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Network of Parliamentary Committees  
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*Center for Economic Analyses*



WESTMINSTER  
FOUNDATION FOR  
DEMOCRACY

# PARLIAMENTARY OVERSIGHT

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OVER POLICIES OF COMPETITION, STATE AID AND  
ATTRACTING FOREIGN DIRECT INVESTMENTS IN THE  
COUNTRIES OF THE WESTERN BALKANS

TOOLKIT FOR MEMBERS  
OF PARLIAMENT AND  
PARLIAMENTARY STAFF

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## List of abbreviations:

<b>AIDA</b>	Albanian Investment Development Agency
<b>AOFI</b>	Serbian Export Credit and Insurance Agency
<b>BiH</b>	Bosnia and Herzegovina
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>FBiH</b>	Federation of Bosnia and Herzegovina
<b>FIPA</b>	Foreign Investment Promotion Agency of Bosnia and Herzegovina
<b>FDI</b>	Foreign Direct Investment
<b>GDP</b>	Gross Domestic Product
<b>IFC</b>	International Finance Corporation
<b>IPAC</b>	Investment Promotion Agency of Kosovo *
<b>KZK</b>	Competition Protection Commission in Macedonia
<b>LGU</b>	Local Government Unit
<b>MIPA</b>	Montenegrin Investment Promotion Agency
<b>MP</b>	Member(s) of Parliament
<b>MS</b>	Member State
<b>OECD</b>	Organization of Economic Cooperation and Development
<b>RS</b>	Republika Srpska
<b>SAA</b>	Stabilisation and Association Agreement
<b>SIEPA</b>	Serbia Investment and Export Promotion Agency
<b>SME</b>	Small and Medium Enterprises
<b>TIDZ</b>	Technological Industrial Development Zones
<b>TFEU</b>	Treaty on the functioning of the European Union
<b>USD</b>	United States Dollar
<b>VAT</b>	Value Added Tax

## Why this toolkit ?

The purpose of this toolkit is to assist Members of Parliaments (MP's) and parliamentary staff in understanding the concept of competition policy and state aid, the obligations arising from the Stabilisation and Association Agreement (SAA) and to facilitate their involvement in the performance of the Parliament's oversight role over these topics.

The first part of the toolkit provides overview of the acquis for the competition policy chapter, administrative structures necessary for alignment with the acquis, links to the SAA, EU requirements for this chapter as well the overview of the institutional set-up and finally the role of the Parliament in oversight and scrutiny of competition policy and state aid by the Western Balkan countries.

The purpose of this toolkit is also to assist members of parliament and parliamentary staff to increase their level of understanding on how countries compete to attract foreign direct investments (FDI) and what instruments countries use to do so.

The second part of the toolkit gives information on each of the countries analyzed about the basic economic indicators like GDP and FDI in the period 2008-2012, it gives overview of legislation, institutions and policies for attracting FDI. The toolkit also gives more details about state aid and competition policies and the role of the parliament in a context of attracting FDI. For each of the countries we also present case studies of FDIs.

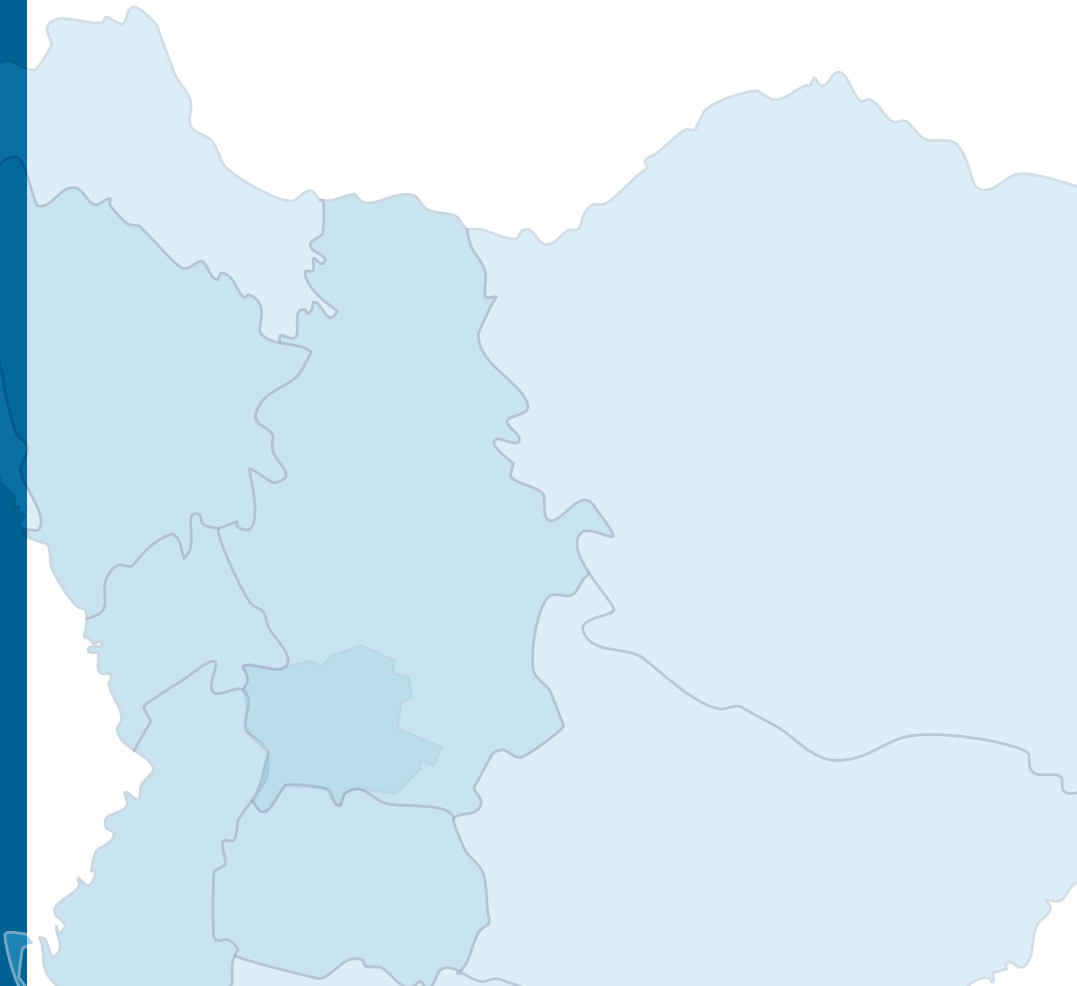
We finalize the toolkit with practical guidelines for improving the parliamentary oversight over the competition policy, state aid and attracting FDI.

With respect,  
**Mr. Marjan Nikolov, Phd**

# 1

FIRST PART

# COMPETITION POLICY AND STATE AID



# Competition policy

## General remarks

The competition policy pursued by the European Commission (EC) has a direct impact on the daily life of the European Union (EU) citizens<sup>1</sup>. The overarching objective of this policy is to preserve and develop a state of effective competition in the common market by impacting on the structure of the markets and the conduct of market players. The requirement for companies to compete with each other fosters innovation, reduces production costs, increases economic efficiency and, consequently, enhances the competitiveness of the European economy. Stimulated by competition, companies offer products and services that are competitive in terms of price and quality. Furthermore, greater competition allows the consumer to choose from a wider range of products and services at lower prices.

A rigorous application of competition policy is the best way of guaranteeing economic freedom. Economic freedom, within a proper regulatory framework, is a precondition for the development of a free society. Freedom of competition is thus a public freedom. It impacts not only on the economic environment but also on the organization of society at large. It is in this way that competition policy is a 'people's' policy<sup>2</sup>.

The competition policy acquis covers both anti-trust and State aid control policies<sup>3</sup>. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant position), to scrutinise mergers between undertakings, and to prevent governments from granting State aid which distorts competition in the internal market. Generally, the competition rules are directly applicable in the whole of the EU and the Member States (MS's) must co-operate fully with the EC in enforcing them. The competition acquis is based on Article 37 (State monopolies of a commercial character), Articles 101-105 (Rules applicable to undertakings), Article 106 (Public undertakings and undertakings with special or exclusive rights) and Articles 107-109 (Rules applicable to State aid) of the Treaty on the Functioning of the European Union (TFEU)<sup>4</sup>.

## Two pillars of EC competition policy

# 1

### Rules relating to undertakings:

- anticompetitive agreements
- abusive practices
- mergers and acquisition control

# 2

### Rules relating to Member States:

- state monopolies of commercial character
- special and exclusive rights
- state aid control

The TFEU states in its principles that the MS's are to adopt an economic policy 'conducted in accordance with the principle of an open market economy with free competition'. The competition policy pursues a precise goal, which is to defend and develop effective competition in the common market. It focuses on four main areas:

- The elimination of agreements which restrict competition and of abuses of a dominant position (e.g. price-fixing agreements between competitors)
- The control of mergers between firms (e.g. a merger between two large groups which results in their dominating the market);
- The liberalisation of monopolistic economic sectors (e.g. telecommunications);

- The monitoring of State aid (e.g. the prohibition of a State grant designed to keep a loss-making firm in business even though it has no prospect of recover.

The rationale for regulating the relations between undertakings is that some agreements between them impair competition. For example an agreement on prices (cartel) whereby firms fix price levels jointly so that consumers are unable to take advantage of the competition between suppliers in order to obtain competitive prices. The result is increase in market prices for the final consumer. Cartel is a group of similar, independent companies which join together to control prices or divide up markets and limit competition. Participants in a cartel can rely on their agreed market share and do not need to provide new products or quality services at competitive prices. Therefore, consumers end up paying more for less quality. This is why cartels are illegal under EU competition law and why the EC imposes heavy fines on companies involved in a cartel. Since cartels are illegal, they are generally highly secretive and evidence of cartels is not easy to find. Other agreements have as a purpose or effect fixing other conditions for the operation of markets: for example, they may allocate production quotas to firms or share markets between them. Agreements of this type are prohibited in the EC because they distort competition and are detrimental to the various operators on the market<sup>5</sup>.

The third subchapter of the Competition policy chapter is the liberalization. The term liberalisation refers in substance to Article 3 of the TFEU which states that the activities of the EU shall include a system ensuring that competition in the internal market is not distorted. For this purpose, there is a specific surveillance system in the case of public undertakings and undertakings to which MS's grant special or exclusive rights. With respect to the liberalisation of specific sectors, reference is made to the relevant sector-specific negotiating chapters.

### Administrative structures

Pursuant to the document 'Guide to the Main Administrative Structures required for implementation of the acquis<sup>6</sup>, in order to enforce the competition rules, i.e. rules on restrictive agreements, abuse of dominant position and on the control of mergers, both for the pre-accession period and beyond accession, a National Competition Authority must be established. The authority must be vested with the necessary powers enabling it to investigate anti-competitive practices, and the powers to order the termination of such practices, including the right to impose sufficient deterrent sanctions.

### Link to the Stabilisation and Association Agreements

The acquis under the Competition Policy chapter is to a large extent linked to obligations under the SAA. The Interim Agreement, and subsequently the SAA, include provisions comparable to the EU acquis on competition, covering anti-competitive agreements, abuses of dominant market positions and State aid. Moreover, they include special rules applying to public undertakings and undertakings with special and exclusive rights and prohibit quantitative restrictions on imports from the EU into the Western Balkan Countries. The Agreement calls for operationally independent authorities to supervise application of the competition rules in the Western Balkan Countries.

The SAA contains provisions on:

- incompatibility of restrictive agreements; abusive practices and state aid measures;
- assessment on the basis of law enforcement criteria of the EC law and
- law approximation obligation.<sup>1</sup>

<sup>1</sup>Competition policy in Europe and the citizen, European Commission, 2000.

<sup>2</sup>Ibid, page 6.

<sup>3</sup>See more on Summaries of legislation, Competition [http://europa.eu/legislation\\_summaries/competition/index\\_en.html](http://europa.eu/legislation_summaries/competition/index_en.html)

<sup>4</sup>Treaty on the Functioning of the European Union Consolidated version 2012 Official Journal C 326 of 26 October 2012



## EU requirements for competition policy

The main EU requirements for this chapter is the existence of:

- appropriate legal background (legislation aligned with the EU acquis);
- appropriate law enforcement facilities (authority with sufficient human/financial resources) and convincing (credible) enforcement record.

### Institutional set-up

The table below gives an overview of the competent authority for anti-trust and state aid control in each of the Western Balkans countries:

Country	Competent Competition Authority	Competent State Aid Authority
Albania	Competition Authority	State Aid Commission
Bosnia and Herzegovina	Competition Council	State Aid Council
Kosovo *	Competition Authority	State Aid Commission
Macedonia	Commission for Protection of Competition	Commission for Protection of Competition
Montenegro	Agency for Protection of Competition	State Aid Control Commission
Serbia	Commission for Protection of Competition	Commission for State Aid Control

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<sup>5</sup>EU Competition policy and the consumer, European Commission.

<sup>6</sup>Guide to the Main Administrative Structures required for implementing the acquis [http://ec.europa.eu/enlargement/pdf/enlargement\\_process/accession\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/negotiations\\_croatia\\_turkey/adminstructures\\_version\\_may05\\_35\\_ch\\_public\\_en.pdf](http://ec.europa.eu/enlargement/pdf/enlargement_process/accession_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/adminstructures_version_may05_35_ch_public_en.pdf).

## Countries of Western Balkans: Overview

### Albania



Albania is a potential candidate country for EU membership. Concerning the legislative alignment with the *acquis* in the area of anti-trust and merger control, Albania has enacted a Law on Competition Protection<sup>7</sup> in 2003 and also has adopted secondary legislation in this area. Furthermore, Albania also has a National Competition Policy.

According to the **EC Progress Report for 2013**<sup>8</sup>, limited progress has been made in the area of competition. The Competition Authority improved its overall performance and increased its administrative capacity. EC noted that further efforts are needed to increase the judiciary's knowledge of competition law. Furthermore, capacity building is needed to increase the knowledge Competition Authority staff in the areas of econometric analysis and use of information and communication technology.

#### Institutional set-up and role of the Parliament in oversight and scrutiny of competition policy

Competent authority for protection of competition is the Competition Authority of Albania. The Authority functions in accordance to the Law on Competition Protection and the Competition Policy of Albania. Pursuant to Article 18 of the Law on Competition Protection, the Authority is a public entity and is independent in performing its tasks. The Authority has the capacity of a legal entity and it comprises of a Commission and a Secretariat. The Commission is the decision taking body of the Authority and it consists of five members (Article 19). According to Article 22, the members of the Commission are appointed by majority of the votes, in the presence of more than half of all the Members of the Parliament of Albania, for a period of five years. The Parliament appoints the Chairman of the Commission. Pursuant to Article 31 the Assembly approves the annual budget for financing the Authority, and this budget constitutes a separate article in State Budget.

Pursuant to Article 24 of the Law the Competition Authority is obliged to submit an annual report to the Parliament within the first three months of the consequent year. This is a useful tool for parliamentary oversight over the competition policy.

### Bosnia and Herzegovina



Bosnia and Herzegovina (BiH) is also a potential candidate country for EU membership. Regarding the legislative alignment with the *acquis* in the area of anti-trust and merger control, BiH has enacted a Competition Law<sup>9</sup> in 2005. There are also numerous by-laws adopted on the basis of this Law.

According to the **EC Progress Report for 2013**<sup>10</sup>, in the area of anti-trust and mergers, the BiH Competition Law has yet to be fully aligned with the *acquis*. The Competition Council's activities focused on mergers and abuses of dominant market positions. Amendments were adopted regarding the Entities' Laws on Public Undertakings enabling the application of the EU's competition principles to public undertakings and undertakings to which special and exclusive rights were granted. Some progress was made in the area of competition. Further efforts have to be made to improve the current anti-trust legislation and to improve the administrative capacity of the Competition Council.

<sup>7</sup>Law on Competition Protection <http://www.caa.gov.al/laws/read/id/68>.

<sup>8</sup>Albania 2013 Progress Report [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/al\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/al_rapport_2013.pdf).

<sup>9</sup>Competition Law, <http://bihkonk.gov.ba/en/category/legislation/competition-act>.

<sup>10</sup>Bosnia and Herzegovina 2013 Progress Report [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/ba\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ba_rapport_2013.pdf).

## Institutional set-up and role of the Parliament in oversight and scrutiny of competition policy

Competent authority for protection of competition is the Competition Council (CC) established at the state level (BiH level). The CC functions in accordance with the Competition Law. Pursuant to Article 20 of the Law within the organizational structure of the BiH Competition Council there are Competition Offices in FBiH and RS as organizational units outside of the headquarters. The CC is responsible for enforcement of the legislation and has adopted numerous decision, conclusions and opinions on concentrations, mergers, restrictive agreements, abuse of dominant position etc. According to Article 21, the CC is an independent body with the capacity of a legal entity. The members of the CC are appointed in the following manner: 3 members are appointed by the BiH Council of Ministers, 2 members by the FBiH Government and 1 member by the RS Government. The BiH Council of Ministers appoints the President of the CC from the CC members (Article 22).

Pursuant to Article 25 of the Law the Competition Council is obliged to submit an annual report to the BiH Council of Ministers.

According to the institutional set-up of the competent authority for protection of competition of BiH, the members of the Competition Council are appointed by the executive branch of the government and the CC submits an annual report to the BiH Council of Ministers. Therefore there is lack of instruments for parliamentary oversight over the competition policy.

### Kosovo \*<sup>11</sup>



Kosovo \* is a part of the Stabilisation and Association process. Regarding legislative alignment with the acquis in the area of anti-trust and merger control, Kosovo \* has enacted a Law on Protection of Competition<sup>12</sup> in 2010 and also has adopted secondary legislation in this area.

According to the **EC Progress Report for 2013**<sup>13</sup>, in the area of anti-trust, some implementing legislation was adopted. The Kosovo \* Competition Authority adopted several decisions and has also issued non-binding opinions and recommendations to the government on specific drafts of legislation and decisions. The EC noted the need for further capacity building of the Authority regarding the expertise and experience of its staff. The authority is still situated in the Parliament building and does not have its own premises. Furthermore, the management of the authority and its procedures need to be significantly improved. These shortcomings put serious constraints on the authority's activities. They need to be addressed as a matter of priority. More needs to be done to increase awareness of competition rules and their advocacy. Implementation of the anti-trust and merger policy is still at a very early stage.

## Institutional set-up and role of the Parliament in oversight and scrutiny of competition policy

Competent authority for protection of competition is the Kosovo \* Competition Authority. The Authority functions in accordance to the Law on Protection of Competition. Pursuant to Article 24 of the Law on Protection of Competition, the Authority is a public institution, independent in performing its duties specified by the Law on Protection of Competition, for which it is accountable to the Assembly. The Authority has a status of a legal entity. The Statute of the Authority is approved by the Assembly. According to Article 25 of the Law, the collegial body that manages the work of the Authority is the Commission for Protection of Competition (CPC) composed of five members out of which one is the President.

<sup>11</sup>This designation is without prejudice to position on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo \* declaration of independence

<sup>12</sup>Law on Protection of Competition, <https://ak.rks-gov.net/?cid=2,20>.

<sup>13</sup>Kosovo \* 2013 Progress Report [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/Kosovo\\*\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/Kosovo*_2013.pdf).

Pursuant to Article 28 of the Law, the CPC is obliged to submit an annual report for the work of the Authority to the Assembly at latest till 31st of March of the coming year. This is a useful tool for parliamentary oversight over the competition policy.



## Macedonia

Republic of Macedonia is a candidate country for EU membership. Concerning the legislative alignment with the *acquis* in the area of anti-trust and merger control, Macedonia has enacted a Law on Protection of Competition<sup>14</sup> in 2010 and also has a adopted secondary legislation in this area.

According to the **EC Progress Report for 2013**<sup>15</sup>, the enforcement record of the Commission for Protection of Competition (CPC) slightly deteriorated. Preparations in the area of anti-trust, including mergers, are at an advanced stage. Good progress was made in the field of competition policy. The legislative framework is in place and the enforcement record continued to improve. The budgetary resources of the CPC remain limited. The number of staff is adequate but they need to be used more efficiently. Overall, preparations in this area are advanced.

### Institutional set-up and role of the Parliament in oversight and scrutiny of competition policy

Competent authority for protection of competition is the Commission for Protection of Competition (CPC). The CPC functions in accordance to the Law on Protection of Competition. Pursuant to Article 26 of the Law on Protection of Competition, the CPC is an independent state body and has the capacity of a legal entity. The CPC has a President, four members and Expert Service. The CPC is independent in performing its duties and in adopting decisions. The CPC is responsible for its work before the Assembly and at latest till 31st of March CPC submits an annual report for its work. This is one of the ways to monitor the activities of the CPC for both competition and state aid and it is a useful tool for parliamentary oversight over these policies. According to Article 27 of the Law, the CPC Members are appointed on the proposal of the Parliamentary Committee for election and nomination by the Assembly of Macedonia.



## Montenegro

Montenegro is a candidate country that has started the negotiations for EU accession. Regarding the legislative alignment with the *acquis* in the area of anti-trust and merger control, Montenegro has enacted a Law on Protection of Competition<sup>16</sup> in 2012 and also has a adopted secondary legislation in this area.

According to the **EC Progress Report for 2013**<sup>17</sup>, in the area of anti-trust and mergers, the new Law on Competition, further aligning the national legislation with the *acquis*, entered into force in October 2012. Additional secondary legislation was also adopted. The new Agency for Protection of Competition (APC) was founded in February 2013 and became formally operational in March. The number of case-handlers increased. There has been no improvement in Montenegro's enforcement record, mainly due to its focus on reorganizing the activities of the new Agency. The capacity of the judiciary to deal with complex competition cases needs to be strengthened.

### Institutional set-up and role of the Parliament in oversight and scrutiny of competition policy

Competent authority for protection of competition is the Agency for Protection of Competition (APC). The Agency functions in accordance to the Law on Protection of Competition. Pursuant to Article 19 of the Law on Competition, the Agency is established as an independent authority and it has the status of a legal entity. The Agency is obliged to publish its activity report for the preceding year and the annual financial statement including the auditor's report on its website. According to Article 20 of the Law, the Agency is accountable for its operation to the Government of Montenegro. Pursuant to Article 21 the Agency is managed by a Director appointed by the Government.

According to the institutional set-up of the competent authority for protection of competition of Montenegro, the Director of the Agency for Protection of Competition is appointed by the executive branch of the government. Also the APC is accountable for its operations to the Government. Therefore there is lack of instruments for parliamentary oversight over the competition policy.



## Serbia

Serbia is a candidate country that has started the negotiations for EU accession. Concerning the legislative alignment with the *acquis* in the area of anti-trust and merger control, Serbia has enacted a Law on Competition<sup>18</sup> in 2009 and also has a adopted secondary legislation in this area.

According to the **EC Progress Report for 2013**<sup>19</sup>, in the field of anti-trust and mergers, the CPC's capacity of the Commission for Protection of Competition (CPC) remains insufficient. The capacity of the judiciary to assess complex competition cases needs to be strengthened. Competition advocacy needs to be stepped up. No progress was made in the area of competition. Concerning liberalisation of specific sectors, a number of Serbian undertakings continue to enjoy special or exclusive rights, *de facto* or *de jure*, e.g. in the fields of transport, infrastructure, postal services, telecommunication services, broadcasting, agriculture, the environment and, to some extent, energy. Additional efforts need to be made to move towards market liberalisation in line with the *acquis*.

### Institutional set-up and role of the Parliament in oversight and scrutiny of competition policy

Competent authority for protection of competition is the Commission for Protection of Competition (CPC). The CPC functions in accordance with the Law on Competition. Pursuant to Article 20 of the Law on Competition, the CPC is an independent and autonomous organization performing public competencies and has a status of a legal entity. The CPC is an independent body and it is self-financing. The CPC is accountable for its work to the National Assembly, to which it submits Annual Report on its activities by the end of February of the current year for the preceding year. This is a useful tool for parliamentary oversight over the competition policy.

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<sup>14</sup>Law on Protection of Competition <http://www.kzk.gov.mk/eng/law.asp>.

<sup>15</sup>Macedonia Progress Report for 2013 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mk\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf).

<sup>16</sup>Law on Competition [http://unctad.org/sections/ditc\\_ccpb/docs/ditc\\_ccpb\\_ncl\\_Montenegro\\_en.pdf](http://unctad.org/sections/ditc_ccpb/docs/ditc_ccpb_ncl_Montenegro_en.pdf).

<sup>17</sup>Montenegro Progress Report for 2013 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mn\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf).

<sup>18</sup>Law on Competition <http://www.kzk.org.rs/en/zakon-2>.

<sup>19</sup>Serbia Progress Report for 2013 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf).

# State Aid

## General remarks

Pursuant to Article 87(1) of the TFEU, State aid is, in principle, incompatible with the common market. According to Article 88 of the TFEU, the EC is given the task to control State aid. This article also requires MS's to inform the EC in advance of any plan to grant State aid ("notification requirement"). The state aid measure fulfils the following criteria:

**(a) Transfer of State resources:** State aid rules cover only measures involving a transfer of State resources (including national, regional or local authorities, public banks and foundations, etc.). Furthermore, the aid does not necessarily need to be granted by the State itself. It may also be granted by a private or public intermediate body appointed by the State. The latter could apply in cases where a private bank is given the responsibility to manage a state funded SME aid scheme. Financial transfers that constitute aid can take many forms: not just grants or interest rate rebates, but also loan guarantees, accelerated depreciation allowances, capital injections etc.;

**(b) Economic advantage:** The aid should constitute an economic advantage that the undertaking would not have received in the normal course of business. Less obvious examples of transactions satisfying this condition are the following (a firm buys/rents publicly owned land at less than the market price; a company sells land to the State at higher than market price; a company enjoys privileged access to infrastructure without paying a fee; an enterprise obtains risk capital from the State on terms, which are more favourable than it would obtain from a private investor, etc.);

**(c) Selectivity:** State aid must be selective and thus affect the balance between certain firms and their competitors. "Selectivity" is what differentiates State aid from so-called "general measures" (namely measures which apply without distinction across the board to all firms in all economic sectors in a MS (e.g. most nation-wide fiscal measures). A scheme is considered "selective", if the authorities administering the scheme enjoy a degree of discretionary power. The selectivity criterion is also satisfied if the scheme applies to only part of the territory of a MS (this is the case for all regional and sectoral aid schemes) and

**(d) Effect on competition and trade:** The aid must have a potential effect on competition and trade between MS's. It is sufficient if it can be shown that the beneficiary is involved in an economic activity and that he operates in a market in which there is trade between MS's. The nature of the beneficiary is not relevant in this context (even a non-profit organisation can engage in economic activities).

According to Article 87(1) of the TFEU, the aid measures that satisfy all the criteria outlined above are, in principle, incompatible with the common market. However, the principle of incompatibility does not amount to a full-scale prohibition. Articles 87(2) and 87(3) of the TFEU specify a number of cases in which State aid could be considered acceptable (the so called "exemptions"). The existence of these exemptions also justifies the vetting of planned State aid measures by the EC, as foreseen in Article 88 of the Treaty. This article provides that MS's must notify to the EC any plan to grant State aid before putting such plan into effect. It also gives the EC the power to decide whether the proposed aid measure qualifies for exemption or whether the "State concerned shall abolish or alter such aid". In the context of Structural Funds operations, the most relevant exemption clauses are those of Article 87(3)(a) and 87(3)(c) of the Treaty; Article 87(3)(a) covers "aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment"; Article 87(3)(c) refers to "aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions contrary to the common interest".

## Administrative structures

In order to create a proper framework for the effective control of State aid for the period preceding accession, a National State Aid Monitoring Authority must be established<sup>20</sup>. Its task is to assess and

control the compatibility of State aids with the criteria arising from the relevant EC acquis. Procedural rules should be adopted to ensure that this Authority receives all necessary information from the aid granting bodies and has the power to effectively control all existing and new aid. The Authority should also create a comprehensive inventory, covering all direct and indirect aid granted by various institutions at central, regional and local Government levels. Whilst at the accession the EC will assume full responsibility for State aid monitoring and control, the EC needs an interlocutor in each MS to co-ordinate the fulfilment of the obligations of notification, reporting and information provision.

### [Link to the Stabilisation and Association Agreements](#)

The state aid acquis<sup>21</sup> is closely linked to the obligations under the Stabilisation and Association Agreement (SAA). The Interim Agreement, and subsequently the SAA, include provisions comparable to the EU state aid. The Agreement calls for operationally independent authorities to supervise application of the state aid rules in the Western Balkan Countries.

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<sup>20</sup>See footnote 6.

<sup>21</sup>See more on Summaries of legislation – State Aid [http://europa.eu/legislation\\_summaries/competition/state\\_aid/index\\_en.htm](http://europa.eu/legislation_summaries/competition/state_aid/index_en.htm).

## Countries of Western Balkans: Overview



### Albania

Concerning the legislative alignment with the *acquis* in the area of state aid, Albania has enacted a Law on State Aid<sup>22</sup> in 2005 and also has a adopted secondary legislation in this area.

According to the EC Progress Report for 2013, the aid granted in 2012 was 30% more than in 2011. The number of notifications by the government remains very low, and there have been no notifications by regional or local authorities. The State Aid Sector in the Ministry of Economy still lacks the necessary administrative capacity to enforce state aid rules. Some progress was made on completing secondary legislation for state aid control to bring it into line with the *acquis*. No progress was made in confirming the operational independence of the State Aid Commission and the Sector. The independence and administrative capacity of the State Aid Commission and Sector need to be enforced. Overall, preparations for the revision of state aid legislation are at an early stage.

### Institutional set-up and role of the Parliament in oversight and scrutiny of state aid policy

Competent authority for monitoring and control of state aid is the State Aid Commission (SAC). The SAC operates in accordance to the Law on State Aid. Pursuant to Article 16 of the Law on State Aid, the SAC is operationally independent in carrying out its functions. The SAC is composed of five members and the Chairman of the SAC is the Minister in Charge with Economic Affairs. The other members are appointed by the Council of Ministers, on the proposal of the Minister of Finance, the Minister in Charge with Economic Affairs, the Minister of Justice, and a representative from Civil Society. According to Article 17 of the Law, the SAC is responsible for preparation of the Annual Report on State Aid and submitting it to the Council of Ministers.

According to the institutional set-up of the competent authority for state aid control of Albania, the members of the State Aid Commission are appointed by the executive branch of the government. Also the SAC submits the Annual Report on State Aid to the Council of Ministers. Therefore there is lack of instruments for parliamentary oversight over the state aid.



### Bosnia and Herzegovina

Regarding the legislative alignment with the *acquis* in the area of state aid, Bosnia and Herzegovina has enacted a State Aid Law in 2012 and also has adopted secondary legislation in this area.

According to the EC Progress Report for 2013, the State Aid Council was established and held its first sessions. The Chairman of the Council resigned in April since the Council and its Secretariat were not operational due to a lack of financial resources. The financing of the authority at the State-level and by the Entities has been secured in the meantime. The appointment of a new chairman is required to avoid blocking of operations by the Council. Rules of procedures and a rulebook on the internal organisation of the Secretariat were adopted. The Secretariat is still not fully operational. A by-law on the procedures and the sample forms for the submission of notifications and for the monitoring of state aid was adopted. A by-law establishing the criteria for granting state aid which is not fully in compliance with the *acquis* is in the process of being adopted. The inventory of aid schemes instituted before the establishment of the State Aid Council has been completed. The aid schemes have not yet been aligned with the EU competition rules. Transparency of all state aid granted in the country has not yet been ensured. In order to comply with the Interim Agreement, the country must fully implement state aid legislation and set up the institutional framework for effective control of all state aid granted in the country. Preparations in this area remain at an early stage.

### Institutional set-up and role of the Parliament in oversight and scrutiny of state aid policy

Competent authority for monitoring and control of state aid is the State Aid Council (SAC). The SAC operates



in accordance to the State Aid Law. Pursuant to Article 7 of the State Aid Law, the SAC is a public institution that has to ensure the uniform application of the State Aid Law on the territory of BiH. The SAC is composed of eight members (three appointed by the BiH Council of Ministers; two appointed by the RS Government; two by the FBiH Government and one by the Brcko District Government).

According to Article 19 of the Law, the SAC is responsible for preparation of the Annual Report on State Aid. By June 30th each year, the SAC submits to the BiH Council of Ministers the Annual Report on State Aid for the previous year.

According to the institutional set-up of the competent authority for state aid monitoring and control of Bosnia and Herzegovina, the members of the State Aid Council are appointed by the executive branch of the government. Also the SAC submits the Annual Report on State Aid to the BiH Council of Ministers. Therefore there is lack of instruments for parliamentary oversight over the state aid.

Kosovo <sup>\*23</sup>



Concerning the legislative alignment with the state aid acquis, Kosovo \* has enacted a Law on State Aid<sup>24</sup> in 2012.

According to the EC Progress Report for 2013, the Law on State Aid has been in force since January 2012 and forms the basis of Kosovo's state aid regime. The rules of procedure and the notification format entered into force in October 2012. The State Aid Commission and the State Aid Office (within the Competition Authority) were established. State aid control legislation needs to be completed with secondary legislation on the basis of the acquis. Internal rules of procedures to prevent potential conflicts of interest between the requesting and granting authority are still needed. The members of the State Aid Commission have been appointed, but the office is not yet operational due to the lack of suitable premises. No request regarding state aid has been addressed to the State Aid Office during the reporting period. Alignment of state aid policy is at a very early stage and there is no track record of implementation.

### Institutional set-up and role of the Parliament in oversight and scrutiny of state aid policy

Competent authority for monitoring and control of state aid is the State Aid Commission (SAC). The SAC operates in accordance to the Law on State Aid. Pursuant to Article 8 of the Law on State Aid, the SAC acts on 'ad hoc' basis and is independent in exercising its functions and in its decision taking. The SAC is composed of five members (chairman is the Minister of Finance and other members are the Minister for European Integration, Minister of Trade and Industry, One representative from the Civil Society and the Chairman of Association of Municipalities ). The SAC is appointed by the Government of Kosovo \* based on the proposal of the Minister of Finance. The SAC is supported by the State Aid Office (SAO). According to Article 7 of the Law the Office is the administrative unit for controlling the state aid and it is established within the Kosovo \* Competition Commission. The office reports for its work to the Kosovo \* Competition Commission. The annual report on the supervision of implementation of state aids is attached to the annual report of Kosovo \* Competition Commission. The Kosovo \* Competition Commission is obliged to submit an annual report for the work of the Authority to the Assembly at latest till 31st of March of the coming year. This is a useful tool for parliamentary oversight over the state aid.

<sup>22</sup>Law on State Aid [http://www.mete.gov.al/doc/20060509102817\\_law\\_on\\_state\\_aid.pdf](http://www.mete.gov.al/doc/20060509102817_law_on_state_aid.pdf).

<sup>23</sup>This designation is without prejudice to position on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo \* declaration of independence

<sup>24</sup>Law on State Aid <http://www.kuvendikosoves.org/?cid=2,191,662>.



## Macedonia

Regarding the legislative alignment with the state aid acquis, Macedonia has enacted a Law on State Aid Control<sup>25</sup> in 2012 and adopted secondary legislation in this area.

According to the EC Progress Report for 2013, the legal framework in the field of state aid has improved with the adoption of decrees on regional aid, horizontal aid and services of general economic interest. The administrative capacity of the state aid department was strengthened through IPA twinning assistance for state aid control, including some specialised training, workshops and study visits for CPC staff. The number of staff dealing with state aid is adequate. In the area of state aid, the country is on track.

### Institutional set-up and relations with the Parliament

Competent authority for monitoring and control of state aid is the Commission for Protection of Competition (CPC). Pursuant to Article 10 of the Law on State Aid Control, the CPC is competent for evaluation and monitoring of all types of state aid.

The CPC is responsible for its work before the Assembly and at latest till 31st of March CPC submits an annual report for its work. This is one of the ways to monitor the activities of the CPC for both competition and state aid and it is a useful tool for parliamentary oversight over these policies.



## Montenegro

Concerning the legislative alignment with the state aid acquis, Montenegro has enacted a Law on State Aid Control<sup>26</sup> in 2011 and adopted secondary legislation in this area.

According to the EC Progress Report for 2013, the government amended the decree on state aid notification and the Ministry of Finance revised the rulebook on the annual report. State aid secondary legislation has yet to be fully aligned with the acquis. The administrative capacity of the State Aid Control Unit (SACU) at the Ministry of Finance, acting as a secretariat for the State Aid Control Commission (SACC), was reinforced slightly with the recruitment of a new official, but its operational capacity still needs to be built up. Given its institutional set-up, the SACC/SACU's independence from the state-granting bodies, in particular, remains to be secured. Its decisions and recommendations should be binding to the parliament and the government. EU rules and the requirements of the SAA for restructuring aid must be complied with. The SACC/SACU's annual report was adopted by the government and submitted to the parliament in July 2013. Some progress was made as regards the alignment of the legislative framework with the acquis. The independence of the competition authorities, particularly in the state aid field, needs to be demonstrated through the enforcement record, which still needs to be significantly improved. Special attention needs to be given to the aluminium plant KAP. Overall, preparations are moderately advanced.

### Institutional set-up and role of the Parliament in oversight and scrutiny of state aid policy

Competent authority for monitoring and control of state aid is the State Aid Control Commission (SACC). The SACC operates in accordance to the Law on State Aid Control. Pursuant to Article 9 of the Law on State Aid Control, the SACC controls the compliance of the notified and granted state aid and is appointed by the Government. According to Article 10 of the Law, the SACC submits an Annual Report on the granted state aid until 30th of June of the current year for the previous year to the Government and to the Parliament of Montenegro. This is a useful tool for parliamentary oversight over the state aid.



## Serbia

Concerning the legislative alignment with the state aid acquis, Serbia has enacted a Law on State Aid Control<sup>27</sup> in 2009 and has adopted secondary legislation in this area.

According to the EC Progress Report for 2013, in the area of state aid, the Commission for State Aid Control (CSAC) adopted 111 decisions, including 41 conclusions initiating ex-post control, compared to 148 decisions over the previous period. The majority of the existing state aid schemes, including the fiscal aid schemes, still need to be aligned with the acquis. The rules on aid to the provision of services of general economic interest need to be aligned with the acquis. An effective mechanism must be implemented to ensure the respect of the de minimis aid threshold and of cumulation rules. The exemption from state aid rules for companies in the process of being privatised needs to be repealed. The CSAS needs to demonstrate its operational independence, particularly from state aid granting bodies. Further efforts are needed to ensure that aid measures are notified to the CSAC and approved before being granted. A decree subsidising the sale of cars produced in Serbia was adopted in March without the CSAS being notified or approving it. It was incompatible with the Interim Agreement and with the acquis and was subsequently repealed. Serbia's record on ex ante notifications of state aid measures needs to be improved. The legislation on state aid control must be aligned with the acquis and applied to all undertakings, including those in the process of being privatised. In both anti-trust and state aid fields, additional advocacy measures are needed. Overall, alignment in the area of competition policy is moderately advanced.

### Institutional set-up and role of the Parliament in oversight and scrutiny of state aid policy

Competent authority for monitoring and control of state aid is the Commission for State Aid Control (CSAC). The CSAC operates in accordance to the Law on State Aid Control. Pursuant to Article 6 of the Law on State Aid Control, the CSAC controls the state aid. The CSAC is set up by the Government and its composed of five members. The CSAC is operationally independent. According to Article 9 of the Law submits to the Government an annual report on state aid granted in the Republic of Serbia.

According to the institutional set-up of the competent authority for state aid monitoring and control of Serbia, the members of the Commission for State Aid Control are appointed by the executive branch of the government. Also the CSAC submits to the Government an annual report on state aid granted in the Republic of Serbia. Therefore there is lack of instruments for parliamentary oversight over the state aid.

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<sup>25</sup>Law on State Aid Control <http://kzk.gov.mk/mak/zapis1.asp?id=900&kategorija=7>.

<sup>27</sup>Law on State Aid Control [http://www.mfin.gov.rs/download/pdf/zakoni/sektor\\_zajavna\\_preduzeca/Law%20on%20State%20Aid%20Control,%20July%208,%202009.pdf](http://www.mfin.gov.rs/download/pdf/zakoni/sektor_zajavna_preduzeca/Law%20on%20State%20Aid%20Control,%20July%208,%202009.pdf).

## Case study

### Albania

#### State Aid

##### Case- Subsidies Scheme for the Albanian Railway<sup>28</sup>

In Albania in 2005 a scheme for subsidies for the railway was established. The scheme aimed at supporting the railway undertaking and grants an annual subsidy from the state budget in order to compensate for the costs of offering public services in this sector. The annual subsidy specifically covers the current expenses of passenger transport. Although the scheme covers the sector of railway transport, its single beneficiary is the undertaking, Albanian Railway sha (HSH). The basis for providing railway subsidies is the Law "On state budget of 2005" (No. 9339, dated 21.12.2004), the Instruction (No. 8, dated 27.01.2005) "On the implementation of the State Budget for 2005", as well as all the budget laws over the years. Every year the state budget allocated subsidies for HSH of around 4 million USD, for its operating activity and 3- 4 million USD for capital investments. Despite the subsidy provided over the years, HSH continues to be unprofitable and there are continuing indications that HSH does not have at its disposal the necessary funds for the maintenance and investments necessary to transform it into an efficient enterprise. Having in mind these circumstances, the State Aid Commission adopted a decision in 2007 that the component Ministry of Public Works, Transport and Telecommunication should conclude a public contract with the Albanian Railways, where the obligation to offer the public service of passenger transport is determined. The Ministry has upheld the decision of the State Aid Commission and a public service contract for passenger transport, related to the financial support by the state was concluded between the Ministry and the railway company.

### Bosnia and Herzegovina

#### Competition Policy

##### Case – Concentration between Etihad Airways P.J.S.C., Abu Dhabi, United Arab Emirates and Serbia represented by the Government of Serbia<sup>29</sup>

In 2013 the Competition Council of BiH adopted a Resolution on rejecting the application for concentration of the company Etihad Airways P.J.S.C., Abu Dhabi, United Arab Emirates and Serbia represented by the Government of Serbia. This resolution was based on the BiH Law on Competition and was adopted after submission of a joint application for concentration by the Etihad Airways and Serbia. The BiH Competition Council rejected the joint application on the basis of the justification that there is no concentration pursuant to the BiH Law on Competition. The company Etihad Airways does not have ownership or shares in the capital of other companies in BiH. Etihad Airways does not sell directly its products or services in BiH but has a revenue from flight reservations outside BiH. The other company JAT Airways is 100% owned by Serbia and is represented by the Government of Serbia. JAT also does not have ownership or shares in the capital of other companies in BiH. JAT sells directly tickets via its representative office in Sarajevo and its unit in Banja Luka. The BiH Competition Council of concluded on the basis of the provision of the agreement between Etihad Airways and JAT that the companies that participate in the concentration were not obliged to submit application for approval of concentration. This was due to the fact that by this agreement Etihad wont acquire control or dominant influence over JAT (since it will have 49% of the shares).

### Kosovo \*

#### Competition Policy

##### Case – Verbal Agreement or Coordinated Practices of Price Equation of the Fuel Derivatives in the Vushtrri Municipality<sup>30</sup>

In 2011 the Kosovo \* Competition Commission adopted a decision on annulment of the verbal agreement

<sup>28</sup>Albania Report on the Inventory of Existing State Aid Schemes in Albania [http://www.mete.gov.al/doc/20100223114526\\_report\\_on\\_the\\_inventory\\_of\\_existing\\_state\\_aids\\_-\\_english.pdf](http://www.mete.gov.al/doc/20100223114526_report_on_the_inventory_of_existing_state_aids_-_english.pdf).

<sup>29</sup>Resolution on rejecting the application for concentration of the company Etihad Airways P.J.S.C., Abu Dhabi, United Arab Emirates and Serbia represented by the Government of Serbia <http://bihkonk.gov.ba/datoteka/Zakljucak-JAT-ETIHAD-25092013-bos.pdf>.

or coordinated practices for determining and levelling of the prices of the petroleum derivatives on the basis of the Law on Competition Protection. On the basis of information from the consumers and public information, the Competition Commission conducted a thorough investigation of several fuel stations and verify the price list of their petroleum derivatives. The commissioners found that the prices for fuel were the same in many fuel stations. During the conversation that the Competition Commission had with the fuel stations they admitted that they have verbally agreed on the same price for the fuel. Therefore the Kosovo \* Competition Commission adopted a decision that the agreement among the owners of the fuel stations for retail sale of fuel in the Vushtrri municipality for determining and leveling of the petroleum prices is annulled.

## Macedonia

### State Aid

#### Case – Opinion by the Commission for Protection of Competition on the Law on Technological and Industrial Development Zones (TIDZ)<sup>31</sup>

In 2007, the Law on Technological and Industrial Development Zones (TIDZ) was enacted. The first text of the law was not aligned with the state aid acquis and therefore consultations with the European Commission were held in order to achieve alignment. The Commission for Protection of Competition (CPC) in 2007 adopted an opinion that the text of the Law is breaching the State Aid law and the obligations from the acquis. After this opinion there were negotiation with the EC and at present the Law is aligned with the acquis. The present TIDZ Law represents an aid scheme aligned with the state aid acquis on regional aid and with this law benefits are prescribed for foreign investors in the TIDZ.

## Montenegro

### Competition Policy

#### Case – Abuse of Dominant Position by Jugopetrol<sup>32</sup>

In 2012 the Agency for Protection of Competition of Montenegro initiated an ex officio procedure for determining whether there is an abuse of dominant position by JSC Jugopetrol, Kotor. Based on the findings on the investigation the Agency adopted a decision determining that Jugopetrol has dominant position on the relevant market for providing services for warehousing of oil and oil derivatives by seaway on the relevant geographical market of harbor Bar. Furthermore Jugopetrol abuses its dominant position by restricting the market at the expense of the potential users of this type of services, by declining business cooperation and by declining to lease the warehouses under market conditions.

## Serbia

### State Aid

#### Case – State Aid for Employment of People with Disabilities and Professional Rehabilitation<sup>33</sup>

In 2010, the Commission for State Aid Control adopted a decision for approving granting of state aid on the basis of a public call on granting funds pursuant to the company programs for employment of people with disabilities and professional rehabilitation. The Commission for State Aid Control concluded in this decision that the granting of this aid is in accordance with the Law on State Aid Control. The amount of the aid was 90.000.000, 00 Serbian Dinars for 2010. The public call represents a scheme for granting horizontal aid for employment i.e state aid for the covering the additional expenses for employment of people with disabilities.

<sup>30</sup>Decision of Kosovo \* Competition Commission on Verbal agreement or coordinated practices of price equation of the fuel derivatives in the Vushtrri municipality [http://ak.rks-gov.net/repository/docs/Vendimi\\_i\\_Vushtrrise%20\\_Eng.pdf](http://ak.rks-gov.net/repository/docs/Vendimi_i_Vushtrrise%20_Eng.pdf).

<sup>31</sup>Opinion of the Commission of Protection of Competition on the draft Law on Technological and Industrial Development Zones, 2007 <http://kzk.gov.mk/images/Vestiimages/446/!%D0%9F%D0%A0%D0%95%D0%97%D0%95%D0%9C%D0%98.PDF>.

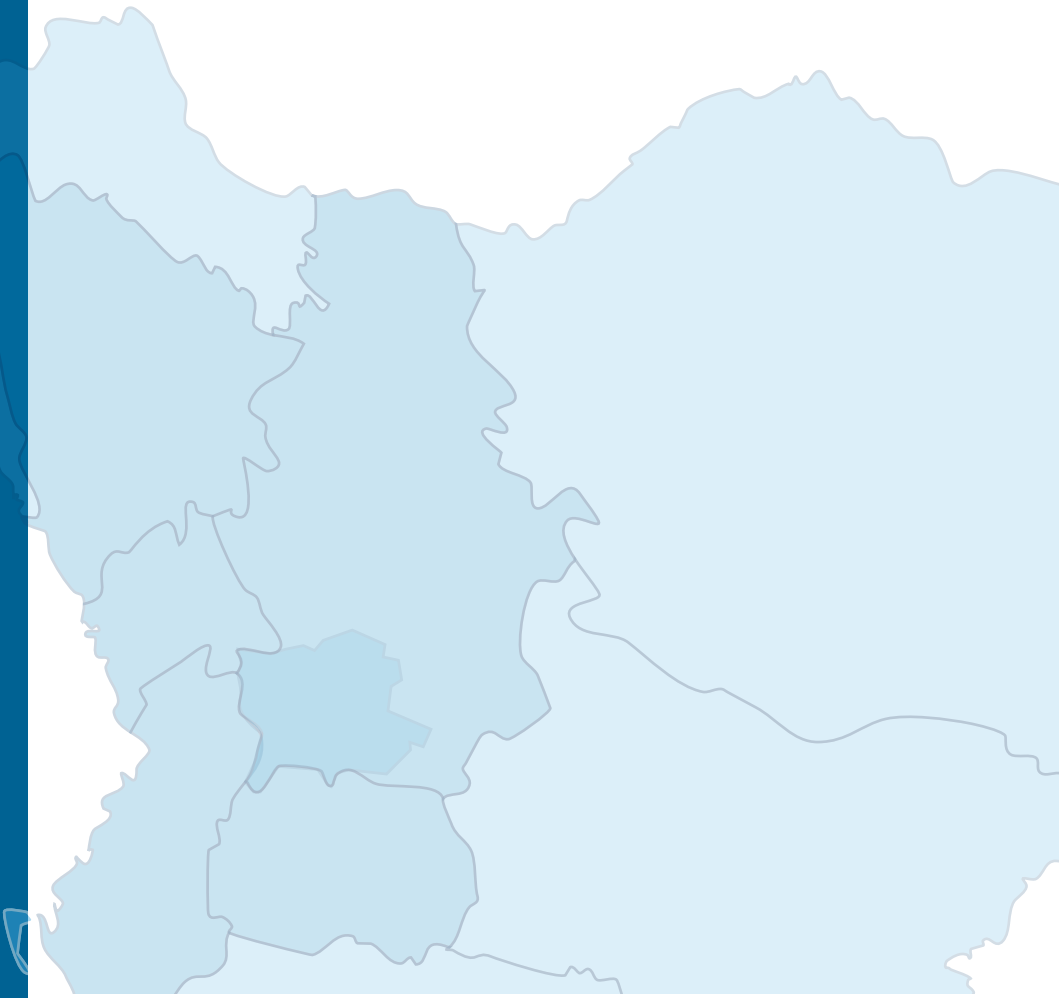
<sup>32</sup>Decision of Montenegro Agency for Protection of Competition on abuse of dominant position by Jugopetrol <http://www.azk.me/1/doc/zloupotrebe/Jugopetrol%2011.pdf>

<sup>33</sup>Decision of the Commission for State Aid Control of Serbia regarding scheme for employment of people with disabilities <http://www.mfin.gov.rs/UserFiles/File/drzavna%20pomoc/IIIsednica/Resenje%20Komisije%20-%20Preduzeća%20za%20profesionalnu%20rehabilitaciju%20i%20za-posteljavanje%20osoba%20sa%20invaliditetom.pdf>

# 2

## SECOND PART

### FOREIGN DIRECT INVESTMENT AND STATE AID



## Definition of FDI and State Aid

There are numerous definitions of FDI and State aid, however as widely accepted definitions can be considered are those of the World Bank and the EU especially considering that all listed countries are candidates or aspiring for EU membership.

### How are FDI defined?

According to the EU's EC the Foreign direct investment<sup>34</sup> (FDI) is cross-border investment made by a direct investor with the intent of obtaining a lasting interest in an enterprise resident in another country (direct investment enterprise). An international investment is classed as FDI when an investor owns 10% or more of ordinary shares or voting rights in an incorporated or unincorporated enterprise abroad respectively.

The Organization of Economic Cooperation and Development - OECD<sup>35</sup> defines the FDI as cross-border investment by a resident entity in one economy with the objective of obtaining a lasting interest in an enterprise resident in another economy. The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the direct investor on the management of the enterprise. Ownership of at least 10% of the voting power, representing the influence by the investor, is the basic criterion used.

The World Bank<sup>36</sup> similarly defines foreign direct investment as the net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor. (It is the sum of equity capital, reinvestment of earnings, other long-term capital, and short-term capital as shown in the balance of payments.)

### How is State Aid defined in the EU?

According to the EU's EC<sup>37</sup> State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. To be State Aid, a measure needs to have these features: there has been an intervention by the State or through State resources which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.); the intervention gives the recipient an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions; competition has been or may be distorted; the intervention is likely to affect trade between Member States.

Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not constitute State aid (examples include general taxation measures or employment legislation).

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<sup>34</sup>[http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=DSP\\_GLOSSARY\\_NOM\\_DTL\\_VIEW&StrNom=CODED2&StrLanguageCode=EN&IntKey=16701585&RdoSearch=BEGIN&TxtSearch=foreign&CboTheme=&IntCurrentPage=1](http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=DSP_GLOSSARY_NOM_DTL_VIEW&StrNom=CODED2&StrLanguageCode=EN&IntKey=16701585&RdoSearch=BEGIN&TxtSearch=foreign&CboTheme=&IntCurrentPage=1).

<sup>35</sup><http://www.oecd-ilibrary.org/sites/factbook-2013-en/04/02/01/index.html?itemId=/content/chapter/factbook-2013-34-en>.

<sup>36</sup><http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD>.

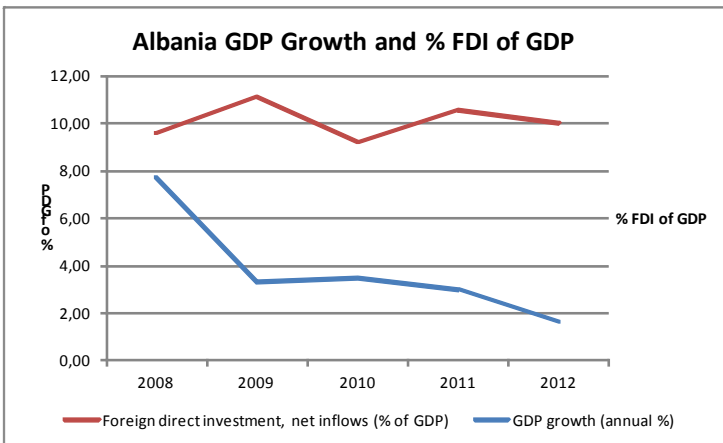
<sup>37</sup>[http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html).

## Countries of Western Balkans: Overview

### Albania

Albania	2008	2009	2010	2011	2012
Population (Total)	3.156.608	3.151.185	3.150.143	3.153.883	3.162.083
GDP (current US\$)	12.968.652.891	12.118.580.597	11.858.166.295	12.959.563.902	12.648.095.824
GDP growth (annual %)	7,70	3,30	3,50	3,00	1,60
Foreign direct investment, net inflows (% of GDP)	9,57	11,08	9,19	10,56	10,00
Foreign direct investment, net inflows (BoP, current US\$)	1.240.972.849	1.343.091.150	1.089.416.366	1.368.298.748	1.265.256.715

Source: <http://data.worldbank.org>.



Source: <http://data.worldbank.org>.

The indicators of the FDI as % of the GDP indicate a stable trend of 10% throughout the five years with significantly outperforming the overall annual GDP growth indicators which show a decrease. The FDI value of Albania in the last five years indicates a stable value over 1 billion USD on an annual basis.

#### Overview of legislation and policies for attracting FDI

The following major legislation regulates the business operations and foreign operations;

- Law on Foreign Investments – provides the equal treatment between domestic and foreign investors
- Law on Entrepreneurs and Commercial Companies (Company Law)
- Law on the Protection of Competition – law aims at protecting free and effective competition in the market, through laying down rules on the behavior of enterprises, and determines the responsible institutions for the protection of competition and their tasks
- Law on state aid - (all sectors except agriculture and fisheries)
- Law on income tax



- Tax procedures Law
- Law on the establishment and operation of economic zones
- Law on VAT
- Law on state aids - lays down the legal basis for the establishment of responsible structures for controlling state aids in Albania.
- Law on Competition Protection

The following institutions are directly responsible for attracting of FDI:

- Albanian Investment Development Agency (AIDA)- relatively new governmental development agency with the aim of increasing competitiveness and attractiveness to foreign investments and supporting the SME development, while being a “onestopshop” for the licensing of tenants in the economic zones<sup>38</sup>.
- Ministry of Economy, Trade and Energy

### Overview of state aid and competition policies

The competition policy law implementation and monitoring is conducted through the Competition Authority<sup>39</sup>, an independent body that reports to the Parliament, and is in charge of antitrust and merger policies.

The state aid law implementation and control is conducted through the State Aid Department at the Ministry of Economy, as the technical administrative structure<sup>40</sup>, whilst State Aid Commission is the decision taken body<sup>41</sup> chaired by the Minister of Economy

Albania does not provide specific incentive for foreign investors, but rather with the latest changes on the law for foreign investors treats the domestic and foreign investors equally. Specific incentivizing measures:

- Corporate income tax at 10 %
- Personal Income Tax, progressive up to 10%
- VAT at 20% [except for medical care and medicines at 10%]
- Incentive for new capital investments by allowing VAT tax deferral up to 12 months (or more if the investments is longer, under specific rules set by the Ministry of Finance)
- Law on foreign investors provides the following incentives:
  - Equal treatment of the foreign investors with the domestic investors
  - Protection of foreign investments from direct or indirect expropriation or nationalization measures, except for special cases defined by law in the interest of public use
  - Right of foreign investors to expatriate all funds and contributions
  - Judicial protection of foreign investors with respect to the legal rights related to their investments.
  - Positive discrimination to foreign investors, the Government through a Decision of the Council of Ministers, provides for the substitution of the foreign investor in a civil dispute with third private parties<sup>42</sup>
  - Foreign investment enterprises are allowed to own land<sup>43</sup>
- Customs duties exemption - for returning emigrants (persons that have lived in another country for a period of not less than 12 months continuously and are coming back to Albania).
- The Competitiveness Fund (AIDA) – SME funds based on a reimbursement of export promotion activities costs, 50% of the costs, up to 1 million LEK <sup>44</sup>
- The Innovation Fund (AIDA) – SME funds for experts to audit their needs for innovation and technology, based on a reimbursement of funds for up to 400 thousand LEK

<sup>38</sup><http://www.aida.gov.al/>.

<sup>39</sup> [www.caa.gov.al](http://www.caa.gov.al).

<sup>40</sup>[http://ec.europa.eu/enlargement/pdf/financial\\_assistance/phare/evaluation/2013/23914\\_rep\\_albania.pdf](http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2013/23914_rep_albania.pdf).

<sup>41</sup><http://www.mete.gov.al/mei/>.

<sup>41</sup>[http://www.mete.gov.al/doc/web\\_fdi\\_report\\_english.pdf](http://www.mete.gov.al/doc/web_fdi_report_english.pdf).

## The role of the Parliament related to attracting FDI and state aid and competition policies

The Competition and State Aid Control Authority provide reports to the Parliament on an annual basis, in line with the EU acquis.

### Case study – Titan Cement Greece /Antea Cement Sh.A<sup>45</sup> cement production (PRIVATE, IFC & EBRD INVESTMENT)

In 2007 The Albanian Parliament ratified an agreement between TITAN Cement Greece and the national authorities on the construction of a cement production facility at the location Boka e Kuge. Titan secured land use and mining rights for the next 99 years. Titan Cement from Greece from 2008 initiated a Greenfield investment worth 200 million EUR in Albania through the company Antea Cement. This is still the largest private foreign investment in the country. The investment was realized with the IFC and the EBRD where TITAN holds a 60% stake in the new enterprise, with the International Finance Corporation and the European Bank for Reconstruction and Development holding the other 40%. Up until now it generated over 185 direct employments.

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<sup>43</sup>[http://www.ey.com/Publication/vwLUAssets/Doing\\_business\\_in\\_Albania\\_2012/\\$File/Doing\\_business\\_in\\_Albania\\_2012.pdf](http://www.ey.com/Publication/vwLUAssets/Doing_business_in_Albania_2012/$File/Doing_business_in_Albania_2012.pdf).

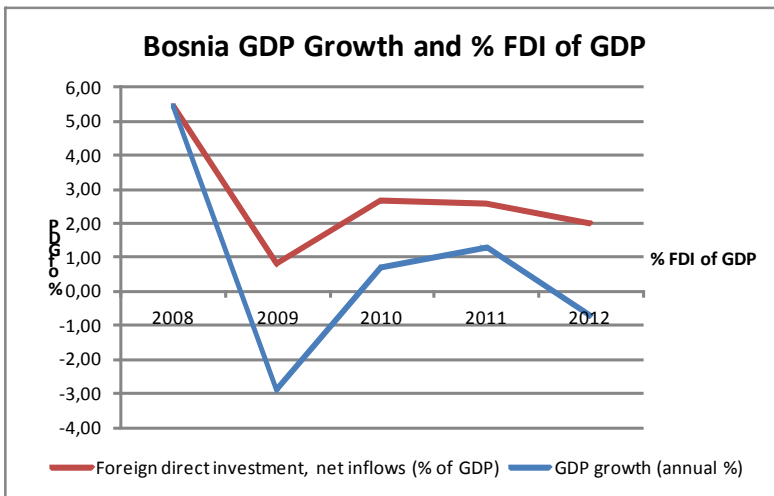
<sup>44</sup><http://aida.gov.al/?p=916>

<sup>45</sup><http://www.anteacement.com/default.asp?siteID=1&pageid=27&langid=2>.

## Bosnia and Herzegovina

Bosnia	2008	2009	2010	2011	2012
Population (Total)	3.861.201	3.853.446	3.845.929	3.839.322	3.833.916
GDP (current US\$)	18.543.289.395	17.082.889.410	16.775.469.778	18.252.421.795	17.465.958.606
GDP growth (annual %)	5,42	-2,91	0,70	1,30	-0,70
Foreign direct investment, net inflows (% of GDP)	5,42	0,81	2,65	2,57	2,00
Foreign direct investment, net inflows (BoP, current US\$)	1.004.852.660	138.511.020	443.840.207	468.733.719	349.607.723

Source: <http://data.worldbank.org>.



Source: <http://data.worldbank.org>.

The indicators of the FDI as % of the GDP indicate a relatively stable trend of around 2% with outperforming the overall annual GDP growth indicators. Except for Y2008 as a significant high FDI value of over 1 billion USD and the significantly low 138 million USD in Y2009, the value is around 400 million USD.

### Overview of legislation and policies for attracting FDI

The following major legislation in Bosnia and Herzegovina regulates<sup>46</sup> the business operations and attracting of FDI:

- Law on the Policy of Foreign Direct Investments

- Law on Free Trade Zones
- Law on Competition
- State Aid Law
- Law on the system of state aid
- Law on Registration of Business Entities
- Law on Enterprises (Company Law)
- Law on Concessions

The following institutions are directly responsible for attracting of FDI:

- Foreign Investment Promotion Agency of Bosnia and Herzegovina (FIPA)
- Government of B&H
- For Republika Srpska – Ministry for economic relations and regional cooperation, and Ministry of Finance

#### Overview of state aid and competition policies

The measures and policies for attracting and supporting foreign investors in B&H are the following:

- Equal treatment of domestic and foreign investors
- Foreign investors are entitled to transfer abroad the proceeds from the investment in B&H
- Foreign investors may own real estate in B&H
- Foreign Investors Support Fund is established in 2007 by a Council of Ministers provides a financial incentive for investors ( due to budget restrictions there are no funds distributed)
- Customs benefits for equipment of the foreign investor being imported as part of share capital is exempt from paying customs duties (except passenger vehicles, slot and gambling machines)
- Free trade zones provide VAT exemption on imported goods in free zones and no import duty for equipment for production in the free zone

#### Tax benefits in Federation of B&H:

- Corporate tax benefit
  - for companies that generated 30% of revenue from exports is exempt from corporate profit tax for the year
  - For investments of minimum 20 million BAM in 5 years in B&H is being exempt from corporate profit tax for five years starting from first investment year with min 4 million BAM
  - if 50% of total employees are disabled and with special needs on an annual basis

#### Tax benefits in Republic of Srpska:

- Profit tax base reduction in the value of the investment for: equipment for company production activities, plants and immovable property for manufacturing and processing; tax base reduction in the amount of the personal income tax and personal benefits paid for employers providing 30 new employments in the year.

- Subsidized employments for: Investments of minimum value of 2 million BAM and minimum 30 new employments depending on the development of the area of 3.500 BAM per employee in developed and medium developed, and 5.000 BAM in underdeveloped and extremely underdeveloped LSGUs.
- Investments over 25 million BAM and 100 new employment, no matter of the developmental status of the region receive funds of 15% of the investment value

#### Brcko district incentives based on Law on incentives to economic development<sup>47</sup> in Brcko district B&H:

- No fees for company signage
- Reimbursement of the court fees for registration of a business entity for newly established enterprises and entrepreneurs;
- Reimbursement of expenses of connection to power, water and sewage network;
- Reimbursement of paid fees for building permits and approvals for the usage of the facility
- Reimbursement of expenses in the amount of the difference in price of electricity and water paid by the company and the price paid by households;
- Reimbursement for paid employment contribution for newly employed persons;
- Reimbursement for salary for maternity leave in amount of 100%;
- Stimulation of the employer in amount of 50% of total duties for health insurance of newly employed workers
- Reimbursement for new fixed asset investments and up to the amount of determined and paid profit tax or income tax for a year

#### The role of the Parliament related to attracting FDI and state aid and competition policies

The Competition Council of Bosnia and Herzegovina<sup>48</sup> is an independent body with sole authority to conduct the competition law and decides on a case basis. The Competition Councils reports on an annual basis to the Council of Ministers of B&H. The State Aid Council is recently established and not yet operational. The Parliament ratifies the Law for state Aid and the establishment of the council.

#### Case study - RS Silicon doo Mrkonjić Grad

The Italian investor Metalleghe initiated the investment in a production plant for metal silica processing in Mrkonjić Grad, Republic of Srpska. The 20013 Letter of intention was signed between the investor and the prime minister of RS and the Mayor.

The investment is estimated to be 30 million BAM. The awarded grant is of value of 9 BAM based on the Invitation for Award of Grant Financing based on the Decree on Conditions and Implementation of Investment and employment program: [1] grant per new employment depending on the development level of the municipality [2] 15% grants of investment value for investments over BAM 25 million and over 100 new employments.

<sup>44</sup><http://www.doingbusiness.org/law-library/bosnia-and-herzegovina>

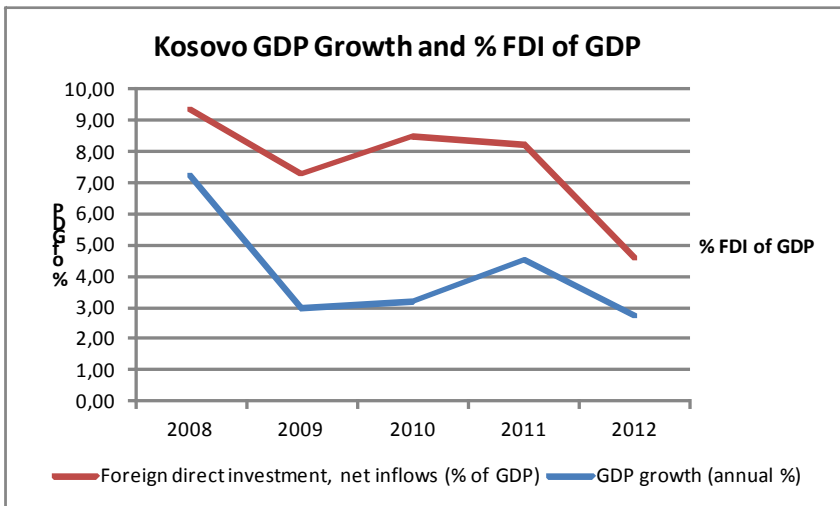
<sup>47</sup><http://skupstinabd.ba/zakoni/zakon-o-podsticaju-privrednog-razvoja-u-br-d.html>.

<sup>48</sup>[www.bihkonk.gov.ba](http://www.bihkonk.gov.ba).

## Kosovo \*

Kosovo *	2008	2009	2010	2011	2012
Population (Total)	1.747.383	1.761.474	1.775.680	1.790.957	1.806.366
GDP (current US\$)	5.771.473.142	5.634.824.257	5.750.799.437	6.636.703.418	6.445.201.981
GDP growth (annual %)	7,20	3,00	3,20	4,50	2,70
Foreign direct investment, net inflows (% of GDP)	9,30	7,24	8,46	8,23	4,55
Foreign direct investment, net inflows (BoP, current US\$)	536.790.832	408.068.783	486.596.952	546.217.229	293.195.750

Source: <http://data.worldbank.org>.



Source: <http://data.worldbank.org>.

The indicators of the FDI, as % of the GDP, indicate a relatively stable trend of around 5% to 8% per annum, outperforming the overall annual GDP growth indicators. Except for the Y2012 low value of the FDI with less than 300 million USD, the value of the FDI in Kosovo \* on an annual basis is between 4 and 5 million USD.

### Overview of legislation and policies for attracting FDI

The following major legislation in Kosovo \* regulates the business operations and attracting of FDI:

- Foreign Investment Law – a law that regulates that the foreign investments which gives them equal treatment with the domestic investors

- Amendment of Law on Business Organizations
- Law on Foreigners
- Law on Competition
- Law on Protection of Competition
- Law on Economic Zones
- Law on goods exempt from custom tax and goods with zero rate of the custom tax
- Law on Value Added Tax
- Law on Taxes on Immovable Property
- Law on PPP and Concessions
- Law on Personal Income Tax
- Law on Leasing
- Law on External Trade

#### The following institutions are directly responsible for attracting of FDI:

- Investment Promotion Agency of Kosovo \* (IPAK)<sup>49</sup> is the primary Government Institution supporting foreign investment in Kosovo \* and export promotion. IPAK provides assistance for international businesses as an executive agency of the Ministry of Trade and Industry. The agency has offices in Pristine and Vienna through ECIKS (an NGO supported by ADA).

#### Overview of state aid and competition policies

The Competition Protection Law implementation and its monitoring are conducted by the Kosovo \* Competition Commission/Authority<sup>50</sup>. There is still no State Aid control Law in force in Kosovo \*.

At the same time, there is no unified subsidies program on a national basis yet. The measures for investments are equally applicable to the foreign as are for the domestic investors:

- Corporate Income Tax<sup>51</sup> - taxpayers with revenue below EUR 50,000 may choose to be taxed either on an actual income basis with 10% or on a presumptive tax basis.

- Taxpayers with revenue below EUR 50,000 have to pay: 3 percent of each quarterly gross income from trade, transportation, agricultural or similar businesses but not less than EUR 37.50 per quarter; 5 percent of the company's annual revenue deriving from the provision of services, vocational, entertainment and similar activities but not less than EUR 37,50 per quarter; 10 percent of net rental income for the quarter, reduced by any amount withheld during that quarter

- Losses can be carried forward for 7 years

- Foreign tax credit income taxes paid abroad by residents, are credited up to the maximum amount of tax payable in Kosovo \*

- Personal income tax rate depends on the annual value which is progressive and withheld by employers (from 0 to 10%)

- Certain goods are exempt from customs duties

- Possible local level incentives in the local economic zone - special economic zones which are not free economic zones

## The role of the Parliament related to attracting FDI and state aid and competition policies

The Kosovo \* Competition Agency is composed from five members, president of commission and four commissioners which are appointed from Parliament of Republic of Kosovo \*. The agency reports in front of the Parliament on the activities through report preparation on annual basis.

### Case study – Etlinger Shtimje (DONOR GRANT SUPPORTED INVESTMENT)

Kolm Pfluger/Etlinger – an Austrian investment for agribusiness production (vegetable and processed vegetable in Shtimje, Kosovo \*. An investment value of 500,000 Euro financially supported by the Austrian Development Cooperation (ADC). The joint investment created 150 new jobs in Kosovo \*.

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<sup>49</sup><http://www.invest-ks.org>.

<sup>50</sup><https://ak.rks-gov.net/?cid=2,11>.

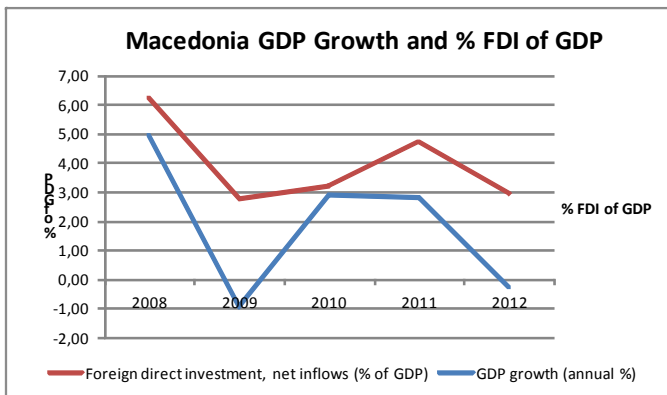
<sup>51</sup><http://www.kpmg.com/AL/en/IssuesAndInsights/ArticlesPublications/Brochures/Documents/2011-Investment-in-Kosovo> \*-web.pdf.



## Macedonia

Macedonia	2008	2009	2010	2011	2012
Population (Total)	2.098.769	2.100.558	2.102.216	2.103.890	2.105.575
GDP (current US\$)	9.834.038.367	9.313.573.965	9.338.665.631	10.439.099.881	9.612.518.136
GDP growth (annual %)	4,95	-0,92	2,89	2,84	-0,27
Foreign direct investment, net inflows (% of GDP)	6,22	2,79	3,22	4,74	2,94
Foreign direct investment, net inflows <sup>1</sup> (BoP, current US\$)	611.688.379	259.530.322	300.734.841	495.096.925	282.676.632

Source: <http://data.worldbank.org>.



Source: <http://data.worldbank.org>.

The indicators of the FDI as % of the GDP indicate a stable trend of approximately 3% to 5% with outperforming the overall annual GDP growth in the last five year period. Except for Y2008 the FDI expressed in USD indicate a stable annual value ranging from 260 million USD up to 495 million USD.

### Overview of legislation and policies for attracting FDI

The following major legislation in R. Macedonia regulates the business operations and attracting of FDI:

- Law on Competition protection – regulates competition conditions
- Law Against Unfair Competition- regulates fair competition conditions
- Law on Technological Industrial Development Zones<sup>53</sup> - regulates the establishment and operations within the TIDZ
- Law on Control of State Aid – regulates the types of state aid the conditions of allowed state aid
- Company Law – regulated the establishment, types and obligations of the companies

- Law on profit tax – regulates the tax obligations coming out of earning of the companies

The following institutions are directly responsible for attracting of FDI:

- Agency for foreign investments and export promotion of the Republic of Macedonia (Investinmacedonia)<sup>54</sup> the official government agency responsible for attracting and developing foreign investments and export promotion
- Directorate for Technological Industrial Zones<sup>55</sup> - authority of the Government of the Republic of Macedonia managing the unification the administrative affairs of all Zones in Republic of Macedonia
- Ministers for attracting foreign direct investments
- Ministry of Economy, Sector for attracting investments

### Overview of state aid and competition policies

The Competition Protection Law and State Aid Control Law implementation, monitoring and control of state-aid in the Republic of Macedonia are conducted by the Commission for Protection of Competition<sup>56</sup>.

The main policies and measures for attracting FDI in Macedonia are

- Flat tax rate of 10%
- Tax relief - no profit tax on reinvested net earnings before taxation
- Investments in TIDZ offer State Aid scheme as regional state aid:
  - Personal and corporate income tax exemption for the first 10 years;
  - Exemption from value added tax and customs duties payment for goods, raw materials, equipment and machines up to 500 thousand EUR granted as incentive towards building costs depending on the value of the investment and the number of employees
    - Land lease of 99 years;
    - Cost free connection to natural gas, water, electricity;
    - Exemption from payment of utility taxes to the local municipality, and fees for land building permits and green customs channel for goods<sup>57</sup>

### The role of the Parliament related to attracting FDI and state aid and competition policies

The Competition Protection Commission is an independent state body with a status of a legal entity, independent in its work and decision making process. The Commission consists of President and four members appointed and dismissed for a five-year period by the Parliament of the Republic of Macedonia, with the right to reappointment.

The Competition Protection Commission is obliged to prepare and submit an annual report covering detailed information on the activities under Law for competition protection and Law on state aid control to the Parliament.

In the case of receiving a State Aid, in the name of the GoM, the Agency for foreign investments and Export Promotion of the Republic of Macedonia signs the agreement with the investor.

### Case of Kemet Electronics Makedonija DOOEL

24.07.2011 Kemet Electronics Makedonija Ltd. and the GoM Signed Agreement for Regional State Aid with the aim of creation of new employments related with the investment

Kemet Electronics is US based company for producing capacitors started operations in 2012 in TIDZ Skopje. The announced investment (in two phases) is worth USD 25 million and plans to employ 500 persons. Kemet Electronics intends to produce standard capacitors and in the future will expand their production with additional products<sup>58</sup>.

The maximum intensity of state aid is determined and 50% of the gross eligible investment costs or 50% of the salary costs for the employees for new employments for two years.

According to the KZK (Competition Protection Commission) 2011 Annual Report, with Decision 27/07/2011, for the year 2011 the company received state aid under regional scheme with the value of 2,05 million EUR<sup>59</sup>.

Kemet electronics received the following benefits<sup>60</sup>: tax reliefs (exempt from payment of 10 years profit tax and personal income tax for 10 years, exempt from VAT of import of goods and trade within the zone); customs reliefs; no fee for management of the construction plot; no obligation for building shelter and the related shelter obligations; exempt of submitting guarantee as an instrument for securing the customs debt.

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<sup>52</sup>FDI Net inflows are sum of equity capital, reinvestment of earnings, other long-term capital, and short-term capital as shown in the balance of payments

<sup>53</sup><http://www.fez.gov.mk/tir-zones-law.html>

<sup>54</sup><http://www.investinmacedonia.com/node/33>.

<sup>55</sup><http://www.fez.gov.mk/dtirz-today.html>.

<sup>56</sup>[www.kzk.gov.mk](http://www.kzk.gov.mk).

<sup>57</sup><http://www.investinmacedonia.com/>.

<sup>58</sup><http://www.fez.gov.mk/kemet-160.html>.

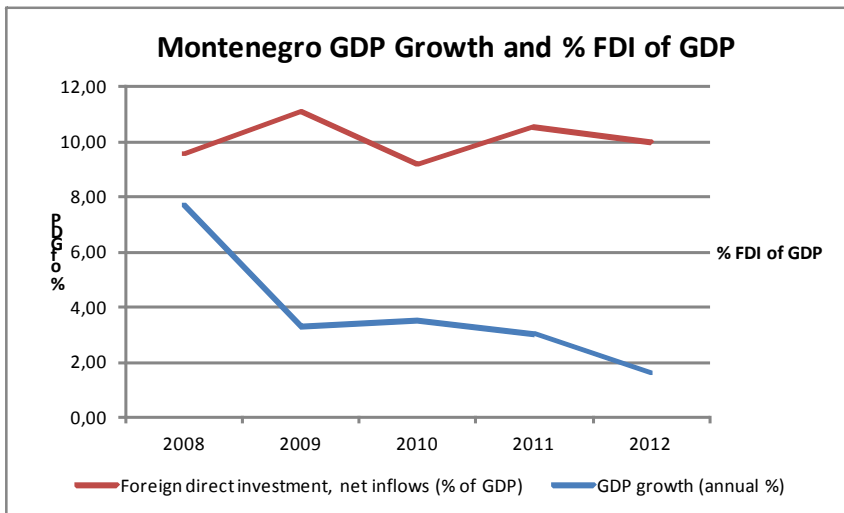
<sup>59</sup>[www.kzk.gov.mk](http://www.kzk.gov.mk).

<sup>59</sup><http://kzk.gov.mk/images/Vestiimages/971/%D0%9F%D0%A0%D0%95%D0%97%D0%95%D0%9C%D0%98.pdf>.

## Montenegro

Montenegro	2008	2009	2010	2011	2012
Population [Total]	618.649	619.408	620.078	620.644	621.081
GDP [current US\$]	4.519.731.947	4.157.852.772	4.114.780.574	4.501.811.520	4.373.170.812
GDP growth (annual %)	6,90	-5,70	2,50	3,23	-0,55
Foreign direct investment, net inflows (% of GDP)	21,57	37,26	18,43	12,36	14,14
Foreign direct investment, net inflows (BoP, current US\$)	975.105.642	1.549.312.935	758.407.500	556.257.883	618.367.296

Source: <http://data.worldbank.org>.



Source: <http://data.worldbank.org>.

The indicators of the FDI as % of the GDP indicate that a stable and significant percentage value in the last five years ranging from maximum 37% in 2009 to minimum 12% in 2011 significantly outperforming the GDP percentage on an annual level. The value of the FDI in Montenegro indicates a declining trend in the last five years, however over half billion USD.

### Overview of legislation and policies for attracting FDI

The following major legislation in Montenegro regulates the business operations and attracting of FDI:

- Foreign Investment Law
- Business Organization Law

- Law on Foreign Current and Capital Operations
- Free Trade Zone Law
- Customs Tariff Law
- Law on Tax on Profit of Legal Entities (Law on Corporate Profit Tax)
- Personal Income Tax Law
- Law on State Aid Control
- Law of Competition Protection

The following institutions are directly responsible for attracting of FDI:

- Montenegrin Investment Promotion Agency<sup>61</sup> (MIPA), a government investment agency to promote foreign investments
- Ministry of Economy of Montenegro

#### Overview of state aid and competition policies<sup>62</sup>

The policy measures for attracting the foreign investments in Montenegro are envisaged in the Strategy for attracting foreign investment of the MIPA, approved by the Government of Montenegro. The competition protection law implementation and its monitoring are conducted by the Agency for Protection of Competition<sup>63</sup>.

The specific measures for investors are:

- 100% Profit tax relief and personal income tax relief - for newly established companies (or business units) in economically underdeveloped municipalities for production activities. The tax reliefs are not applicable for primary agriculture production, transport and ship building, fishery and steel.
- Subsidizing of categories of unemployed – perceptual exemption of personal insurance and benefits for defined categories of unemployed as of certain age, long term unemployed, business zones, etc.
- Local tax reliefs on a municipal basis such as reduction of: communal and other tax, subsidized rent/price for business zones, property tax, PPP arrangements, infrastructural projects, etc.
- Free Zone Port of Bar<sup>64</sup> incentives:
  - use of land and facilities with long-term lease as per fixed conditions;
  - customs, customs duties and VAT exempt for goods entering the Zone;
  - goods can be temporarily taken out of the Zone;
  - goods from the Zone pay customs and customs duties only for the foreign component in the goods;
  - profit tax exemption;
  - Free profit transfer and deposits.
- Besides the foreign investment subsidizing measures the State Aid measures are generally thought the following forms: (1) Horizontal aid – aimed at the restructuring and improvement of existing companies (2) Vertical aid – regional development support through Investment-development fund<sup>65</sup> (SME support, infrastructure for municipalities, etc.) and Agency for employment<sup>66</sup> (benefit relief for unemployed).

## The role of the Parliament related to attracting FDI and state aid and competition policies

According to the Foreign Investment Law the incitement and promotion of foreign investments that contribute to the economic development of Montenegro is conducted on the basis of the Strategy for the Promotion of Foreign Investments adopted by the Government of Montenegro while the promotion is done by the Montenegrin Agency for the Promotion of Foreign Investments. The Agency for Protection of Competition of Montenegro and the Commission for State Aid control is responsible in front of the Government and is obliged to submit their annual report of work to the Government and the Parliament of Monte Negro.

### Case study – Portomontenegro Yachting industry /

Portomontenegro is a luxury yacht homeport combined with marina village and one of the largest investments in Montenegro. The investor Adriatic Marines in 2007 bought the marina and ship building Sava Kovačević - Arsenal for 23 million euro. According to the investor up to this point the investment is valued at 200 million EUR and created new 800 employments<sup>67</sup>. According to the investor there have been no specific subsidies provided directly to the company. However in the shipbuilding sector under the sector state aid there have been granted 105 thousand EUR for 2012. The subsidies including the state aid for Montenegro are largely aimed at domestic companies with difficulties for restructuring.

### Milk Industry Simic

According to the 2012 report of the State Aid commission, one of the domestic company that received the largest individual incentive under the state aid for agriculture – subsidy, is the milk producing company Mljekara „Šimšić“ – Danilovgrad, which for 2012 received a grant with the value of 248 thousand EUR out of the total milk sector subsidy value of 658 thousand EUR. The total state aid for 2012 has been 41,9 million EUR.

### Kontejnarski Terminal

In 2011, the Ministry of Maritime Affairs and Transport awarded a regional state aid to the company Kontejnarski Terminal (Container Terminal), as aid in the form of a guarantee for the loan approved by EBRD, amounting to 787 thousand EUR for the loan of 4 million EUR<sup>68</sup>.

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<sup>61</sup><http://www.mipa.co.me/>.

<sup>62</sup>Strategija privlačenja stranih direktnih investicija 2013-2015.

<sup>63</sup><http://www.azzk.me/>.

<sup>64</sup><http://www.lukabar.me/eng/szona.htm>.

<sup>65</sup><http://www.irfcg.me/>.

<sup>66</sup><http://www.zzzcg.org/home/default.asp>.

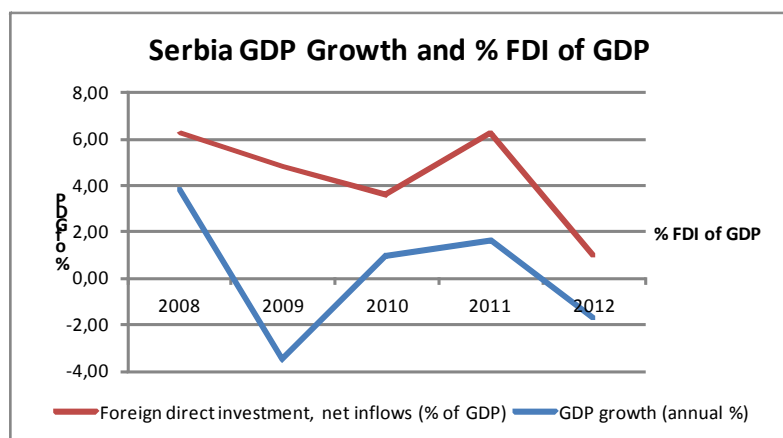
<sup>67</sup><http://www.vijesti.me/vijesti/korlet-ovakvo-brodogradiliste-bijelaj-je-prijetnja-zivotnu-sredinu-clanak-159738>.

<sup>68</sup><http://www.emim.org/files/3.pdf>.

## Serbia

Serbia	2008	2009	2010	2011	2012
Population (Total)	7.350.221	7.320.807	7.291.436	7.258.745	7.223.887
GDP (current US\$)	47.760.580.366	40.249.479.880	36.990.001.284	43.291.846.196	37.488.935.010
GDP growth (annual %)	3,80	-3,50	1,01	1,63	-1,70
Foreign direct investment, net inflows (% of GDP)	6,27	4,81	3,62	6,24	0,95
Foreign direct investment, net inflows (BoP, current US\$)	2.996.385.201	1.935.601.654	1.340.194.855	2.700.435.377	355.286.702

Source: <http://data.worldbank.org>.



Source: <http://data.worldbank.org>.

The indicators of the FDI as % of the GDP indicate that a varying trend in the last five years ranging from maximum 6% in 2008 to less than 1% in 2012 following the trend of the overall annual GDP growth in the same period. Except for Y2012, when the value of the FDI is 355 million USD, the rest of the period Serbia accounts an annual value of FDI ranging from 1,34 billion USD, to little less than 3 billion USD, outperforming the annual GDP growth.

### Overview of legislation and policies for attracting FDI

The following major legislation in Serbia regulates the business operations and attracting of FDI:

- Law on Competition protection – regulates fair competition conditions
- Law on control of state aid – regulates the conditions and control of state aid for competition protection market economy, improvement of the business development (does not regulate agriculture and aquaculture)
- Law on Free Zones – regulated the establishment and roles of the free economic zones

- Law on business companies (Company law) – regulated the establishment, obligations of all company types
- Law on profit tax – regulates the tax obligations coming out of earning of the companies
- Customs Law – regulates the customs rules

#### The following institutions are directly responsible for attracting of FDI:

- Serbia Investment and Export Promotion Agency (SIEPA) - is a government agency for promotion of foreign direct investment, and their support
- Serbian Export Credit and Insurance Agency (AOFI)<sup>69</sup> – is a governmental export credit agency for the purpose of export promotion and development of foreign economic relations
- Ministry of Economy - through the above agencies
- Free Zones Administration<sup>70</sup> - an administrative entity within the ministry of Finance, that carry out the state administration activities in the field of free zones

#### Overview of state aid and competition policies

The Competition Protection Law implementation and the monitoring is conducted by the Commission for Protection of Competition<sup>71</sup> and State Aid Law implementation and the control of state-aid in Serbia is conducted by the Commission for State Aid control<sup>72</sup> within the Ministry of Finance of R. Serbia comprised of representatives of the Ministries of finance, economy, infrastructure, environmental protection and Commission for Protection of the Competition.

Specific investment support measures in Serbia are:

- State Grants for Greenfield and Brownfield investments - (valid for all sectors except primary agriculture, the hospitality industry, retail, and the production of synthetic fibers and coal) in the form of non-refundable state funds between 4 and 10 thousand EUR per new job created within three years of the day of signing the contract on awarding funds.
  - State Grants for large investors
    - investments over €200 million, and 1.000 new jobs within 10 years, up to 17% of the investment's total value;
    - investments over €100 million and minimum of 300 new jobs within a time period less than 10 years, up to 17% of the investment value
    - investments of between €50 and €100 million a minimum of 300 new jobs within a time period less than 10 years up to 20% of the investment
  - Medium-sized investments of over €30 million and at least 150 new jobs within 10 years up to 17% of the total investment
  - Financial investments depending on the sector, territorial development level, investment size and minimum full time jobs created ranging from 4 to 20 thousand EUR per new job created.
  - The National Employment Service Grants - for employment, apprentice and re-training, funds available per employee/apprentice
  - Corporate Profit Tax Holiday –an exemption for a period of 10 years for large companies, if investments in fixed assets are over €9 million and employ at least 100 additional employees throughout the investment period and for investments in underdeveloped regions exempt from corporate profit tax for 5 years under certain conditions



- Corporate Profit Tax Credits - tax payable reduced by 20% (or 40% for small enterprises) of the amount invested in fixed assets for the tax period however not exceeding 33% (or 70% for small enterprises) of the total tax liability for a single year. If not used up it can be carried forward for up to 10 years.

- Carrying Forward of Losses – up to five years

- Salary Tax and Social Insurance Charges Exemptions – for 3 or 2 years depending on certain categories of workers

- Annual Income Tax Deductions for non-Serbian citizens, where rate depends on the income compared to the average salary in Serbia, a taxation starts if it is three times the average Serbia salary by 10% and the percentage increase as the amount increases

- Free economic zone benefits:

- Value Added Tax Exemptions for income generated through commercial activities within the current six Free Zones: Subotica, Novi Sad, Zrenjanin, Sabac, Kragujevac, and Pirot.

- Customs-Free Imports of: raw material and semi-finished goods for export production in the free economic zones or authorized by the customs for outward processing production and of imported equipment and machinery which is part of the foreign investor's capital of a company in Serbia.

- Additional Local Incentives size depending on the location: construction land lease fee exemptions or deductions, payments in installments, with the prior consent of the Serbian Government; construction land development fee relief; etc<sup>73</sup>.

### The role of the Parliament related to attracting FDI and state aid and competition policies

Commission for Protection of Competition is an independent state organization which is responsible in front of the Parliament, and is obliged to prepare and submit an annual report covering detailed information on the activities under Law for Competition protection to the Parliament.

The incentivizing Laws are voted on by the Parliament while the exact amounts of support are brought through the adopting various rulebooks and other regulations.

### Case of FAS<sup>74</sup> FIAT Automobiles Serbia

The largest investment in the automobiles sector in Serbia as part of the Kragujevac Free Zone is the FIAT project. The export value of FIAT in 2013 is valued at over 1,5 billion EUR (according to SIEPA).

The protocol between Fiat Automobili Srbija for regulation of the relationship, intended a state financial support of 14 million EUR (6 million EUR for 2013 and 8 million EUR for 2014) under the condition to open a defined number of new employments. Through the Decree on the Conditions for Incentivizing Production of and Demand for Passenger Vehicles Produced in the Republic of Serbia in 2013 [23.03.2013]<sup>75</sup>, and FIAT as the sole producer in Serbia, subsidized the sales up to the value of over 6 million EUR (720 million RSD) through: the reduction of the price of the new car model „500L” on the domestic market for 3 thousand EUR per car and ensure that the commercial banks and leasing companies enable financing of the models with an annual interest below 3%.

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<sup>69</sup>[www.aofi.rs](http://www.aofi.rs).

<sup>70</sup><http://www.usz.gov.rs/eng/o-nama.php>.

<sup>71</sup> [www.kzk.org.rs](http://www.kzk.org.rs).

<sup>72</sup><http://www.mfin.gov.rs/pages/issue.php?id=7271>.

<sup>73</sup><http://www.usz.gov.rs/files/publikacije/Investment%20Incentives%20in%20Serbia%202013.pdf>.

<sup>74</sup><http://www.usz.gov.rs/eng/proizvodjaci.php>.

<sup>75</sup>[http://www.mfin.gov.rs/UserFiles/File/dokumenti/2013/uredba\\_putnicka\\_vozila057\\_lat.pdf](http://www.mfin.gov.rs/UserFiles/File/dokumenti/2013/uredba_putnicka_vozila057_lat.pdf).

## Practical guidelines for improving parliamentary oversight

### A. Competition policy and state aid in the countries of Western Balkans

In line with the conducted assessment on the current state-of-play on the level of legislative alignment and the institutional set up major challenges remain for the parliamentary oversight over the competition policy and state aid in the countries of Western Balkans.

- One of the major challenges for achieving alignment for the competition policy chapter is the necessity to develop and strengthen the enforcement capacity of the competent bodies for protection of competition and for monitoring and control of state aid;
- The full alignment in this chapter requires a fundamental change in business culture;
- Concerning state aid policy it is important to realise that state aid does not come for free. Nor it is a solution that can instantly solve problems. The tax payers in the end have to finance state aid and there are opportunity costs to it. Giving aid to undertakings means taking funding away from other policy areas. State resources are limited and they are needed for many essential purposes, such as the educational system, the health system, national security, social protection and others. It is therefore necessary for the countries to make their choices transparently and to prioritise action;
- There is a need to strengthen the instruments for parliamentary oversight over competition policy and state aid.

#### Suggested improvements:

- The obligation for submission of an annual report by the competent authority to the Assembly represents a useful tool for parliamentary oversight over the competition policy and the state aid policy. Therefore in the countries where there is no such instrument established it would be useful to establish it.
- The role of the Parliament in state aid control should be strengthened by capacity building activities for the MP's as well as for the parliamentary staff and
- One of the instruments for parliamentary oversight of the state aid policy is the discussions and monitoring through the Parliamentary committees on budget and finance. Therefore the awareness should be raised among MP's and parliamentary staff on the elements of state aid and state aid rules.

### B. FDI and state aid in the countries of Western Balkans

Given the information in this toolkit and the conducted assessment we can propose the following practical guidelines to improve parliamentary scrutiny over policies of state aid, competitiveness and attracting foreign direct investments in the countries of Western Balkans:

- The discussion on FDI and national competition in the global world is still considered a topic that should be addressed by the executive power only.
- Parliaments of Western Balkan are focusing more on annual reports from institutions in an ex-post fashion and are limited in monitoring the process of state aid and attracting FDI.
- The reports are focusing more on input and output measures without looking for information from the

executive power related to outcome and performance of the state aid and policies to attract FDI.

- There is de-facto no proper cost-benefit analyses so that one can understand better why each policies and measures for state aid and attracting FDI are proposed by the executive power.
- There is neither debate nor proper “next generation” policies proposed by the executive power on how to integrate the FDI with national economies and how to include domestic companies in the supply chain.

#### Suggested improvements:

- Parliaments should be involved early in the process of designing the state aid and attracting FDI by the executive power. Parliament is the right place to discuss all the aspects of state aid and attracting FDI before actually conducted by the executive power.
- Within the annual reports of the proper institutions related to state aid and attracting FDI there should be reported also analyses of efficiency and effectiveness of FDI
- Parliaments should ask executive power to prepare proper ex-ante cost-benefit analysis of each state aid and FDI policies proposed.

Attracting FDI and state aid policies is very specific part of the public finances that deserves efficient and effective control by the parliaments otherwise it will end up in ministries giving discretionary concessions to FDI the way they seem appropriate instead of conducting socio-economic policy for better performance of the national economy.

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