CELIS Country Note

on

Serbia, 2023

by

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Abstract

The Republic of Serbia promotes itself as an open country and tries to attract as much foreign investments as possible, from various sources and in various fields. In the last year (2022), the Republic of Serbia attracted numerous foreign direct investments (FDI), which lay between 4.3 and 4.4 billion EUR. Partners of the Republic of Serbia are various and include China and the EU, but also Russia. Despite the increase of the FDI in the Republic of Serbia, it still has an undeveloped investment screening mechanism. The only field of industry where the screening mechanism is implemented is defense. Additionally, the National Bank of Serbia conducts some type of investment screening, but only for statistical purposes. Having in mind that the Republic of Serbia is a country in the process of accession to the EU and because of it, it has an obligation to align its legislation with the EU's, we can expect it to implement some type of investment screening mechanism in the near future.

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1. Introduction and Political Background

1.1. Introduction

The last year (2022), the Republic of Serbia attracted a large amount of foreign direct investments, which lay between 4.3 and 4.4 billion EUR.[1]

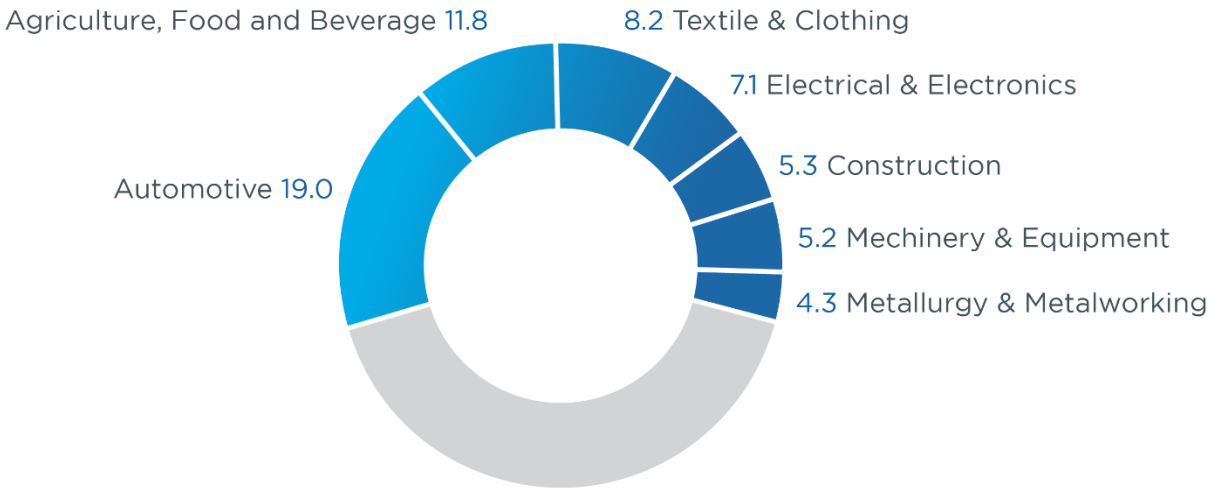
It was estimated that the total economic activity in the Republic of Serbia in 2022, measured by the real movement of gross domestic product (GDP), recorded a growth of 2.3% compared to 2021. In 2022, gross fixed capital formation, measured by the real growth rates, is on the unchanged level as in 2021. Pursuant to the Ministry of finance Serbia's GDP was around 60,2 billion EUR, making impact of foreign direct investments to 7.3% in GDP. The largest inflow of investments came from China – with a little over one billion EUR. On the list of countries of origin of the largest investments, Great Britain follows with 260.7 million EUR, followed by Germany with 247.6 million EUR. Japan is in fourth place with investments worth around 200 million EUR.[2] The EU is traditionally Serbia's key trading partner accounting for more than 60% of Serbia's total trade in 2021. The value of Serbia's exports to the EU amounts to 14 billion EUR in 2021.[3]

The Serbian government actively seeks to attract foreign investments. Foreign investments are regarded as one of the main goals of Serbian government and which should improve its position in the world and to ease the process of accession to the EU. The Ministry of Finance and Ministry of Economy are in charge of the promotion of investment possibilities in Serbia. Additionally, the Serbian government established the Development Agency of Serbia. The Development Agency of Serbia is a government organization dedicated to facilitating and implementing direct investments, promoting and increasing exports, improving the competitiveness of Serbian economy, as well as reputation, and economic and regional development of the Republic of Serbia. In the end, contribution of the whole government and

[1] https://www.tanjug.rs/ekonomija/srbija/5786/nbs-novi-rekord-srbije-u-privlacenju-stranih-direktnih-investicija-izmedu-43-i-44-mlrd-evra-u-2022/vest.
[2] https://www.danas.rs/vesti/ekonomija/odakle-je-stiglo-najvise-stranih-direktnih-investicija-u-srbiju/.
[3] https://europa.rs/trgovina/.

efforts made by embassies, as well as other diplomatic authorities and Chamber of Commerce at trade fairs in promotion of Serbia should be mentioned. Presence of numerous bilateral chambers (for example: Canadian, French, German, Japanese etc) of commerce ought to be contributed to their role in attracting foreign direct investments and their help to foreign investors.

Pursuant to the Development Agency of Serbia and its data from January 2021, distribution of foreign investments through sectors is as follows:[4]



Source: https://ras.gov.rs/en/invest-in-serbia/why-serbia/join-the-pool-of-the-successful accessed on 05 October 2023

1.2. Political Background

Since Serbia is in the process of accession to the EU, it took an international obligation to align its legislation with the EU legislation. In this process, in 2013, Serbia concluded the Stabilisation and Association Agreement with the European Communities and their Member States, according to which the parties agreed to steadily establish a bilateral free trade area. Serbia also signed the Central European Free Trade Agreement, making it a party of the CEFTA. Furthermore, Serbia is a party of the Free Trade Agreement with the Eurasian Economic Union, which facilitates the trade between Serbia on one hand and Russia, Kazakhstan and Belarus. In the end, Serbia has numerous bilateral trade investment agreements.

[4] https://ras.gov.rs/en/invest-in-serbia/why-serbia/join-the-pool-of-the-successful.

Pursuant to the Constitution of the Republic of Serbia, the hierarchy of the legal acts is the following: the Constitution, ratified international agreements and commonly accepted rules of international law, laws, decrees, bylaws etc.[5]

However, despite its obligation to align its legislation with the EU's, Serbia has not yet adopted any law which should transpose the EU Regulation 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. Foreign direct investment screening exists only in the sector of defence, i.e., to be more precise in armament and military supply. The screening is regulated by the Law on Production and Trade of Weapons and Military Equipment (Official Gazette of the Republic of Serbia no. 36/2018)[6]. Furthermore, the National Bank of Serbia performs a screening of foreign investments for statistical purposes.

2. Defence and Banking

2.1. Defence

Pursuant to Article 10 of the Law on Production and Trade of Weapons and Military Equipment, a foreign investor may be granted investment in the field of production of weapons and military equipment under the conditions established by this law.[7] A foreign investor may be granted capital investment by establishing a company for the production of weapons and military equipment independently, with another domestic or foreign legal or physical entity or with the Republic of Serbia, by capital increase in the manufacturer of weapons and military equipment and by purchasing the capital of the manufacturer of weapons and military equipment.

The screening is performed by the Ministry of Defence.[8] Along with the request for approval the foreign investor shall submit an elaboration on foreign investment. Foreign investment in this sector must be aligned with the defence, security, and foreign policy interests of Serbia.[9] The legal entity in which a foreign investor is the majority owner may be registered in the

[5] Articles 194 and 195 of the Constitution of the Republic of Serbia Official Gazette of the Republic of Serbia no. 98/2006 and 115/2021.
[6] Law on Production and Trade of Weapons and Military Equipment (Official Gazette of the Republic of Serbia no. 36/2018).
[7] Article 10 of the Law on Production and Trade of Weapons and Military Equipment (Official Gazette of the Republic of Serbia no. 36/2018).
[8] Article 12 of the Law on Production and Trade of Weapons and Military Equipment (Official Gazette of the Republic of Serbia no. 36/2018).
[9] Article 13 of the Law on Production and Trade of Weapons and Military Equipment (Official Gazette of the Republic of Serbia no. 36/2018).

Register of legal entities authorized to perform arms and military equipment manufacturing operations, if it meets all the conditions prescribed by the provisions of the above-mentioned law.[10]

The Ministry of Defense, in the decision-making process whether to approve or not foreign investment, obtains the opinions of relevant ministries and security services, analyses the impact of foreign investment on defence, the development of the defence technological and industrial base of the Republic of Serbia and its export potential, the protection of human health, the environment, national and public security of Serbia and prepares a draft decision accordingly. The final decision is entrusted to the Government of Serbia, based on the recommendation of the Ministry of Defence. The approval shall be issued or refused in the period which shall not be longer than 120 days, as of the date of receipt of the request.[11]

2.2. Banking

Additionally, the National Bank of Serbia performs a screening of foreign investments for statistical purposes. The National Bank of Serbia has this competence according to the Serbian FOREX law[12] and based on the Decision of the National Bank of Serbia[13], accompanied by the Instructions for the Implementation of the Decision on the Obligation of Reporting of Business with Foreigners.

According to the FOREX Law and the Decision of the National Bank of Serbia and instructions for its implementation, residential companies (those companies that are established and registered in Serbia) are supposed to report to the National Bank of Serbia, if such company is established and/or acquired by the foreigner.[14] Such report must be submitted to the National Bank of Serbia quarterly (to be more precise at the end of every quarter starting from the beginning of the year).[15]

[10] Article 11 Ibid.
[11] Article 13 Ibid.
[12] Article 13 of the Forex law (Official Gazette of the Republic of Serbia no. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018).
[13] Decision on the Obligation of Reporting of Business with Foreigners - ("Official Gazette of RS", no. 87/2009 and 40/2015 - other decisions
[14] Article 1 of the Decision on the Obligation of Reporting of Business with Foreigners - ("Official Gazette of RS", no. 87/2009 and 40/2015 - other decisions).
[15]Article 2 of the Instructions for the Implementation of the Decision on the Obligation of Reporting of Business with Foreigners ("Official Gazette of RS", no. 87/2009 and 40/2015 - other decisions).

It is important to mention that omission to file a report constitutes only misdemeanour, hence the National Bank of Serbia does not interfere with validity of acquisition and/or establishment. For described misdemeanour monetary fine is provided in the amount between 100.000 RSD (850 EUR) to 2.000.000 RSD (1.700 EUR) for the company and between 5.000 RSD (40 EUR) and 150.000 RSD (1.280 EUR) for liable person in the company[16].

At the end it is worth mentioning that in specific sectors such as insurance or banking or in specific types of companies – joint stock companies, shareholders that acquire a certain threshold must notify competent authority about it. However, this obligation is vested to all investors, not being subjected to their nationality. For specific industries it is consider as preliminary notification and is subjected to the approval of the competent authority[17] (for example in banking it is the National Bank of Serbia[18]), in the sense that is condition for validity of the acquisition,[19] while in all other cases it is only an obligation to notify, which if breached result only in a misdemeanour, but not causing transaction to be invalid.[20]

3. Developments to follow

Having in mind that the Republic of Serbia is in the process of accession to the EU, it can be expected that the Republic of Serbia will align its legislation with the EU's. However, there is no certainty as to when this will take place.

[16] Article 37 paragraph 1 of the Forex law (Official Gazette of the Republic of Serbia no. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018).
[17] Articles 97 and 99 of the Law on banks (Official Gazette of the Republic of Serbia no.107/2005, 91/2010 and 14/2015) and Article 31 of the Law on insurance (Official Gazette of the Republic of Serbia no. 139/2014 and 44/2021)). Please note, that pursuant to the article 99 of the Law on banks: If a person without the prior consent of the National Bank of Serbia acquires direct or indirect ownership in the bank that enables from 5% to 20%, more than 20% to 33%, more than 33% to 50% and more than 50% of voting rights, the National Bank of Serbia will order that person to alienate ownership, i.e. will prohibit him from indirectly or directly exercising voting rights in the bank and from influencing the bank's management or the bank's business policy .If the person who acquired the property from paragraph 1 of this article without the consent of the National Bank of Serbia does not alienate the property in the manner and within the period established by the National Bank of Serbia, the legal transaction on the basis of which the shares were acquired is null and void. If the National Bank of Serbia revokes the decision on granting consent, with the same decision, it will prohibit the person whose consent to acquire ownership in the bank was revoked from disposing of all rights from the shares on the basis of which that ownership was acquired, and may order him and to alienate those shares.
[18] https://n1info.rs/biznis/aik-banka-pripojila-nasu-aik-banku-nekadasnju-sberbanku-u-srbiji/.
[19] Article 81 of the Capital Markets Law (Official Gazette of the Republic of Serbia no.129/2021).
[20] Article 91 Ibid. However, please note that in case of failure to notify the SEC, the SEC can deprive shareholder of its right to vote on the shares it acquired without the proper notification.

Annex: Relevant laws, ordinances, regulatory guidelines

- Constitution of the Republic of Serbia http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution
- Law on Production and Trade of Weapons and Military Equipment https://www.paragraf.rs/propisi/zakon-o-proizvodnji-i-prometu-naoruzanja-i-vojne-opreme-republike-srbije.html
- FOREX Law https://www.paragraf.rs/propisi/law-on-foreign-currency-transactions.html
- Decision on the Obligation of Reporting of Business with Foreigners and Instructions for the Implementation of the Decision on the Obligation of Reporting of Business with Foreigners https://nbs.rs/en/drugi-nivo-navigacije/propisi/propisi-stat/
- Law on Banks https://www.nbs.rs%2Fexport%2Fsites%2FNBS_site%2Fdocuments-eng%2Fpropisi%2Fzakoni%2Flaw_banks.pdf&usg=AOvVaw1CIZOrehUxSTcMgMtbXwn4
- Law on Insurances https://www.nbs.rs%2Fexport%2Fsites%2FNBS_site%2Fdocuments-eng%2Fpropisi%2Fzakoni%2Flaw_insurance.pdf&usg=AOvVaw1qOnFEUChi2hd0Q3fh6F7v
- Capital Markets Law https://www.paragraf.rs/propisi/zakon_o_trzistu_kapitala.html

About the CELIS Institute

The CELIS Institute is an independent non-profit, non-partisan research enterprise dedicated to promoting better regulation of foreign investments in the context of security, public order, and competitiveness. It produces expert analysis and fosters a continuous trusting dialogue between policymakers, the investment community, and academics. The CELIS Institute is the leading forum for studying and debating investment screening policy. More about the Institute's activities under www.celis.insitute.

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CELIS Country Reports (hereafter "Report") are produced by leading experts for any European and select non-European jurisdiction following an elaborate model, allowing for comparison and evaluation across jurisdictions. The project's aim is to identify and suggest best practice and to propose a common European (model) law on investment screening.

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