

# UNCTAD Expert Meeting on Taking Stock of IIA Reform

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## Bosnia and Herzegovina

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Two years following the World Investment Forum held here in Geneva in 2014, reforms of International Investment Agreements (IIAs) regime are visible and what is more important unstoppable and irreversible. Yet, number of questions remains to be answered. What kinds of reforms were taken by individual countries? How compatible are they? Could such fragmented reform create new problems? Whether it could have been prevented by earlier multilateral action?

Over last five years, Bosnia and Herzegovina has taken a number of actions on different levels. All of them, however, were aimed at achieving the same objective, preserving an attractive investment climate and ensuring sustainable development of the country.

The most substantial and to present the most important actions were taken on a national level. Some of them are the review of existing BITs, analysis of correlation between BITs concluded and FDIs registered per country and per year, country's investment policy review prepared with UNCTAD in 2015, analysis of ISDS cases and establishment of a better and more streamlined coordination between different national institutions.

Taking into account similarities in national legislation, structure of BITs concluded and need for inflow of FDIs, on regional level we have initiated national BITs experts' consultative meeting so as to exchange the experience and information and possibly establish a common understanding of a set of actions that are most appropriate to be taken in the future.

While we could not greatly influence developments on a multilateral level, we closely followed all related actions and actively participated whenever possible. This particularly relates to all activities taken and events organized by UNCTAD.

Actions on bilateral level are only to be taken at a later stage. We believe that hasty action without clearly defined agenda and tools to achieve desired outcomes could lead us to even more complex situation. In addition, countries like Bosnia and Herzegovina can be successful in reform only within the framework of multilateral consensus over

major reform issues and with readiness of capital exporting countries to participate in the reform on bilateral level.

Important work has been done to present on multilateral level. The UNCTAD has done a great job so far and we are looking forward continuation of these activities. This particularly taking into account the Addis Ababa Action Agenda, the outcome document of the Third United Nations Financing for Development Conference held in July 2015. We find the two elements of this document particularly important.

The first is that UN Member States declared that the goal of protecting and encouraging investment should not affect the states' ability to pursue public policy objectives and that we all will endeavour to craft trade and investment agreements with appropriate safeguards so as not to constrain domestic policies and regulation in the public interest.

The second is the request of the UN Member States to UNCTAD to continue its existing programme of meetings and consultations with Member States on investment agreements. We welcome this and very much look forward future work on this pressing issue.

Based on Bosnia and Herzegovina experience to present, the following actions are recommendable in individual country's reform of IIAs regime:

- internal analysis which should help us gain reliable information and data on where we are today;
- selecting and deciding on the optimum set of actions and tools to achieve objectives of national development policy;
- establishing of a clear and streamlined communication between major stakeholders in the country and with partners on bilateral and regional level; and
- active participation in multilateral action and processes.

Still, there is no guarantee for success as individual actions have quite limited reach in reform both in quantity and quality.

To conclude, the fragmented IIAs reform done in so many different ways is among major future challenges and remains to be addressed. In absence of more inclusive approach and multilateral consensus over major issues of the IIAs reform, we are witnessing that countries decide to go their own ways. Some have done only minor changes. Other resorted to a deep reform and renegotiations or even decided to terminate their BITs concluded in the past. As a consequence, we may be changing the current state but no one can say for sure what will be the state of future as the cards may only be reshuffled.

Therefore, we strongly support continued multilateral work within this forum and remain hopeful that more and more inclusive debate shall result with applicable and sustainable solutions.