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The European perspective of the region has helped the countries to achieve overall political and economic reforms with improved democratic processes. In 2016, the region's total trade with the EU was over EUR 43 billion, up 80% since 2008 and with significant further growth potential. EU companies are also the biggest investors in the Western Balkans, with over EUR 10 billion of Foreign Direct Investment in the region in the past five years alone. The countries of the region are increasingly acting as partners on the global stage. This firm, merit-based prospect of EU membership for the Western Balkans is in the Union's very own political, security and economic interest. It is a geostrategic investment in a stable, strong and united Europe based on common values. It is a powerful tool to promote democracy, the rule of law and the respect for fundamental rights. The region's economies face many structural weaknesses, with inefficient and rigid markets, low productivity, limited access to finance, unclear property rights and a cumbersome regulatory environment, leading to low competitiveness and high unemployment. Overall, the levels of investment and growth rates are insufficient to significantly reduce the gap with the EU. Economic development is further hampered by an entrenched grey economy.<sup>1</sup>

## INVESTMENT AND COMMERCIAL ARBITRATION IN THE WESTERN BALKANS

An investment in the Western Balkans is an investment in Europe. Investments will only increase if economic governance is strengthened and structural reforms pursued to increase competitiveness. A significant component in the decision-making process of prospective investors is the availability of predictable and reliable remedies for the protection of their legal and economic rights. International arbitration has proven to be the preferred dispute resolution mechanism for international investors worldwide, and the Western Balkans region has in recent years undertaken significant steps towards creating a modern arbitration system in line with international and European standards. All the countries of the region are signatories of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

Their arbitration legislation is in line with the United Nations Commission for International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. Although there is much room for improvement, the countries of the region have demonstrated the understanding and willingness to strengthen the system of international arbitration in the respective



jurisdictions. Recently, that was proven by the ratification of the Singapore Convention on Mediation by Montenegro, North Macedonia, and Serbia.

Some of the main areas for improvement that have been identified over the years are the lack of capacities of the judiciary to support arbitral proceedings and the potential for court interference in arbitration. Therefore, there is a need for extensive and continuous training and education for the judges, and the legal community in general on the nature and management of arbitral proceedings, as well as the proper role of the courts. In addition, despite the similar legal tradition of the countries in the region, there are some specificities of the governmental framework in some countries that require particular attention and internal harmonization.

Finally, one other challenge is the lack of awareness of the citizens and some legal practitioners about arbitrations and its availability. This lack of familiarity leads to a lack of trust and reluctance to refer disputes to arbitration. This can be resolved by a continuous and targeted promotion and awareness raising. This campaign should primarily be aimed at the business community, as well as the general population, in order to introduce them to the availability and benefit of arbitration as a dispute resolution mechanism. This should increase the frequency of referrals to arbitration and an alleviation of the caseload of the judiciary.

Over the years, there have been significant efforts of the international community towards the engagement of the region in

international discussions of reforms in international arbitration, particularly in the area of Investor-State Dispute Settlement (ISDS) Reform. The measures below serve to support this goal and to enhance growth and job creation in particular for the region's youth. The Western Balkans Investment Framework financed through the Instrument for Pre-accession Assistance will be increasingly at the core of fostering investments in the region. To that effect, it will be expanded to further attract and coordinate bilateral donors' and International Financing Institutions' investment.<sup>2</sup>

Since many years now, the GIZ Open Regional Fund for South East Europe - Legal Reform, on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), has been supporting the institutions in the Western Balkans to increase their capacities to deal with dispute settlement proceedings, as well as to follow and implement the latest international developments in the region. There are currently discussions at both the international level and in the EU context on how the investment protection treaties should be handled and what the dispute settlement proceedings should look like. These discussions are being held, among other places, in various working groups of the UNCITRAL such as the Working Group III: Investor-State Dispute Settlement (ISDS) Reform.

By using the regional and international network already in place, the Open Regional Fund (ORF) aims to increase mutual learning, sharing of best practices and experiences and cooperation in this field. Bearing in mind that the countries of the



Western Balkans have agreed to develop a Regional Economic Area and to prioritise the topic of investments, the ORF supports the countries in getting involved in the ongoing discussions taking place at the international and EU level. In addition, the project supports the capacity building of the competent institutions in direct response to their needs. By providing the institutions with the necessary tools and best practices from the EU and region, it is possible that the region becomes more attractive to investors and that investors believe more in the rule of law and legal framework. Finally, with sufficient insights and capacities, the regional delegations should be able to participate in the international discussions on investment policy reform on equal footing with other global players.

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<sup>1</sup> EU Strategy “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, [https://ec.europa.eu/info/sites/default/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/info/sites/default/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)

<sup>2</sup> EU Strategy “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, [https://ec.europa.eu/info/sites/default/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/info/sites/default/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)

