

Ms Samira SULEJMANOVIC

Head of Department for Bilateral Trade Relations
Ministry of Foreign Trade and
Economic Relations
Bosnia and Herzegovina

UNCTAD Virtual IIA Conference 2020: “IIA Reform in Times of COVID-19”

Thursday, 26 November 2020

Panel 1 “Country Perspectives: IIA Reform in Times of COVID-19”

Dear colleague panellists,

Dear participants,

Even though we meet this year in an unprecedented circumstance, it is still my pleasure and honour to be amongst all of you today and be able to share information and discuss on this important matter. The IIAs reform had started years ago. A lot of progress has been achieved and in many different but interrelated aspects of this complex reform. Only time will tell how effective the reform is and whether we acted in the right direction. I have many times here in UNCTAD and other fora raised the concern that fragmented and individual reform actions might create a new problem, that is a patchwork of new provisions for us but it is only the future to show if concerns were grounded.

The fact that Bosnia and Herzegovina is a small economy in transition, located in Europe and wishing to join the European Union in the future has greatly determined the IIA reform in my country. Three years ago, the Council of Ministers of BIH put moratorium on conclusion of new IIAs until the State position and policy is revised to address its best interests. Identification and redefinition of the key policy issues turned to be quite a challenge and we decided that partial and hasty reform was out of the question. The reform also needed to follow the lines of the EU policy as EU membership remains top foreign policy objective of the country. In addition, reform of IIAs without it being accompanied with reform and progress in other areas such as national mechanism to address ISDS cases, inter-institutional communication and coordination, raising awareness etc would be only partially effective. Therefore, apart from drafting new policy solutions, we have invested quite an effort to establish and make operational a Permanent Negotiating Body for

Amicable Settlement of International Investment Disputes and raise awareness of institutions on the IIAs in parallel.

The Covid-19 pandemic not only caught many of us unguarded and unprepared but emphasized key deficiencies of the system and our exposure to ISDS cases. The old and unreformed IIAs presented a perfect ground for Covid-19 related governmental measures to be challenged. This is not to say that governmental measures *per se* were compliant or noncompliant with obligations taken. This is to say that existing IIAs of my country do not contain specific or carve out provisions which could be a safety net for such extraordinary circumstances.

In a bizarre way, the fact that overall reform of IIAs in Bosnia and Herzegovina takes more time than in some other countries served us well so that “pandemic-like” situations can also be addressed.

The national reform is closely linked and synchronized on a Western Balkans’ regional level. Namely, sharing number of common traits and objective to join EU, it was perfectly normal to agree over a number of measures to be taken at regional level or regionally coordinated while taken at national level. As a result, we have *Regional Standards on Negotiation of IIAs* endorsed at the Western Balkans Summit in Sofia on 10th November 2020. In the next phase of reforms under the investment pillar of the Common Regional Market Action Plan 2021-2024 we have gone further and plan to replace old BITs with EU Members States and review Covid-19 response measures and their legal risks brought by them.

Last but not least, the reform of the IIAs regime from our perspective greatly depends on the ISDS reform which is currently going on in the UNCITRAL Working Group III. Bosnia and Herzegovina, therefore, closely follows the work of this body and again works regionally to articulate its best interests on the future solutions.

I thank you for your attention.