice, employers often resort to recruiting students, even on a temporary basis, instead of hiring registered unemployed persons, solely for the purpose of paying lower taxes and contributions (12% and 29% of taxes and contributions in the FBiH/BD and RS, respectively (the tax bases of 12% and 29% of taxes and contributions in the FBiH/BD and RS, respectively are far more attractive than the bases of 60% to 70% applicable to conventional and regular employment).

FBiH, RS and BD: RECOMMENDATION

In order to adequately regulate the concept of student work, lawmakers in all three administrative units in BiH should design a completely new form of employment for students. Attention should be paid to the following:

- Student employment contracts should be flexible in terms of their length and working hours; this means that the working hours should be adapted to the educational commitments of students, and the employed students should be granted most of the rights

given to employees on standard employment contracts;
- Certain employment contracts with students should be counted towards their length of service;
- When hiring students, employers should be released from paying certain taxes and contributions, which are normally paid for the employees on standard employment contracts, or, if not fully released, then reduced, in order to incentivize student recruitment;
- Entity governments should provide certain incentives for those employers who employ students or graduates, thus enabling them to acquire first-time job experience, by subsidizing part of their salary, meal allowance, transport costs, bonuses or other work-related costs over a given period of time;
- Jobs for which students are hired should be closely related to their course of education;
- The work during the studies should be arranged to allow students to make a one-year recess in order to seek a job in a particular profession that is close to their studies and to gain the necessary work experience before returning to university;
- The new regulation should provide as much flexibility as possible for students and employers in regulating labour relations and enable other forms of employment, such as shift work and zero-hour contracts. It is also necessary to clearly define the concept of graduate positions that considerably differ from the internship concept (given that these two concepts significantly overlap in their definitions and applications in BiH).

PROFESSIONAL AND ADDITIONAL TRAINING

FBiH and RS: OPEN ISSUE

An Adult Education Survey was conducted for the first time in Bosnia and Herzegovina from 1 February to 31 March 2017 as an integral part of the European Adult Education Research, which is implemented on a five-year basis in all EU member states, candidate countries and potential candidate countries. According to the data collected, only 8.7% of the respondents stated that they participated in some form of formal and/or informal education programme, where 2.2% were involved in formal education; 6.9% in an informal one, while a significantly larger proportion of respondents – 74.7% expressed their intention to acquire knowledge through everyday activities, or through informal learning.

Bearing in mind that the number of unemployed persons holding highly-skilled or skilled worker qualifications was the highest in October 2018 accounting for 142,537 persons and adding to this number 124,326 persons with secondary school degree, we arrive at approximately 60% of the total registered unemployed persons, where the labour force participation on the market is very low, and most employers find it difficult to recruit highly-motivated and adequate workforce, it is necessary to place a greater emphasis on mobilising and training of the workforce when designing active labour market policy measures.

A significant progress has been made in the development of the legal framework related to adult education, including 164 institutions that have been accredited for conducting training (April 2018), however, there is still a large number of challenges in the implementation of these programmes and their quality assurance.

FBiH and RS: RECOMMENDATION

Given that the adopted laws on adult education will be implemented more intensely as of 2019, it remains to be seen what the effects of their implementation will be in practice, which needs to be monitored on the system level.

For the successful functioning of this education system, it is necessary to test the labour demand on a continuous basis and act upon it accordingly for those professions that are in demand by the companies operating in Bosnia and Herzegovina. In this regard, it is necessary to establish cooperation between companies, municipalities, employment agencies and educational institutions. In order to implement these activities, municipalities should be more active in developing local employment action plans, and ensure their implementation or co-funding in cooperation with the employment agencies.

In addition to developing and implementing an accreditation system for adult education institutions and programmes in line with international standards, it is necessary to ensure sound learning conditions, high-quality programmes and learning

processes and their outcomes. The adult education monitoring system of Republika Srpska could be taken as an example of good practice, and as such customised to be used at other administrative levels in the country.

OVERTIME WORK

FBiH and RS: OPEN ISSUE

The Labour Laws treat overtime differently. In addition, overtime is too strictly defined so that it does not provide for adjustments to the employer's needs, while, certainly, taking into account the rights and interests of workers.

FBiH and RS: RECOMMENDATION

Harmonize the Labour Laws for the purpose of aligning and clarifying the provisions governing overtime work.

ANNUAL LEAVE

FBiH: OPEN ISSUE

The Labour Law stipulates mandatory use of a portion of annual leave for a period of at least 12 days. In practice, this means that worker must use two weeks and two working days in the third week in a row, which is quite impractical when synchronizing the use of annual leave among workers.

The employer has to ensure continuous and uninterrupted business activities and in case of a large number of workers, it is gets problematic when an annual leave enters the third week.

FBiH: RECOMMENDATION

The provision governing the use of annual leave should be amended, i.e. harmonized with the RS Labour Law, so that it reads that a part of annual leave must be used for a period of at least 2 weeks in a row, where, for the purpose of determining the length of annual leave, a working week would count as five working days.

DEFINING PERFORMANCE-RELATED COMPENSATION

FBiH and RS: OPEN ISSUE

The Labour Laws stipulate that the salary consists of the basic (fixed) wage, the performance-related compensation (which is variable and depends on the performance), and a raise.

This mandatory regulation of the performance-related compensation is often a problem in practice. Namely, there are many situations where it is very difficult to measure the performance, especially on a monthly basis in order to pay the salary (salaries are mandatorily paid on a monthly basis; otherwise, it would be considered a bonus and not a salary). Sometimes it is impossible to measure the monthly performance and sometimes it is theoretically possible, but would cause too many undue costs.

Another issue is that it is not clear at all what the minimum salary is. If the minimum salary is equal to the base wage, then the performance-related compensation should be mandatorily in place.

If, on the other hand, the minimum salary is the sum of the base wage and the performance-related compensation, the worker would receive only the base wage in case of underperformance, which means that s/he would receive less that the amount defined as statutory minimum salary.

FBiH and RS: RECOMMENDATION

The performance-related compensation should be defined as an option, and not as a requirement and it could be regulated by branch collective agreements or labour rulebooks. It is necessary to define what constitutes the minimum wage, and to clarify that the base salary cannot be less than the minimum wage, in order to avoid payments to workers that are below the statutory minimum.

HARMONIZING THE LEGISLATION RELATED TO PART-TIME EMPLOYMENT

FBiH and RS: OPEN ISSUE

The matter of part-time employment in BiH, although regulated, has not be harmonized among administrative units in BiH. Employment (both full-time and part-time) is governed by the Labour Law enacted in the relevant administrative unit where the work is carried out. This means that the deciding factor for determining which laws should be applied to the employment relationship is actually the place of the employee's work.

In terms of working hours within a part-time employment, in the FBiH and BD, such working

hours can be any working hours shorter than full-time (i.e. shorter than 40 hours per week). In RS, part-time working hours cannot be shorter than eight hours a week unless a special law provides otherwise.

An important issue related to working time flexibility is the question of whether a full-time employee can conclude additional part-time employment contracts. In RS and the FBiH, this is not possible. In both Entities, an employee may have more than one employment contract only if the total sum of his/her working hours does not exceed 40 hours per week. In other words, if an employee already has a full time contract, s/he is not allowed to conclude any additional employment contracts. In BD, on the other hand, a full-time employee can additionally conclude a part-time employment contract (up to 20 hours a week) with another or even the same employer, provided that the working hours for different employment contracts with the same employer do not overlap. The relevant law also provides for additional requirements.

In the event that an employee intends to enter a part-time employment contract with another employer and thus engage in a business activity that is competitive towards his/her employer where s/he is employed on a full-time basis, the employee is required to obtain a prior approval from his/her full-time employer for such an engagement. In any other case, the employee does not require the approval of his/her full-time employer to engage in another business activity, but should notify his/her employer thereof in writing, within eight days from the date of entering into a part-time employment contract with another employer.

In principle, employers in the Federation of BiH avoid hiring employees on a part-time basis because of additional tax expenditures. The applicable FBiH Law on Social Security Contributions stipulates that the contribution base cannot be lower than the lowest wage established by the General Collective Agreement. In RS, this is not the case because the contributions are tied to personal income tax, i.e. the contribution base is the income payable under the RS Law on Personal Income Tax, which means that the contributions are paid on the actual contracted amount. BD does not have its own legislation on income tax and contributions and therefore employees are entitled to choose which legislation and entity law will apply to their employment relationship.

In addition, in BD, the possibility of entering into a part-time employment contract on top of the existing full-time employment contract is in no way regulated nor treated in relation to the applicable social security contributions, nor is it clear how two parallel part-time employment contracts should be treated. It is also important to note that there is no specific case law in this respect, but in any case, this issue should be explicitly regulated by applicable laws.

In terms of other employment-related rights, part-time employees are entitled to all rights arising from employment as full-time employees, provided that those rights are granted in proportion to the number of hours worked.

FBiH and RS: RECOMMENDATION

The Labour Laws should be harmonized to ensure equal part-time employment conditions, which can be achieved by adopting appropriate amendments to the laws currently in force (which is a simpler procedure than the adoption of completely new laws).

The matter of part-time employment should be treated in the Labour Laws of the FBiH and RS, respectively in the same way it is treated in the BD Labour Law, since the relevant Articles in the BD Labour Law provide and allow for the possibility of entering into such an employment contract in parallel with the existing full-time employment contract.

Furthermore, the RS Labour Law should be amended to remove the restrictions related to the minimum working hours required for part-time employment.

Finally, it is necessary to change the requirements related to the social security contributions in the FBiH, so that, in the case of part-time employees, their amount is proportional to the actual salary earned by the employees. The only prerequisite should be that social security contributions are paid at least in proportion to the current minimum wage.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH, RS and BD Wages of workers on sick leave	Harmonize the regulations in the FBiH cantons, as well as those in the BiH Entities and Brcko District in this area, in particular, in terms of the wage compensations payable by the employer to the employees on sick leave, the time periods during which such wage compensations are to be borne by the employer, and the amounts to be reimbursed to the employers by the Health Insurance Funds for the wage compensations that the employers paid to the workers during their sick leave. It is also necessary to tighten sick leave policies and to allow for the sanctioning of any possible abuses.	• FBiH Government • FBiH Parliament • FBiH Health Insurance and Reinsurance Institute --- • RS Government • RS National Assembly • RS Health Insurance Fund --- • BD BiH Government • BD BiH Assembly
FBiH, RS and BD Wage compensations to female workers on maternity leave	It is necessary to harmonize regulations and practices related to determining the amount and payment of maternity leave wage compensations in all cantons in the FBiH, and then harmonize those regulations with the ones in RS and BD, by determining an equal maternity leave compensation in all parts of BiH and defining who will be paying it and for what period of time.	• FBiH Government • FBiH Parliament • FBiH Health Insurance and Reinsurance Institute --- • RS Government • RS National Assembly • RS Health Insurance Fund --- • BD BiH Government • BD BiH Assembly
FBiH and RS Adequate regulation of employment in the form of short-term agency work	Labour force 'leasing', i.e. assigning workers for a certain period of time to another employer still remains unregulated, and therefore, this type and mode of employment should be explicitly and clearly regulated in the FBiH, RS and BD, to ensure that both the rights of workers and employers are protected.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly
FBiH, RS and BD Extending the possible length of short-term and occasional jobs in a calendar year	It is necessary to extend the duration of contracts for short-term and occasional jobs in the labour laws of the entities and BD, so that short-term and occasional employment can last up to 120 days in a calendar year. In this way, the unreported (illegal) employment would be significantly reduced and, this would, to a certain extent, prevent BiH labour force to leave BiH for pursuing seasonal jobs.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly --- • BD BiH Government • BD BiH Assembly

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH, RS and BD Regulation of fixed-term employment contracts	The Labour Laws should be urgently aligned with respect to fixed-term employment contracts, so as to remove the current constraints provided for in the RS and BD Labour Laws respectively, and have the approach adopted in the FBiH applied equally throughout BiH. Furthermore, the duration of fixed-term employment contracts and the periods between successive fixed-term employment contracts that do not constitute an interruption in the employment status should be equally regulated in all three administrative units in BiH, in line with the RS regulations, i.e. the period should be 30 days.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly --- • BD BiH Government • BD BiH Assembly
FBiH, RS and BD Enabling students to acquire professional and practical knowledge through internships, apprenticeships and traineeships	In order to improve the quality of the education system, it is necessary to work on the development of dual education system. The RS, FBiH and BD laws should define concepts such as shift work, zero hour contracts, or jobs for graduates in terms of student employment.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly --- • BD BiH Government • BD BiH Assembly
FBiH, RS and BD Employing students on a full-time and part-time basis	In order to adequately regulate the concept of student work, lawmakers in all three administrative units in BiH should design a completely new form of employment for students.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly --- • BD BiH Government • BD BiH Assembly

OPEN ISSUE	RECOMMENDATION	RESPONSIBLE INSTITUTION
FBiH and RS Professional and additional training	Given that the adopted laws on adult education will be implemented more intensely as of 2019, it remains to be seen what the effects of their implementation will be in practice. For the successful functioning of this education system, it is necessary to test the labour demand on a continuous basis and act upon it accordingly for those professions that are in demand by the companies operating in Bosnia and Herzegovina. In this regard, it is necessary to establish cooperation between companies, municipalities, employment agencies and educational institutions.	• Municipalities in FBiH and RS • Employment agencies in FBiH and RS • Educational institutions in FBiH and RS
FBiH and RS Overtime work	Harmonize the Labour Laws for the purpose of aligning and clarifying the provisions governing overtime work.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly
FBiH Annual leave	The provision governing the use of annual leave should be amended, i.e. harmonized with the RS Labour Law, so that it reads that a part of annual leave must be used for a period of at least 2 weeks in a row, where, for the purpose of determining the length of annual leave, a working week would count as five working days.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament
FBiH and RS Defining performance-related compensation	The performance-related compensation should be defined as an option, and not as a requirement and it could be regulated by branch collective agreements or labour rulebooks. It is necessary to define what constitutes the minimum wage, and to clarify that the base salary cannot be less than the minimum wage, in order to avoid payments to workers that are below the statutory minimum.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly
FBiH and RS Harmonizing the legislation related to part-time employment	The Labour Laws of the entities should be harmonized to ensure equal part-time employment conditions. The matter of part-time employment should be treated in the Labour Laws of the FBiH and RS, respectively in the same way it is treated in the BD Labour Law, since the relevant Articles in the BD Labour Law provide and allow for the possibility of entering into such an employment contract in parallel with the existing full-time employment contract.	• FBiH Ministry of Labour and Social Policy • FBiH Government • FBiH Parliament --- • RS Ministry of Labour, War Veterans and Disabled Persons' Protection • RS Government • RS National Assembly

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- Rulebook on Referential Criteria for the Work of Judges and Expert Associates in BiH Courts (Official Gazette of BiH, 2/14 – Consolidated Text)

13 The provisions of article 12 of the Law on Indirect Taxation System in BiH (Official Gazette of BiH, 44/03, 52/04, 34/07 and 04/08) ceased to have effect on the day the Law on Wages and Compensations in Institutions of BiH (Official Gazette of BiH, 50/08) entered into force (1 July 2008).

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- Law on Leasing (Official Gazette of FBiH, 85/08, 39/00, 65/13 and 104/16)
- Law on Petroleum Products in FBiH (Official Gazette of FBiH, 52/14)

14 The provisions of the Law on Social Contributions of FBiH (Official Gazette of FBiH, 35/98, 54/00, 16/01 and 37/01) that regulate the rate of default interest on public revenue ceased to have effect on the day the FBiH Law on the Rate of Default Interest on Public Revenue (Official Gazette FBiH, 48/01 and 52/01) entered into force (10 November 2001).

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- Law on Waste Management (Official Gazette of FBiH, 33/03, 72/09 and 92/17)
- Law on Extrajudicial Procedure (Official Gazette of FBiH, 02/98, 39/04, 73/05 and 80/14 – other law[15])
- Law on Waters (Official Gazette of FBiH, 70/06)
- Law on Health Insurance (Official Gazette of FBiH, 30/97, 07/02, 70/08, 48/11 and 36/18)

Rulebooks

- Rulebook on Submission of Oil Sector-related Data (Official Gazette of FBiH, 16/16)
- Rulebook on Limit Values for Emissions into the Air from Combustion Plants (Official Gazette of FBiH, 3/13 and 92/17)
- Rulebook on Limit Values of Pollutant Emissions into the Air (Official Gazette of FBiH, 12/05)
- Rulebook on Licensing for Performing Energy Activities in the Sector of the Oil Industry (Official Gazette of FBiH, 15/16)
- Rulebook on Methodology for Determination of Reference Price of Electricity (Official Gazette of FBiH, 50/14)
- Rulebook on Criteria for the Evaluation of Applications for Funds i.e. Programs, Projects and Similar Activities of the FBiH Environmental Protection Fund (Official Gazette of FBiH, 73/10)
- Rulebook on Method of Calculation and Payment and the Deadlines for Calculation and Payment of Fees by Air Pollutants (Official Gazette of FBiH, 79/11)
- Rulebook on Procedure for Announcing Public Tenders and Selecting the Beneficiaries of the FBiH Environmental Protection Fund (Official Gazette of FBiH, 73/10 and 17/15)
- Rulebook on Application of the FBiH Law on Corporate Income Tax (Official Gazette of FBiH, 88/16, 11/17 and 96/17)
- Rulebook on Contents, Form, Requirements and Method of Issuing and Keeping of Water Management Acts (Official Gazette of FBiH, 31/15)
- Rulebook on Transfer Pricing (Official Gazette of FBiH, 67/16)

15 The provisions of articles 91-145 of the Law on Extrajudicial Procedure of FBiH (Official Gazette of FBiH, 02/98, 39/04 and 73/05) ceased to have effect on the day the Law on Inheritance in FBiH (Official Gazette of FBiH, 80/14) entered into force (10 January 2015).

- Rulebook on Conditions and Manner of Granting Loans, Credits or other Facilities of the FBiH Environmental Protection Fund. (Official Gazette of FBiH, 75/10)
- Rulebook on Requirements to be met by the Beneficiaries of the FBiH Environmental Protection Fund (Official Gazette of FBiH, 75/10)
- Rulebook on Determining the Quality of Liquid Petroleum Fuels (Official Gazette of FBiH, 107/14, 69/15 and 03/16)
- Rulebook on the Requirements for the Operation of Waste Incineration Plants (Official Gazette of FBiH, 12/05)
- FERK's Licensing Rule (Official Gazette of FBiH, 02/17)

Decree

- Decree on Organization and Regulation of the Gas Industry Sector (Official Gazette of FBiH, 83/07)
- Decree on Stimulating Power Generation from Renewable Energy Sources and in Efficient Cogeneration Facilities (Official Gazette of FBiH, 48/14)
- Decree on Conditions for Discharging Wastewater into Natural Recipients and Public Sewer Systems (Official Gazette of FBiH, 04/12)
- Decree on Types of Fees and Criteria for Calculating Air Pollutant Fees (Official Gazette of FBiH, 66/11 and 107/14)

Decisions

- Decisions on the classification of occupations in the FBiH (Official Gazette of FBiH, 60/14)

REPUBLIKA SRPSKA

Laws

- Law on Social Security Contributions (Official Gazette of RS, 114/17)
- Law on Electronic Signature (Official Gazette of RS, 106/15)
- Law on Gas (Official Gazette of RS, 22/18)
- Law on Enforcement Procedure (Official Gazette of RS, 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13, 98/14, 05/17 – CC Decision, 58/18 – CC Order and 66/18)
- Law on Public-Private Partnership (PPP) in RS (Official Gazette of RS, 59/09 and 63/11)
- Law on Concessions (Official Gazette of RS, 59/13)
- Law on Liquidation Procedure (Official Gazette of RS, 64/02)
- Law on Leasing (Official Gazette of RS, 70/07 and 116/11)
- Law on Renewable Energy Sources and Efficient Cogeneration (Official Gazette of RS, 39/13 and 108/13)
- Law on Civil Procedure (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 105/08 – CC Decision, 45/09 – CC Decision, 49/09 and 61/13)
- Law on Tax System (Official Gazette of RS, 62/17)
- Law on Corporate Income Tax (Official Gazette of RS, 94/15 and 01/17)
- Law on Personal Income Tax (Official Gazette of RS, 60/15, 05/16 and 66/18)
- Law on Land Survey and Cadastre of RS (Official Gazette of RS, 06/12, 110/16, 22/18 – CC Decision and 62/18)
- Law on Companies (Official Gazette of RS, 27/08, 58/09, 100/11, 67/13 and 100/17)
- Law on Accounting and Auditing of RS (Official Gazette of RS, 94/15)

- Law on Labour (Official Gazette of RS, 01/16 and 66/18)
- Law on Registration of Business Entities in RS (Official Gazette of RS, 67/13 and 15/16)
- Law on Bankruptcy (Official Gazette of RS, 16/16)
- Law on Courts of RS (Official Gazette of RS, 37/12, 14/14 – CC Decision, 44/15, 39/16 – CC decision and 100/17)
- Law on Spatial Planning and Construction (Official Gazette of RS, 40/13, 02/15 – CC Decision, 106/15, 03/16 - Correction and 104/18 – CC Decision)
- Law on Extrajudicial Procedure (Official Gazette of RS, 36/09 and 91/16)
- Law on Health Insurance (Official Gazette of RS, 18/99, 51/01, 70/01, 51/03, 57/03 – Correction 17/08, 01/09, 106/09, 39/16 – CC Decision and 110/16)

Rulebooks

- RERS' Licensing Rule (Official Gazette of RS, 39/10 and 65/13)
- Rulebook on Stimulating the Production of Electricity from Renewable Sources and Efficient Cogeneration (Official Gazette of RS, 114/13, 88/14 and 43/16)

Decisions

- Classification of Occupations 2008 (KZBiH - 08) (Official Gazette of RS, 40/11)

BRČKO DISTRICT

Laws

- Law on Civil Procedure of BD BiH (Official Gazette of BD BiH, 28/18)
- Law on Enterprises of BD BiH (Official Gazette of BD BiH, 11/01, 10/02, 14/02, 01/03, 08/03, 04/04, 19/07 and 34/07)
- Law on Labour of BD BiH (Official Gazette of BD BiH, 19/06 – Consolidated Text, 19/07, 25/08, 20/13, 31/14 and 01/15)
- Law on Registration of Business Entities in BD BiH (Official Gazette of BD BiH, 15/05)
- Law on Health Insurance in BD BiH (Official Gazette of BD BiH, 27/18 – Consolidated Text)

INTERNATIONAL LEGAL ACTS

- Directive on the EU's common System of VAT
- International Accounting Standards
- OECD Model Tax Convention
- OECD Transfer Pricing Guidelines
- Standard BAS EN 228
- Standard BAS EN 590
- UNCITRAL Model Law on International Commercial Arbitration
- General Data Protection Regulation (EU) 2016/679 (GDPR)
- Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market

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