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PROMOTING INNOVATION AND SUSTAINABLE GROWTH THROUGH LAW REFORM

ABOUT THE EBRD

The EBRD is a multilateral bank, owned by 66 countries as well as the European Union and the European Investment Bank. It promotes the development of the private sector and entrepreneurial initiative in 38 economies, across three continents. The Bank's investments are aimed at making the economies in its regions competitive, inclusive, well governed, green, resilient and integrated.

ABOUT THIS JOURNAL

Legal reform is a unique dimension of the EBRD's work. Legal reform activities focus on the development of the legal rules, institutions and culture on which a vibrant market-oriented economy depends. Published once a year by the Legal Transition Programme, *Law in Transition* journal covers legal developments in the region, and by sharing lessons learned aims to stimulate debate on legal reform in transition economies.

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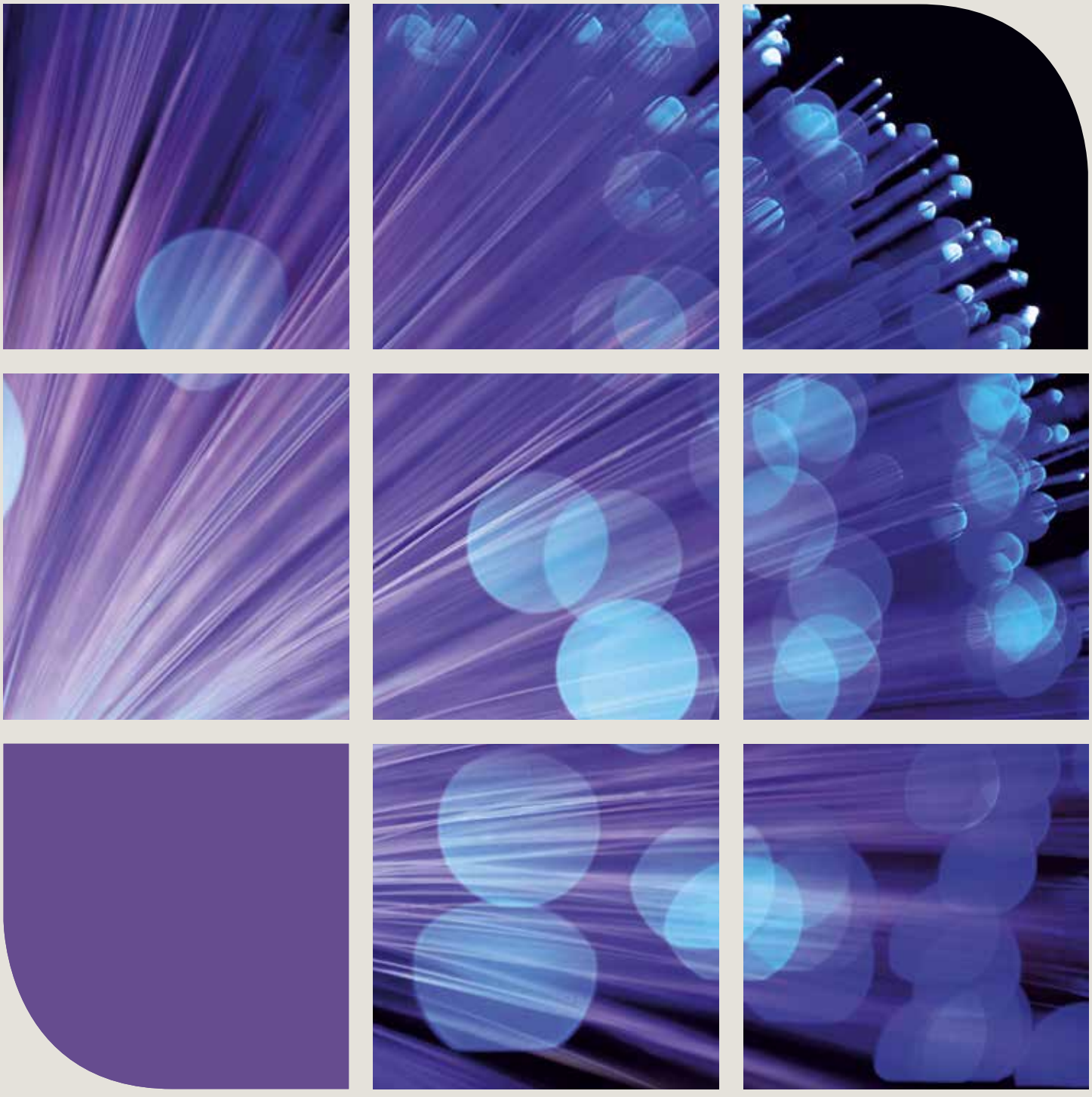

Marie-Anne Birken

PROMOTING INNOVATION AND SUSTAINABLE GROWTH THROUGH LAW REFORM

Innovation is rapidly sweeping the globe, and emerging markets are where immense growth and opportunity lie. Finding innovative solutions to complex development challenges is essential, and innovation thrives best when facilitated by an ecosystem of enabling conditions, including predictable and transparent legal rules enforced by a competent judiciary.

The EBRD's Legal Transition Programme has been at the forefront of innovative projects aimed at creating a robust legal environment in the Bank's region. From our work on energy efficiency regulation, through assistance with legal and regulatory strategies for the development of knowledge-based economies, to regulatory frameworks for alternative financing products, such as Sharia-compliant factoring. Our legal reform work also seeks to prepare countries for the rise of new technologies, which in many cases have the potential to help developing countries "leapfrog" the more developed economies. Our projects on electronic procurement regimes, regulation of crowdfunding platforms and blockchain-based smart contracts exemplify our efforts in this area. The programme also puts a strong emphasis on knowledge sharing through public events, presentations and publications. *The Law in Transition* journal is our annual flagship publication.

Echoing the significance of an investor-friendly legal environment, in his interview for this edition, Suma Chakrabarti, the EBRD President, emphasises the importance of persuading countries that foreign investment relies on improving the business climate, which inevitably entails strengthening the rule of law. This requires the understanding of local circumstances and incentives for stakeholders, which will ultimately determine whether governments will support and prioritise reforms. Under President Chakrabarti's leadership, the EBRD has significantly expanded its policy dialogue activities aimed at promoting reforms in its region, including legal reform.

I trust that everyone with an interest in legal reform will find excellent food for thought in this year's *Law in Transition* journal. I hope it will serve as a useful resource for those who make and influence legal reform policy in transition countries.

MARIE-ANNE BIRKEN
GENERAL COUNSEL, EBRD

EDITOR'S MESSAGE

At a time of continuing political and economic uncertainty in many parts of the EBRD region, the importance of legal reform cannot be overstated. This issue of the *Law in Transition* journal provides an array of lessons and ideas from the Legal Transition Programme (LTP's) work. Let us take a closer look at the contents of the issue and how its articles build on each other.

In his interview with LTP Director **Michel Nussbaumer**, **EBRD President Sir Suma Chakrabarti** discusses his long-lasting interest in the law and the legal reform trends he has observed in the Bank's countries of operations.

Turning to the substance of LTP work during the last year, we helped to address one of the major challenges of our time – that of climate change – by supporting **Georgia with the development of a National Energy Efficiency Action Plan**. As described in our article, this vast legal reform effort, including the drafting of a new Energy Efficiency Law, signals Georgia's intent to make a concrete contribution to the fight against global warming.

Another area that is high on the agenda of many of the EBRD's countries of operations is the provision of **high-speed, quality broadband**. **Paul Moffatt** gives an account of our work with Serbia on the adoption of strategies to boost the uptake of the latest information and communications technology (ICT) and facilitate the country's transition to a knowledge-based economy.

Given the huge investment needs of EBRD economies, in ICT and other forms of infrastructure, many governments have used partnerships with the private sector to help fund these projects and make use of private expertise. Yet, many countries struggle to implement **public-private partnerships (PPPs)**. Last year, the LTP undertook an **assessment of PPP laws** in its countries of operations, as described in **Alexei Zverev's article.**

The EBRD's involvement in financing PPPs cannot be divorced from the **procurement process**. A good procurement regime should address both high- and low-level procurement, the latter being particularly relevant to small and medium-sized enterprises (SMEs). Our article describes the LTP's work with the Tunisian government on **improving the process for online small value procurement in Tunisia**.

Staying with the theme of SMEs, the article that I authored describes the emergence of **financial technology** and its potential to facilitate alternative funding sources for SMEs. The LTP is working on defining best practices for the **regulation of crowdfunding platforms** and on addressing legal obstacles to the enforceability of innovative

"At a time of continuing political and economic uncertainty in many parts of the EBRD region, the importance of legal reform cannot be overstated."

blockchain-based smart contracts, with a focus on the protection of **creditors' rights**. Factoring is another useful instrument for improving SME access to finance. In his article, **Ammar Al-Saleh** discusses possible solutions for **Sharia-compliant factoring**, which is of particular relevance to countries in the southern and eastern Mediterranean **(SEMED)** region.

Returning to the theme of creditors' rights protection, the article co-authored by **Howard Rosen** and myself describes an innovative global treaty – the **Luxembourg Protocol** to the Cape Town Convention on International Interests in **Mobile Equipment** – which provides a new system of rights for creditors with security interest over **rolling stock**. As such, the protocol could be particularly relevant in the context of the **Belt and Road Initiative**, which aims to develop new rail links across more than 60 countries with different movable pledge regimes.

Also related to the protection of creditors' rights is the unfortunate practice of **account blocking**, a system of corporate debt recovery that is widespread in the **Western Balkans**. Our piece describes how we are helping regulators explore alternatives to this system, which denies defaulting businesses access to their bank accounts and working capital and ultimately reduces the likelihood of creditors recovering their assets.

As an international financial institution (IFI) with a mandate to promote good governance, the EBRD is concerned with the **corporate governance** regimes of its countries of operations. In their interview, **Gian Piero Cigna** and **Pavle Djuric** describe the findings of the LTP's latest **Corporate Governance Sector Assessment** and explain why boards of directors need to embrace **gender diversity** as well as providing better disclosure and displaying more independence.

Lastly, legal reforms can be successful only if they are complemented by improvements in the quality of state institutions. **Franklin Steves**'s article, written with **Milica Delevic** and other colleagues, describes the Bank's extensive work in support of the **capacity-building of state institutions** responsible for economic governance, which has already led to concrete and visible results.

Thank you for taking the time to explore this edition of the *Law in Transition* journal. I hope that the articles that follow will promote a greater understanding of the EBRD's legal reform work and spark ideas for new projects. I look forward to hearing any comments you may have.

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MY LEGAL HEROES: FROM MAHATMA GANDHI TO LAURA CODRUTA KÖVESI

President Chakrabarti on how lawyers can change the world

Suma Chakrabarti became President of the EBRD in 2012 and was re-elected to a second four-year term in 2016. Before joining the Bank, President Chakrabarti was the most senior civil servant at the British Ministry of Justice. Prior to this, he headed the UK's Department for International Development (DFID). He holds a degree in Politics, Philosophy and Economics from Oxford University and a Masters in Development Economics from the University of Sussex.

Under Suma Chakrabarti's presidency, the EBRD has significantly expanded its policy dialogue activities aimed at promoting reform in the Bank's countries of operations, including legal reform and other improvements to governance.

Michel Nussbaumer, Director of the Bank's Legal Transition Programme (LTP), interviewed President Chakrabarti about his experience of advocating legal reform and stronger rule of law in his capacity as head of the EBRD, as well as in his previous jobs.

Michel Nussbaumer: When you meet with heads of government and other key decision-makers from the EBRD region, as you do on a regular basis, how high on their agenda is legal reform?

Suma Chakrabarti: The honest truth in my mind is that it is not high enough on their agenda. It is like a "nice thing to have", but they don't think of it much unless they have a legal background themselves, which is quite rare in our countries of operations.

MN: Do you see a difference in that context between our old region[1] of operations and our new region?[2] The old region was forced to enact legal reforms as they were starting from a clean slate after the collapse of the Soviet bloc, whereas in the new SEMED region there is a long tradition of commercial law.

SC: Actually I don't see this difference. The behaviours are quite similar in our traditional region and in the SEMED region, in particular in terms of the attitude towards corruption and prosecuting it. Talking to governments in Romania and Bulgaria has been quite similar to talking to governments in the SEMED region.

MN: But we should not forget the impact of EU accession in the old region.

SC: EU accession has always been a good motive for institutional reforms in all these countries. But at the same time the EU itself is still very critical of some of its members when it comes to the judiciary and organised crime, and how it is prosecuted or not prosecuted. Since the EU became very clear about the failings in Bulgaria and Romania, for example, there have been major advances. Look at Laura Codruta Kövesi[3] pushing on the anti-corruption front in Romania. She has done a tremendous job I think, so that the judiciary in Romania is now very much more independent. Many female judges have supported her actions.

Laura Codruta Kövesi has done a tremendous job, so that the judiciary in Romania is now very much more independent. Many female judges have supported her actions.

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MN: Then there is the question about what we can do to incentivise countries to reform their legislation. Would you have any advice on how to make our policy dialogue more efficient?

SC: In terms of getting governments to take this agenda more seriously, you have to explain to them why it is of value to them.

To give you a very concrete example, I just had an email from one of our country teams about, among other things, the appointment of the chief prosecutor and the head of the justice system in that country. These are issues where the leaders in our countries of operations are not necessarily thinking in the national interest. They are thinking of what is in their own interest. And it is our role as international public servants to tell them what is really in the long-term interest of their country. We should tell them "This is the right thing to do", or "Please don't do this".

But you also have to find a way to explain to them that, if you have a good legal and judicial system, you will attract more foreign investment, because investors will be more confident that fair decisions will be made. I think this is really, really important to investors – that disputes are resolved fairly and quickly. If you want to be re-elected, as a politician, you will want to attract more investment, and that's why you have to make the reasoning sufficiently short term and get them interested.

MN: Do you see a risk in offering free technical assistance to countries, as we do most of the time? Would fee-based services create more responsibility on the counterpart's side?

SC: Yes, generally speaking if you pay for it you should care more about it. But you have to judge this case by case.

If you asked Tajikistan to pay for technical assistance, or any low income country, I don't think they could afford it. But you could ask Poland to pay. You have to make a judgement about where the country is in its development process.

"It is our role as international public servants to tell the leaders in our countries of operations what is really in the long-term interest of their country."

MN: What about cooperation and competition among international financial institutions (IFIs)? In IFI headquarters in Washington or London you hear that everyone wants to cooperate, but on the ground in the Kyrgyz Republic or Armenia, there is much more competition for projects.

SC: I don't see quite as much as volume chasing and silly behaviours in areas such as the one covered by the Legal Transition Programme. I tend to find that lawyers in these various institutions have a more shared viewpoint.

MN: Are there any areas that we are not working on and should be?

SC: Of course I could come up with a long list of things to do, but we won't have the money. But within what we do already, I have seen the good stuff your team has done on judicial training in particular, and I would like to scale this up.

MN: You are aware that judicial training is a special type of law reform work. It is expensive, it is difficult to make sustainable…

SC: I think we are good at it. This is an area of expertise that the EBRD has and we should build on it.

Another thing I want to say is we need to advertise our legal reform work more. Of course we can do press releases, but we should capitalise more on success stories. Take for example the Chernobyl project[4] for the Nuclear Safety team. They get so much publicity because they are on the public's mind. So we have to work harder together to find LTP projects that you can communicate about to show the difference that you make.

MN: Now, can we talk a little about your pre-EBRD days? You were Permanent Secretary at the UK Ministry of Justice from late 2007 until July 2012, when you joined the EBRD. Can you tell us more about the job there?

SC: I was chosen as a non-lawyer to lead the department. In previous times, the Ministry (or rather its predecessors) had always been led by a lawyer. The Ministry of Justice is a 95,000 person business, covering the prisons, the courts and the probation services.

MN: Were these criminal courts only?

SC: No, no, civil courts too, and the judiciary, or part of it. The essential question was: how do you create a new structure, a new ministry, with all these constituent parts together?

MN: It did not exist before?

SC: No. We had never had a Ministry of Justice before.[5] So, it was really a leadership-management exercise. At the time, the 95,000 people working for the Ministry were quite siloed. The idea that the Prison Service would relate to those in Legal Aid or some other aspects of the justice system was actually quite problematic. We had a process called Transforming Justice which became quite famous. We were also by that time beginning to face up to the fact that austerity meant cutting budgets as well, so we had to start cuts but at the same time make sure people could get access to justice.

Something that your readers outside the UK might find interesting: because we had taken the Prison Service and the National Probation Service out of the Home Office (the so-called interior ministry as people call it on the Continent), into the Justice Ministry, the Home Office became much more security-oriented, while the Justice Ministry became more focused on the rehabilitation of criminals. In other words, you get a quite right-wing, illiberal interior ministry and you have a justice ministry which is staffed by more liberal people.

Theresa May, when she was Home Secretary, made a famous joke about her and Ken Clarke (then Secretary of Justice): “I lock them up and he lets them out”. This encapsulates the divisions of the time.

MN: Was there any international cooperation at the Ministry of Justice?

SC: There was, mostly focusing on judicial training programmes. We developed the so-called Justice Assistance Network, which was a cross-departmental

initiative between DFID, the Ministry of Justice, the Home Office and lawyers from other departments. The programme involved training judges in other countries, but also helping to make the courts function better.

MN: So this may explain why you are so interested in the judicial training activities of the EBRD Legal Transition Programme?

SC: Yes! And I am also interested in lawyers for another reason: in 2009, I became an Honorary Bencher of the Middle Temple[6] here in London.

MN: Does this mean that you are technically a barrister?

SC: Yes, but without the qualifications. They decided they liked me so much they would let me in [laughs]. Anyway, in my admission speech, I mentioned that I have always been interested in lawyers. It goes back to the Independence Movement in the British Empire. Many country movements were led by lawyers: for example Mahatma Gandhi, Jawaharlal Nehru, Muhammad Ali Jinnah.

"The first message is that law is an important part of the development process. And the second one has to do with the whole question of gender balance: we want to get a judiciary that better reflects society."

MN: Gandhi was trained in the UK, right?

SC: Yes, and so were Nehru and Jinnah. If you then look at South Africa as well, many of the leading lights in the anti-apartheid movement were lawyers. All these lawyers played a vital part in the process.

MN: More on the political side, than the economic one.

SC: This is right. And many people do not know this. They don't know, unless they have studied the matter, that Nehru or Gandhi were lawyers. In fact, lawyers are often associated with being anti-change, being on the conservative side. And all the Myers-Briggs indicators by the way show this. They are conservative, they are introverted personality types, because they have to care about the rules.

MN: Did you ever consider becoming a lawyer?

SC: No, I did not. But I became interested in lawyers because of the fight against colonialism.

And later, when I started my first job, working as an economist in a ministry in Botswana, the importance of law for making sure the institution ran well became very clear. We know now in development how much institutions and policies matter.

MN: In the 1990s, the importance of legal frameworks was not so obvious in the IFI world. This became more obvious with the Doing Business project at the World Bank in the noughties.

SC: That's right. Maybe the importance of lawyers was not recognised 'til then. I think we have known about the importance of institutions since the late 1980s – if you look at the Know How Fund promoted by the UK government, for example. You are right that the recognition of the importance of the law as part of the institutional framework is more recent.

1 Countries of the Caucasus, Central Asia, central and eastern Europe and Russia.

2 The southern and eastern Mediterranean area (also known as SEMED), which includes Egypt, Jordan, Lebanon, Morocco, Tunisia, West Bank and Gaza. The EBRD began operating in SEMED in 2012.

3 The chief prosecutor at Romania's National Anticorruption Directorate.

4 The EBRD manages international funds that finance work to secure Chernobyl, including the construction of the shelter known as the New Safe Confinement. For more information, visit www.ebrd.com/what-we-do/sectors/nuclear-safety/chernobyl-overview.html (last accessed 15 December 2017).

MN: Can you please tell us about your time at DFID. Did you have a chance to promote the rule of law as part of your role there?

SC: Very much so. That happened in the context of country strategies. DFID is extremely strong on political economy, when compared with other donors, so when you want to design a country strategy for a developing country, you have to think about institutions and legal frameworks.

Another aspect of my work at DFID was that sometimes I would have to go and challenge a government because they were behaving badly, in terms of lawyer independence. I had these very difficult face-to-face discussions with presidents or attorney generals in Sub-Saharan Africa about their treatment of lawyers.

MN: Did your programme at DFID include law reform assistance for these countries?

SC: Yes, but it was only starting. I think DFID began to rely more on the Ministry of Justice, when it was created, to do that.

MN: What sort of legal models were you promoting in DFID projects? The English law model, which is often seen as a gold standard? Or were you relying on international standards?

SC: We did not actually have to promote the UK model, because most of the countries that DFID is helping are Commonwealth countries, so they have English law-inspired systems already. Rather, the focus was on getting systems that worked and ensuring they had good governance and good legal processes.

MN: Do you have any family connections with lawyers or the rule of law?

SC: I don't think we have a single lawyer in the family. We have doctors, academics, accountants, journalists, but I can't recall a single lawyer. Note however that my wife, who is Japanese, is interested in the law. She has recently focused her research on legal services, in particular on outsourcing them. So she has a big interest in how lawyers function, how they behave and what makes them tick. And of course at the Ministry of Justice I became very interested in lawyers. I retain strong personal links with senior members of the judiciary in the UK and I continue to see them.

MN: To conclude, I would like to go back to our technical cooperation activities. You know we are working to establish a platform for women judges in the SEMED region. The idea is to allow them to share experiences and develop their leadership potential in these societies. What would be your message to these women judges?

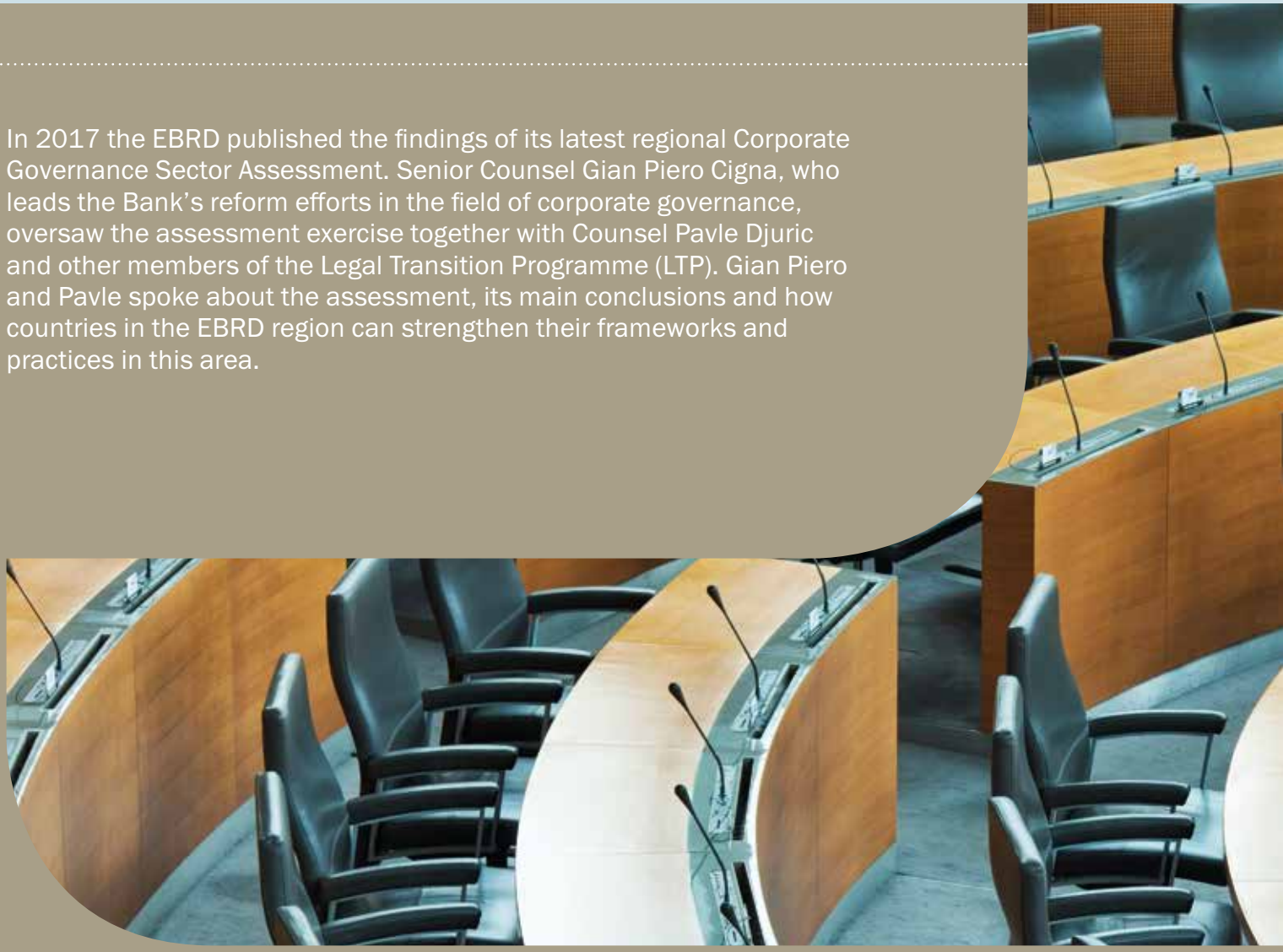
SC: The first message is that law is an important part of the development process. And the second one has to do with the whole question of gender balance: we want to get a judiciary that better reflects society. So, this means more women, but also more openly gay judges. It is fantastic that now, in Britain, so many senior judges are suddenly openly gay, whereas before they were denying it. Now it is OK. Having more minority judges is good for everyone!

5 The Ministry of Justice was formed in 2007, combining the criminal justice functions of the Home Office and its agencies with the responsibilities of the Department for Constitutional Affairs.

6 The Middle Temple is one of the four Inns of Court which have the exclusive right to call their members to the English Bar as barristers. Benchers, or Masters of the Bench, are responsible for governance at the Middle Temple, which elects Honorary Benchers from other walks of life who have excelled in their profession.

HOW CORPORATE GOVERNANCE IN THE EBRD REGION NEEDS TO IMPROVE

In 2017 the EBRD published the findings of its latest regional Corporate Governance Sector Assessment. Senior Counsel Gian Piero Cigna, who leads the Bank's reform efforts in the field of corporate governance, oversaw the assessment exercise together with Counsel Pavle Djuric and other members of the Legal Transition Programme (LTP). Gian Piero and Pavle spoke about the assessment, its main conclusions and how countries in the EBRD region can strengthen their frameworks and practices in this area.



What did the Corporate Governance Sector Assessment consist of?

Gian Piero: We examined the corporate governance legal framework and practices of 34 EBRD countries of operations over two years, producing a detailed report on each of those countries.[2] For every jurisdiction, we considered the quality of the legal framework in place (including voluntary corporate governance codes); the capacity of the institutional framework (for example, courts and regulators) to enforce legislation; and the effectiveness of these frameworks in practice. We measured effectiveness by examining the corporate governance disclosure of the 10 largest[3] companies in each country and gauging whether what companies did was aligned with the law and best practice. Transparency and disclosure are key pillars of corporate governance and central to shareholders' ability to exercise their rights on an informed basis.

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Pavle: In each country we first sent questionnaires to these companies, as well as to law firms, auditors, national regulators and stock exchanges, seeking information on corporate governance legislation and how it is implemented. Then we analysed the legal framework in each country along with the websites and annual reports of the largest companies and regulators. We also screened reports produced by a wide range of other institutions, including international financial institutions (IFIs), the Organisation for Economic Co-operation and Development (OECD), non-governmental organisations, central banks and universities.

Finally, we matched our internal analysis with the questionnaire responses and established a grid, based on international best practice benchmarks, which analysed the performance of the corporate governance environment of every country. We focused on five dimensions: (i) the structure and functioning of the board of directors; (ii) the transparency and disclosure of company information; (iii) internal control; (iv) the rights of shareholders; and (v) stakeholders and institutions.

What are the main findings of the assessment?

GPC: As expected, countries in the European Union (EU) tend to have better corporate governance legislation and practices. There is, however, room for improvement in all countries in the EBRD region, including those in the EU. Some countries seemed to perform well in one area but poorly in another. This is not good, as corporate governance is like a jigsaw puzzle: if just one piece is missing or in the wrong place, the overall picture is incomplete or distorted. Similarly, if just one dimension of corporate governance is weak, then all the others are weakened too.

"Transparency and disclosure are key pillars of corporate governance and central to shareholders' ability to exercise their rights on an informed basis."

"Corporate governance is like a jigsaw puzzle: if just one piece is missing or in the wrong place, the overall picture is incomplete or distorted"

We identified several key weaknesses in all the corporate governance systems we examined. We expected better quality disclosure from the listed companies. Often, the information provided was insufficient on the composition and qualifications of the board and its committees or on compliance with the national corporate governance code. This might be due to investors and regulators not fully appreciating the value of good disclosure and putting insufficient pressure on issuers to provide quality disclosure beyond financial information. But this is a short-sighted approach as the quality of financial data depends on the competence of those preparing it.

This leads me to another problem area: the functions and composition of the board of directors. The core functions of the board are to approve the strategy, budget and risk appetite of a company and to ensure managers keep within agreed budgetary and risk constraints when implementing strategy. To be able to do these jobs, the board should have the authority to appoint and remove executives – especially if they do not perform well. Only in a handful of countries, however, is the legislation clear in assigning all of these functions to the board. In most cases, these powers stay with the general shareholders' meeting and we really asked ourselves what purpose the board served.

PD: When looking at board composition, we noticed that corporate governance systems paid little attention to board diversity, which is key to avoiding "group thinking", a phenomenon identified as one of the main contributing factors to the recent financial crisis. We were particularly struck by the lack of gender diversity on boards. There is increasing evidence of the strong link between high levels of gender diversity on boards and good corporate performance, so this is an issue that cuts to the heart of what corporate governance is all about: improving a company's decision-making so that it generates more wealth while protecting the interests of stakeholders.

"When corporations launch initial public offerings and seek Bank support, we can encourage them to adopt a gender diversity policy."

Globally, the countries that are the most successful with gender diversity on boards seem to be those that have introduced quotas by law, such as France, Iceland and Norway. Nevertheless, introducing quotas in EBRD countries of operations may not be the solution as there could be a high degree of cultural resistance to such a move. We believe – before talking about quotas – it would be important to focus on raising awareness of the value of gender diversity to companies, as well as to wider society. For example, when corporations launch initial public offerings (IPOs) and seek Bank support, we can encourage them to adopt a gender diversity policy. With state-owned enterprises (SOEs) too, we can help them to appreciate that having a better gender balance can lead to better results, which will help them meet the expectations of taxpayers.

GPC: This is an issue that we are discussing with other development finance institutions (DFIs) involved in the DFI Corporate Finance Working Group. It is important that we all sing from the same hymn sheet on this matter so that clients don't compare the different requirements we have in relation to

gender diversity and go for the lowest requirements. I think this is an area where IFIs, including the EBRD, could do more.

What were your other concerns about the way boards are structured and how they function?

GPC: Independent directors are a crucial component of a well-functioning board but how this independence is defined is often inadequate in many parts of the Bank's region. Frequently the only criterion for independence is that of non-affiliation with the company's executives or owners. Non-affiliation is, however, just the start. Independent directors also need to be highly engaged and demonstrate objectivity of mind and a challenging attitude. They are key to a company's performance as they can provide a perspective that controlling shareholders might not have. They are also an essential element in ensuring that corporate decision-making is protected from conflicts of interest.

"Independent directors are a crucial component of a well-functioning board but how this independence is defined is often inadequate in many parts of the Bank's region."

However, to perform this role, independent directors should at a minimum attend all board meetings in person – and disclosure should clearly evidence this. Especially when they sit on committees, independent directors should be able to challenge managers on key issues and their performance could be measured according to the robustness of internal control mechanisms such as a whistleblowing function. Annual reports should at least mention what they have done in practice to demonstrate their independence and engagement. Investors should pay attention to this disclosure as the independence of these directors is crucial to ensuring that a company's financial statements are reliable. Unfortunately, we are still far from this situation.

PD: This brings us to a recurring theme from the assessment: we need better quality disclosure, rather than more disclosure. Describing what independent directors have done to demonstrate their objectivity is an example of the "qualitative" data that we would like to see companies sharing more widely. This is something that we often encourage in our investee companies through our corporate governance action plans, especially if the companies are listed or systemically important.

GPC: It seems that in many cases companies and investors in our region do not fully appreciate the importance of board diversity and the role of independent board members. Too often investors limit their engagement to the appointment of directors, without focusing on whether they are playing an effective role. We frequently see examples of supposedly independent board members silently nodding to all board decisions and going along with whatever the Chief Executive Officer says. Good quality disclosure should reveal whether management is duly challenged.

1 Unless otherwise stated, Mike McDonough, Staff Writer, EBRD Communications, wrote some of the articles in this year's journal. He also co-edited this edition. He can be contacted at McDonouM@ebrd.com

2 www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html (last accessed 20 December 2017).

3 That is, the companies with the biggest market capitalisation. In countries that do not have a stock exchange, or where there were fewer than 10 listed issuers or no data on capitalisation, the assessment selected the 10 companies with the biggest revenue and labour force. In some countries where all 10 companies were in the same sector, the sample was corrected to reflect other parts of the economy. The working hypothesis was that the 10 largest listed companies offer the best disclosure in each country. The assessment presumed that when certain practices were not disclosed by them, they were unlikely to be disclosed by smaller or unlisted companies.

"The Bank works closely with policy-makers and companies to improve the corporate governance framework and culture in the EBRD region."

Independent directors have a crucial role and if they are unable to do their job, they should resign, as recently happened at Naftogaz, the Ukrainian state-owned power company,[4] rather than carry on with business as usual. Such a move – albeit extreme – sends a strong message to the market that there are serious concerns. In turn, the market should understand the seriousness of this signal.

Beyond the issue of board composition and functions, what other issues did the assessment reveal?

PD: In many countries there is a need to improve the internal control system by strengthening the role of the audit committee, which performs key board functions. Because of that, we believe that audit committees, which are frequently made up of external experts, should instead consist of a majority of independent directors from the board. That way, when an audit committee recommends specific actions to the board, the directors who are part of that committee can vote for them at board level, thereby reinforcing the objectivity of the board's judgement.

Furthermore, we believe that committee members should have a thorough understanding of a corporation's business when performing their duties, while "outsiders" – who do not sit on the board – might only have a partial vision and understanding of the corporation's activities. While it is legitimate that committees might need external advice or expertise on specific issues, they should be able to request such advice without allowing outsiders to take the place of board members in their decision-making.

What does the Bank do with the findings of this assessment?

GPC: In many countries where the EBRD invests, there are good things in place at the same time as significant shortcomings. But we are not just pointing these flaws out and leaving it at that: the Bank works closely with policy-makers and companies to improve the corporate governance framework and culture in the EBRD region. For example, we had a successful engagement with the Central Bank of Russia (CBR) over the review and implementation of the Russian Corporate Governance Code. We assisted the CBR in reviewing the code and establishing a methodology for monitoring companies' disclosure on their compliance with the code, which was an absolute novelty for Russia.

Thanks to the EBRD's assistance, in May and December 2017 the CBR published its first ever monitoring reports. We are very pleased to see the active dialogue that the CBR is having with issuers and how the quality of disclosure has improved as a result. The CBR is also setting its corporate governance reform priorities by assessing companies' practices and disclosure.

We have a long journey in front of us, but we are committed to our role and we hope that the next assessment will show further progress.

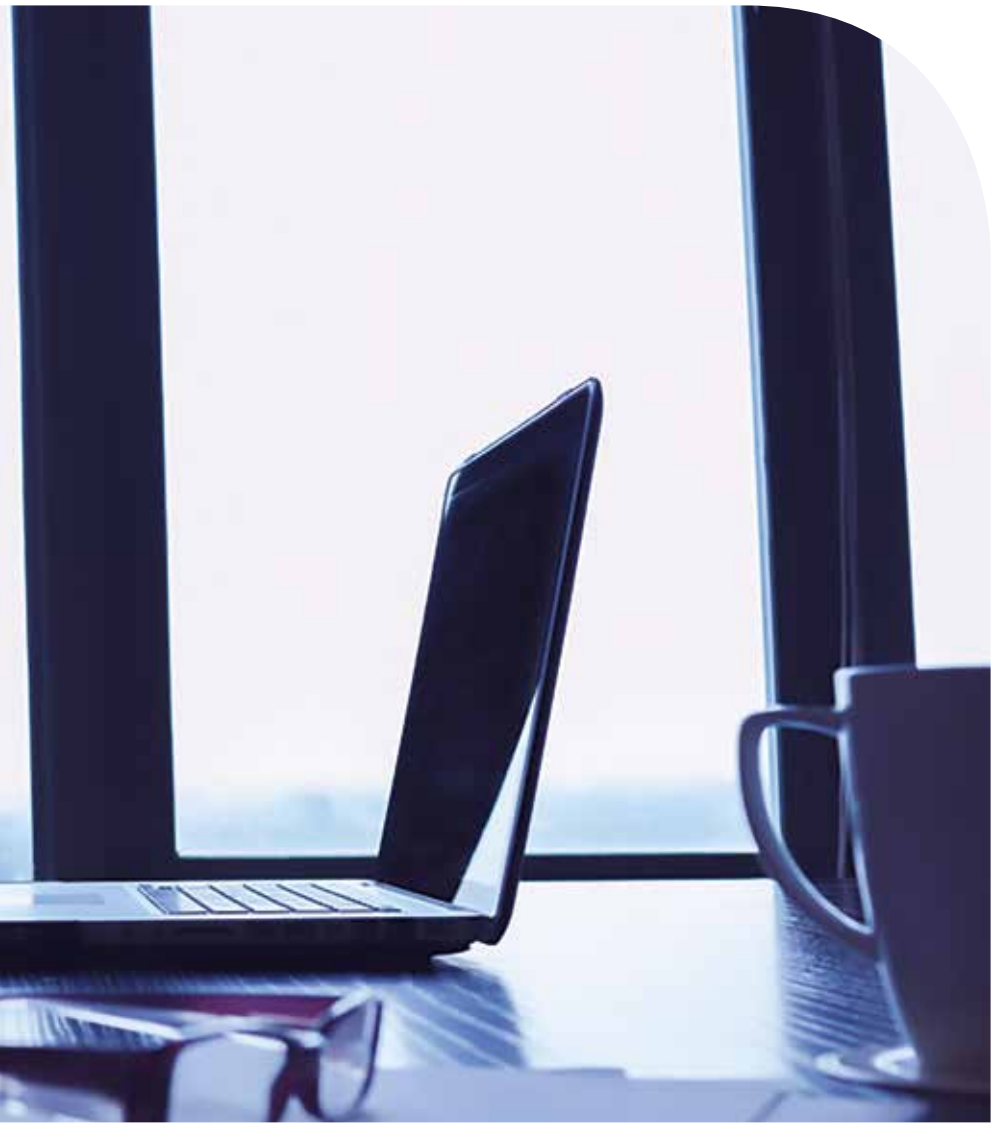
4 www.naftogaz.com/www/3/nakweben.nsf/0/6D7C544D5F376866C22581A0006883A0?OpenDocument&year=2017&month=09&nt=News& (last accessed 20 December 2017).

5 The CBR monitoring reports are available at: http://www.cbr.ru/StaticHtml/File/14233/Review_17042017.pdf and http://www.cbr.ru/Content/Document/File/33001/Review_27122017.pdf (last accessed 4 January 2018).

IN SEARCH OF ALTERNATIVES TO ACCOUNT BLOCKING IN THE WESTERN BALKANS

In his novel *Little Dorrit*, Charles Dickens ridiculed the institution of debtors' prisons for keeping inmates from working and being able to repay their debts, as a result of which they languished in custody for years while creditors waited in vain for their money.

Although it does not deprive debtors of their liberty, account blocking – part of a system of corporate debt recovery that is widespread in the Western Balkans – has a similarly negative effect on their ability to pay creditors. Combined with cash sweeping, the practice denies businesses access to their bank accounts and working capital, effectively preventing them from continuing with their activities and servicing their debt. This impedes efforts towards out-of-court restructuring or reorganisation within bankruptcy and increases the likelihood of a viable firm in temporary financial distress going bankrupt and being liquidated.



Combined with cash sweeping, the practice denies businesses access to their bank accounts and working capital, effectively preventing them from continuing with their activities and servicing their debt.

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STORY WRITTEN BY MIKE MCDONOUGH

"As well as creating otherwise avoidable job losses and destroying economic value, this means creditors end up recovering far less money than they might do if an alternative system of debt enforcement were used," says Jaime Ruiz Rocamora, a Principal Counsel in the Legal Transition Programme (LTP) who specialises in debt restructuring and bankruptcy reform. "The system also creates an incentive for borrowers to resort to fraudulent behaviour to avoid losing their business."

Out-of-court restructuring and reorganisation are essential tools for preserving value in the corporate sector and improving the wider investment climate. In order to promote their use in the Western Balkans, the EBRD is helping regulators in the region implement alternatives to cash sweeping and account blocking as a way of securing and enforcing creditors' rights.

As part of these efforts, in 2017 the Bank launched a regional study of account blocking in four countries where it is widely used: Bosnia and Herzegovina, FYR Macedonia, Montenegro and Serbia. The study, which was funded by Luxembourg and completed early in 2018, assessed the impact of cash sweeping and account blocking on a corporate debtor's ability to successfully restructure or reorganise their debts. It also considered their effect on the extent to which creditors cooperate with each other to restructure a borrower's debts. The overall objective of the study is to suggest viable alternatives that could gradually replace cash sweeping and account blocking.

HOW ACCOUNT BLOCKING WORKS

While the laws and regulations establishing account blocking vary from country to country in the Western Balkans, the main features of the system are the same. When obtaining a loan, it is a standard requirement of the credit market that a business provide security in the form of a bill of exchange, which identifies a particular bank account held by the borrower.

In the event of default, the creditor submits the bill of exchange to the bank where the account is held. This triggers a two-stage process which is implemented by the centralised system of a country's national bank. In the first stage, cash is swept from the debtor's bank account and transferred to the creditor until the debt is repaid. If there is insufficient cash in that account, the creditor can use the bill of exchange to sweep all of the debtor's bank accounts until that creditor's claims have been repaid in full.

If that amount is still insufficient, the second stage of the process – account blocking – is triggered. This involves blocking all of the debtor's accounts in any bank and transferring to the creditor any payments made into those accounts until the debt is repaid in full.

The process does not involve going to court and is very quick and easy to enforce. As a result, cash sweeping and account blocking are the accepted market standard among creditors in the Western Balkans.

"In 2017 the Bank launched a regional study of account blocking in four countries where it is widely used: Bosnia and Herzegovina, FYR Macedonia, Montenegro and Serbia."

"In Serbia, for example, a vast majority of lenders surveyed in the study insist on bills of exchange as collateral," says Jaime. "Bills of exchange are also very secure compared to alternatives such as account pledges which, due to inadequate legislation, currently afford creditors very little guarantee that they will recover any of the funds they have loaned."

EFFECTS OF CASH SWEEPING AND ACCOUNT BLOCKING

The impact of bills of exchange on debtors, however, is often damaging. Cash sweeping deprives a business of its existing working capital while account blocking stops debtors from accessing any future proceeds until the debt is recovered in full. Bills of exchange therefore interrupt the cash flow of debtors, which could prevent them from paying suppliers or employees. This disrupts their business, exacerbates their financial distress and increases the prospect of debtors heading towards bankruptcy, which usually results in liquidation and minimal rates of lender recovery.

"In the study, 60 per cent of commercial banks and 80 per cent of companies surveyed in Serbia – the biggest jurisdiction analysed – agreed that bills of

exchange reduce the business operability and liquidity of the debtor," says Jaime. "Despite this, respondents did not agree that enforcing bills of exchange was detrimental to the chances of achieving successful out-of-court restructuring or reorganisation."

The EBRD study, however, demonstrates that this is the case. Data collected by the Bank, with support from consultants, shows that the overwhelming majority of businesses subject to account blocking measures see their finances deteriorate considerably over time. The prospect of the debtor's finances worsening dramatically discourages creditors from participating in out-of-court restructuring or reorganisation plan negotiations, leaving liquidation as the inevitable consequence of the debtor's worsening financial situation.

Furthermore, in order to protect their cash flow and continue running their business activities, many debtors resort to fraudulent measures such as using the bank accounts of an affiliated company or those of directors or managers' family members to receive and make payments. As a result, debtors are reluctant to share information with creditors about their business operations. This reluctance effectively prevents them from entering recovery plan negotiations with lenders.

"Data collected by the Bank, shows that the overwhelming majority of businesses subject to account blocking measures see their finances deteriorate considerably over time."

RACE BETWEEN CREDITORS

Another feature of bills of exchange that hinders out-of-court restructuring and reorganisation is that it incites creditors to act individually as opposed to working together to restructure the debtor's finances. Cash sweeping and account blocking prompt a race between creditors, as the first one enforcing a bill of exchange sweeps all the cash from the debtor's bank accounts and blocks all of these accounts until their claims have been fully repaid. In practice, this triggers a chain reaction of creditors submitting bills of exchange in order to reserve as much of any remaining cash as possible.

Even creditors who do not hold bills of exchange or who prefer work-out solutions are deterred from participating in out-of-court restructuring because the process is unprotected from other creditors enforcing their bills of exchange and ruining the start of any negotiations. And while court reorganisation allows judges to impose a stay on creditors enforcing their claims, the speed with which lenders can enforce bills of exchange means that they typically trigger cash sweeping and account blocking before the start of any reorganisation process.

GRADUAL CHANGE RECOMMENDED

We have seen how cash sweeping and account blocking pose a threat to the survival of viable businesses in temporary financial difficulty. The widespread use of bills of exchange in the Western Balkans and the lack of other reliable security instruments over cash assets mean, however, that any regulators wishing to reform the system will need to do so gradually in order to win support from creditors and avoid depressing the region's already-sluggish liquidity market.

"Out-of-court restructuring and reorganisation are vital for giving companies in temporary financial difficulty a second chance to generate revenue."

The EBRD study therefore recommends a three-stage model for reforming the credit environment in Bosnia and Herzegovina, FYR Macedonia, Montenegro and Serbia. The first stage would involve removing the account blocking features of bills of exchange, which would retain their cash sweeping powers but not their ability to block future inbound cash flows to the debtor's accounts. This would reduce the incentive for creditors to take unilateral action.

Also as part of this initial phase, the study urges legislators to undertake legislative reforms in order to create a functional and reliable account pledge system as an alternative to account blocking. In particular, these reforms would allow account pledges to cover any account balance top-ups and could protect cash subject to an account pledge from claims arising from bills of exchange or from court decisions.

In the second phase, some two to three years after the introduction of a functional and reliable account pledge system, the legislator would strip bills of exchange of their power to sweep cash across all of a debtor's accounts and instead limit cash sweeping to a specific debtor account. Reforms within this second stage would ensure the debtor's continued access to working capital.

Lastly, the final reforms would remove the direct cash sweeping powers of bills of exchange, which would only be enforceable through a court ruling (as is the case in Austria and Germany).

MAXIMISING VALUE

Taken together, these reforms aim to bring the credit environment in the Western Balkans closer to internationally accepted standards of best practice and significantly increase the use of out-of-court restructuring and, to some extent, reorganisation within bankruptcy.

Corporate debt restructuring mechanisms are essential for the development of an effective creditor rights regime, which in turn helps to create a more stable financial system. Nevertheless, as Jaime points out, encouraging creditors in the Western Balkans to use alternative cash collateral as opposed to bills of exchange will require something of a culture change. Out-of-court restructuring and reorganisation are vital for giving companies in temporary financial difficulty a second chance to generate revenue, rather than going into liquidation and losing all the value created.

"But it will take time to persuade lenders in the region that this is the best way of increasing their debt recovery rates, as well as of maximising value for their debtors' employees, owners and business partners and for wider society, which benefits from these businesses' taxes."

Jaime adds: "We are grateful to Luxembourg for financing this study and we very much hope that the relevant authorities in the four countries concerned will make use of its findings to improve their systems in a way that would benefit creditors and debtors alike."

SMART CONTRACTS, BLOCKCHAIN AND CROWDFUNDING: HOW THE LAW IS GETTING TO GRIPS WITH TECHNOLOGY

These days it is difficult to open a newspaper or go online without reading a story about Bitcoin and the disruptive potential of blockchain – the technology that underpins Bitcoin and other cryptocurrencies. We are hearing more and more about smart contracts and their link to the so-called internet of things, while the term crowdfunding has been an established part of business vocabulary for several years already.

And yet a discrepancy exists between the hype surrounding these forms of financial technology (or FinTech) and the lack of clarity regarding their regulatory status and the legal risks associated with them. Many countries have enacted crowdfunding legislation but this varies widely and there is little consensus as to what constitutes international best practice. When it comes to smart contracts, blockchain and other applications of distributed ledger technology (DLT), there is a vacuum as many countries have only just started considering how to regulate them.

The legal risks resulting from the unclear regulatory environment are most often cited as the key factor keeping companies and public institutions from adopting Distributed Ledger Technology.

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The situation threatens to prevent businesses, governments and citizens from reaping the benefits of FinTech as fully or as quickly as they might. According to the Cambridge Centre for Alternative Finance, part of the Judge Business School at Cambridge University, the legal risks resulting from the unclear regulatory environment are most often cited as the key factor keeping companies and public institutions from adopting DLT.[1]

Since its creation, the EBRD has prided itself on aiding entrepreneurs to make use of new financial instruments to support their activities and contribute to economic growth. In 2017, the Legal Transition Programme (LTP) launched two technical cooperation (TC) projects that seek to help regulators across the Bank's region of operations address the legal issues created by these nascent technologies and unleash their full business potential. LTP lawyers also initiated a TC project aimed at helping Ukraine draft an electronic governance law that will, among other functions, regulate cryptocurrencies.

"Since its creation, the EBRD has prided itself on aiding entrepreneurs to make use of new financial instruments to support their activities and contribute to economic growth."

SMART CONTRACTS AND BLOCKCHAIN

The first regional TC project focuses on the regulation of blockchain-based applications and smart contracts. Although there is no universally accepted definition of a blockchain, in essence it is a distributed ledger – a database shared by a multitude of users – that makes use of cryptography and data rules to achieve consensus among participants about which updates to the records in the ledger are valid. This removes the need for a trusted central authority to maintain the ledger or for users to know and trust each other.

Records in the ledger have a unique timestamp and cryptographic signature, making it in theory nearly impossible to change a record without leaving a trail of this modification, as a result of which distributed ledgers are considered virtually tamper proof. Often (but not always), valid transactions are grouped into blocks and chained together in a sequence that can be added on to but not reversed, hence the term blockchain, which is often used interchangeably with the term distributed ledger (although not all DLT makes use of blockchains).

A smart contract is a "self-executing software programme that automatically performs some function"[2] when a pre-defined event occurs (for example, a vending machine dispenses a soft drink when a certain amount of money is put into it). Smart contracts often live on a distributed ledger, which is why they are important to the world of blockchain. Despite their name, they are not legal contracts although they are often linked to the legal system through the use of legal prose.

Connecting smart contracts to objects linked to the internet – the internet of things – opens up a plethora of opportunities for transforming the way we go about our daily activities. For example, smart contracts could permit electric vehicles, when stopped in traffic, to sell small amounts of electricity to each other based on their battery needs.[3]

For the purposes of the EBRD, the possible applications of blockchain-based smart contracts to public and financial services are of the most interest. Governments may be able to use them to collect taxes or pay welfare benefits, manage procurement processes and ensure the integrity of other government services such as voting. Countries such as Georgia are looking at how they could employ DLT to create land registries that are immune to tampering and illicit land transfers.[4]

Finance is another area in which the combination of blockchain technology and smart contracts offers great promise. Financial institutions could use smart contracts to automate and speed up a wide variety of transactions such as clearing and settlement processes or trade finance disbursements.[5] Blockchain, meanwhile, could provide access to financial services to the many millions of people across the globe who do not have a bank account because they live in remote areas or cannot afford the fees banks charge customers for the services they offer.[6]

Tantalising though they are, these possibilities pose many legal questions that the LTP project will consider. How can smart contracts be made legally binding and capable of capturing the complexity of commercial agreements contained in natural language contracts? Transactions in the public blockchain of a smart contract can be seen by anyone, so how can users protect their confidentiality? In the case of a smart contract between parties in different jurisdictions, which jurisdiction applies in the event of a dispute? How can the pseudonymous nature of some blockchain transactions be reconciled with increasingly strict anti-money laundering (AML) and know your customer (KYC) regulatory requirements?

"In 2017, the Legal Transition Programme launched two technical cooperation projects that seek to help regulators across the Bank's region of operations address the legal issues created by these nascent technologies and unleash their full business potential."

In theory, blockchain technology makes tampering virtually impossible, but just how secure is it really and would a cyber attack constitute a case of *force majeure* exonerating any contract breach? If code performs in a way that the parties did not expect, what remedies will they have and against whom? Are there terms in the text part of the smart contract that will override any erroneous outputs from the code and, if so, would that not defeat the purpose of having a self-execution code altogether?

These are highly complex, multi-faceted issues and LTP hopes that its expertise will help policy-makers feel more confident in deciding how they are addressed by legal frameworks, as a result of which smart contracts and blockchain should enjoy much wider uptake in the EBRD region. One thing seems certain, however: a careful balancing of the potential of smart contracts and the many aspects of regulation that may apply will be required. That means starting with small steps: testing the technology in simpler contexts that are well understood and where performance is easy to automate using existing systems and on a small scale, then building the system up.

CROWDFUNDING

Crowdfunding platforms offer smaller companies and individual entrepreneurs valuable opportunities for accessing finance which may not be available to them through financial institutions or the capital markets. Initial public offerings (IPOs), for example, require companies to produce an investor prospectus and undergo extensive due diligence, both of which are expensive procedures and effectively exclude smaller players from entering the equities market.

Crowdfunding, by contrast, allows businesses with fewer resources to draw on a multitude of investors by linking them together through the internet. This approach also enables entrepreneurs to benefit from the expert advice that many of these investors are likely to possess, which further increases the chances of a venture being successful.

The downside of crowdfunding is that it does not offer investors the same degree of protection that capital markets provide: entrepreneurs seeking investment in this way do not need to disclose the detailed information that stock exchanges, for instance, require of them. It is conceivable, as things stand in some jurisdictions, that investors could be invited to finance a project without having received any guarantee that the venture actually exists.

Several countries within the EBRD's region of operations have enacted crowdfunding legislation or are in the process of doing so and most of the leading economies in the European Union have a bespoke regulatory regime in place for this form of FinTech.[7] There exists, however, no consensus as to what constitutes best practice in this area, which makes it difficult for the EBRD to advise policy-makers in the Bank's region who have asked for support with regulating crowdfunding.

Our crowdfunding regional TC project will therefore seek to offer best practice recommendations for issues including the minimum capital and liquidity requirements of investee companies; anti-money laundering and KYC checks; maximum loan size; the disclosure requirements needed to protect investors; rules on conflicts of interest and the organisation requirements of crowdfunding platforms.

The Bank hopes that, thanks to these recommendations, regulators in the EBRD region will become more comfortable with the formulation of crowdfunding regulation, which in turn should give legitimacy to crowdfunding platforms, while ensuring the adequate protection of investors. Apart from Estonia, most EBRD countries of operations lag behind western Europe when it comes to the financial volumes mobilised by crowdfunding, often as a result of inadequate legislation.[8]

E-GOVERNANCE IN UKRAINE

Quite a few countries in the EBRD region have recognised the transformative potential of technology for the delivery of public services. Estonia, Georgia and Latvia have been particularly active in this area and have scored notable successes.

Ukraine introduced mandatory electronic public procurement in 2016. Now the country is developing a law on electronic governance (or e-governance). Following a request for assistance from the Ukrainian authorities, EBRD lawyers are advising policy-makers on the legislative framework for e-government services, based on the Estonian model. Another focus of this TC project will be how best to regulate blockchain-based cryptocurrencies. In that context, our lawyers are advising on international practices for the regulation of cryptocurrencies, particularly Japan's recent Cryptocurrency Law, which focuses on the regulation of cryptocurrency exchange services, with the primary aim of protecting users and preventing money laundering and terrorism financing.

READY FOR THE FUTURE

The excitement surrounding many of these new technologies, in particular blockchain and smart contracts, makes it hard to tell what is pie in the sky thinking and what could offer concrete solutions to longstanding problems. Just as with the advent of the internet more than two decades ago, a wind of change is in the air and it is highly likely that the way we all do business and go about our daily lives will shift radically – although whether this takes one, five or 10 years remains unclear.

The EBRD has a well-deserved reputation as a reliable partner in uncertain times. With these three TC projects, the Bank is demonstrating its continued commitment to helping clients to ready themselves for the future.

By the time next year's edition of *Law in Transition* journal is published, we hope to be able to report significant progress in putting together clear best practice recommendations for regulating crowdfunding and solving some of the key legal obstacles to the use of smart contracts. This should provide inspiration for a broader debate on how EBRD countries of operations can make the most of innovations that offer the prospect of a more transparent and inclusive economic future.

"Quite a few countries in the EBRD region have recognised the transformative potential of technology for the delivery of public services. Estonia, Georgia and Latvia have been particularly active in this area and have scored notable successes."

BOX: SHARIA-COMPLIANT FACTORING – AN AREA OF GROWING INTEREST FOR LTP

Another form of alternative finance occupying the attention of LTP lawyers is factoring that complies with Sharia law – the law of Islam. A financial service based on the sale of accounts receivable, factoring is a useful tool for small and medium-sized enterprises (SMEs) to access finance. Because smaller businesses in the southern and eastern Mediterranean (SEMED) region often struggle to obtain affordable financing, there is growing interest in expanding the provision of factoring in that geographical area. Ensuring that the service is available in a way that respects Sharia law can help in this endeavour, as Islamic finance is a popular alternative system of finance.

In order to be Sharia-compliant, factoring must not generate a profit through the charging of interest for the service provider as charging interest is considered *haram*, which is the Arabic term for something forbidden by Islamic law. Furthermore, the economic activities financed by factoring must be *halal* – which in Arabic means allowed by Islamic law. For example, gambling and the consumption of alcohol or pork are forbidden under Sharia law, so using factoring for businesses that involve these in any way would not be Sharia-compliant.

The EBRD has been active in the promotion of factoring through the activities of the Trade Facilitation Programme (TFP) and the investments of the Financial Institutions (FI) team for some time now. At the same time, LTP lawyers have been engaged in offering technical assistance to improve the legal and regulatory environment for factoring in the Bank's countries of operations.

As part of this work and its wider commitment to standard setting, the LTP will explore the legislative framework for Sharia-compliant factoring. The challenge is to develop legislation that meets the requirements of Sharia law while ensuring that factoring remains financially viable for the service provider. For instance, legislation would need to be crafted in a way that avoids references to the charging of interest and instead refers to the benefits that a provider would receive, as benefits are considered *halal*.

Successful examples of Sharia-compliant factoring already exist in countries such as Malaysia and the United Arab Emirates. We are exploring how these operate in order to see whether and how they could be adapted for the purposes of the EBRD region. Challenges to offering Sharia-compliant factoring exist: the most obvious commercial impairment would be the lack of availability of entities that can offer this alternative source of finance. From a legal perspective, one significant challenge would be the enforceability of laws governing assignment.

The LTP expects that, once a legal framework for Sharia-compliant factoring has been established, SEMED economies and others (such as Turkey) could use this as the basis for their own legislation in this area. This would open factoring up to finance providers and SMEs that are keen to operate within the requirements of Islamic law, thereby making it easier for such small businesses to access the finance they need in order to grow.

1 Global Blockchain Benchmarking Study, 2017, Cambridge Centre for Alternative Finance https://www.jbs.cam.ac.uk/faculty-research/centres/alternative-finance/publications/global-blockchain/#.WhFodP5LEdU (last accessed 5 December 2017).

2 Global Blockchain Benchmarking Study, 2017.

3 http://f.datasrvr.com/fr1/416/66238/2.pdf (last accessed 5 December 2017).

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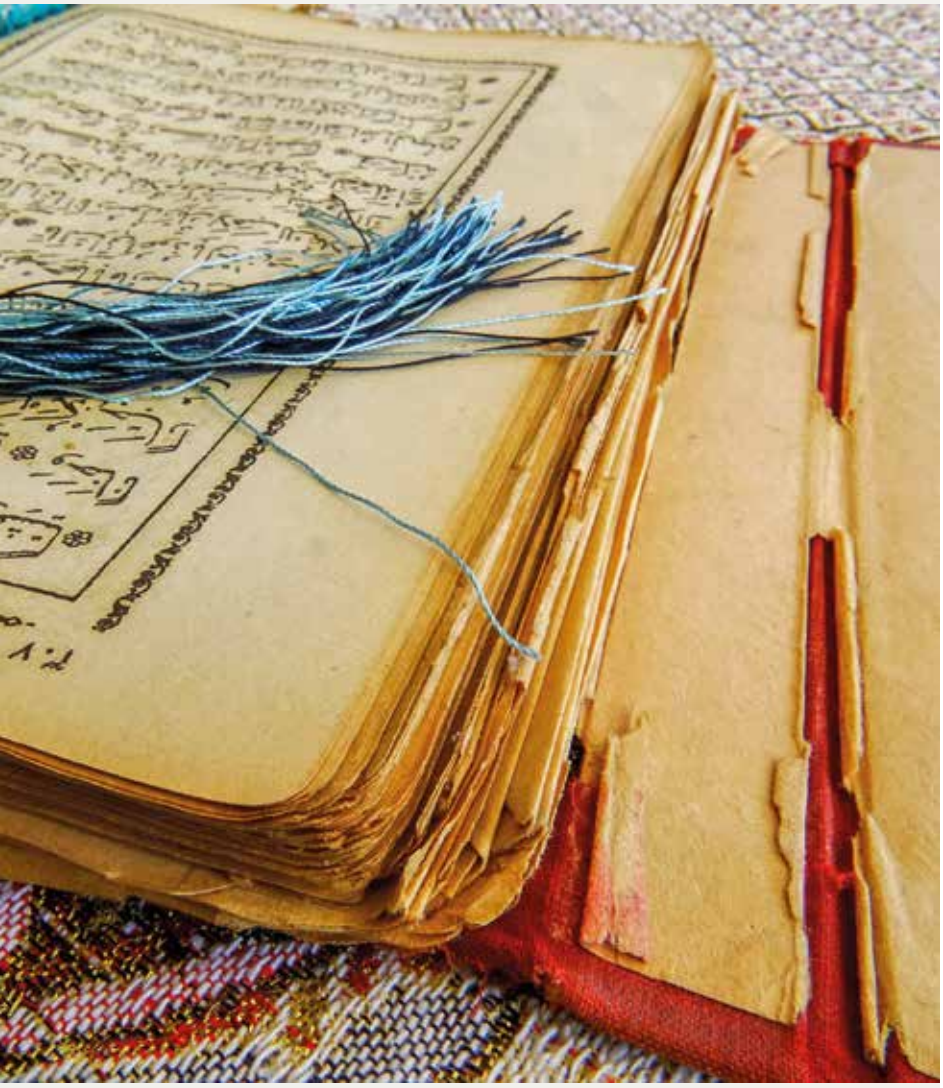
5 https://www.ft.com/content/7dc8738c-a922-11e7-93c5-648314d2c72c (last accessed 5 December 2017).



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GEORGIA TACKLES ENERGY EFFICIENCY CHALLENGE WITH NATIONAL ACTION PLAN

Imagine you own a large house that you want to make more energy efficient while also making it more comfortable. Which parts of the house do you start working on first and which improvements represent the best value for money? How do you even know how much energy you are wasting and how this could be prevented? And what energy efficiency obligations do you have based on your commitments to the wider community?

This analogy helps to illustrate the challenge facing Georgia and which the National Energy Efficiency Action Plan (NEEAP), drawn up with assistance from the EBRD, seeks to address: how to reduce the economy's energy intensity, which is currently some 30 per cent higher than the average for the countries of the European Union (EU), while allowing for continued economic growth and compliance with the country's international commitments?

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The NEEAP (or the Plan) is a checklist of measures that Georgia needs to undertake over the next three years in order to improve its energy efficiency (EE) levels while satisfying higher energy demand. The policies and investments listed in the NEEAP, which will cost €1.37 billion to implement, aim to help Georgia realise energy savings of 14 per cent by 2025, compared with a business as usual (BAU) scenario. These savings will help the country meet its international obligations related to combating climate change, increase its energy security and strengthen its energy links with the EU.

"The Georgian NEEAP is a very wide-ranging and ambitious document in terms of the objectives it sets out and the measures it employs to meet these objectives," says Vesselina Haralampieva, a Principal Counsel in the Legal Transition Programme who co-led the EBRD's work on the Plan. This work benefited from support from the Swedish International Development Agency. "It is a landmark for Georgia, which until now had virtually no energy efficiency regulations in place and very limited investment in energy performance. The NEEAP is Georgia's signal to the world that it is serious about energy efficiency and taking concrete action to prove it."

As well as detailing the potential energy savings for each of its proposed measures, the NEEAP provides an estimate of their cost. Some of this will be borne by the Georgian authorities and some by the private sector. Donor governments are also expected to help fund improvements and the Plan helps them decide which use of their contributions represents the best value for money.

"The policy and legal measures featured in the NEEAP will help to make EU energy efficiency rules part of the legal and regulatory landscape that Georgian officials, businesses and consumers have to live with daily."

FIGHTING CLIMATE CHANGE

The urgent need for the NEEAP is underlined by Georgia's binding commitment to reduce greenhouse gas emissions by 15 per cent by 2030, compared with a BAU scenario. The commitment is contained in Georgia's Nationally Determined Contribution (NDC) to the global response to climate change that was enshrined in the Paris Agreement of 2015.

"Fossil fuels, which are the main source of greenhouse gas emissions, accounted for 75 per cent of primary energy supply in Georgia in 2015," says Remon Zakaria, an Associate Director within the EBRD's Energy Efficiency and Climate Change team and co-leader of the project. "Improving energy efficiency is widely seen as the most cost-effective way of reducing fossil fuel consumption and therefore has a key role to play in helping Georgia achieve its emissions targets."

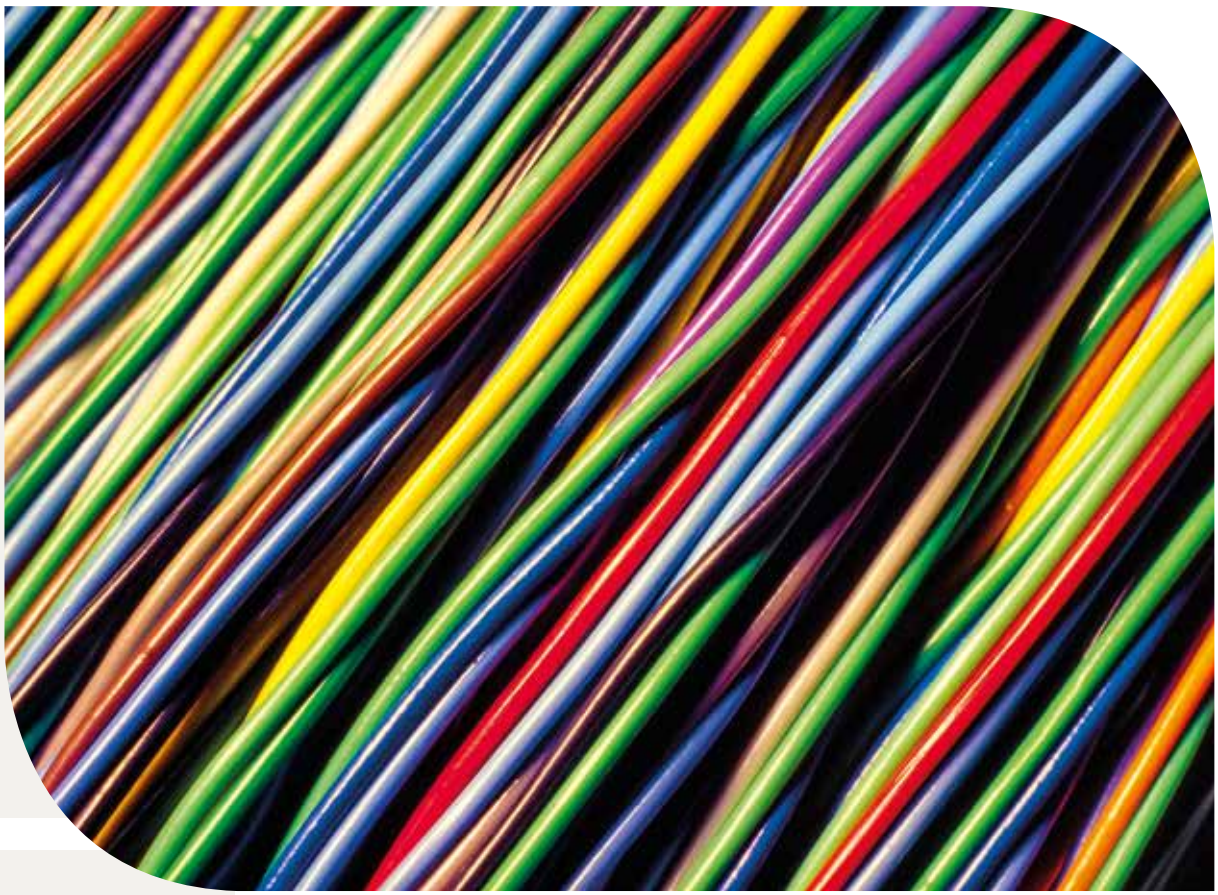
"Before the introduction of the NEEAP," adds Vesselina, "the country did not have a clear programme of the energy efficiency measures it needed to carry out in order to meet these targets. So the importance of this document to Georgia's contribution to the collective fight against global warming cannot be overemphasised: if the NDC is the destination, the NEEAP and its implementation constitute one of the main means of getting there."

GEORGIA AND THE EU

The NDC is just one of Georgia's international obligations relating to energy efficiency. In order to strengthen its political and economic ties with the EU, Georgia signed an Association Agreement with the 28-nation bloc in 2014. The agreement requires Georgia to align many of its laws and regulations with European legislation, including the 2012 EU Energy Efficiency Directive (EED), which Georgia has agreed to transpose into national law by 31 December 2018.

The commitment to adopt the EED also flows from Georgia's membership of the Energy Community, an international agreement that brings the EU and its neighbours together to create a pan-European energy market. Other parts of the acquis communautaire – the accumulated body of EU laws and regulations – that Georgia has pledged to adopt include the 2010 Energy Performance in Buildings Directive (EPBD) and the 2010 Energy Labelling Directive regarding products that consume energy.

A major benefit for Georgia of being a member of the Energy Community is that it will boost efforts to increase the country's energy security.



"Ninety-five per cent of the fossil fuels Georgia consumes are imported from neighbouring countries – these days, mainly Azerbaijan," says Remon. "So becoming more energy efficient will help Georgia to rely less on fuel imports. Plus being part of a wider European energy market could mitigate the impact of any energy shocks stemming from geopolitical uncertainty in the Caucasus region."

NEW RULES, MORE INVESTMENT AND GREATER AWARENESS

The policy and legal measures featured in the NEEAP will help to make EU energy efficiency rules part of the legal and regulatory landscape that Georgian officials, businesses and consumers have to live with daily. The NEEAP also recommends regulatory and investment measures that will help Georgians to meet the requirements set out in the EED and awareness-raising measures to highlight the importance of saving energy.

"Currently, many people in Georgia have a low level of awareness of the importance of energy efficiency and there is very little in the way of policy to discourage wasteful energy use," notes Remon. "Another problem is that the country lacks reliable data on its energy consumption, especially in industry, transport and the buildings sector.

Vesselina adds: "So moving from the present situation to one in which Georgians know how much energy they are using, have energy efficiency legislation in place, comply with it and understand why they are being asked to do so, is a big undertaking. This is another reason why the NEEAP is so significant for Georgia and why the EBRD and the Bank's Regional Director for the Caucasus, Moldova and Belarus, Bruno Balvanera, have been so committed to making it a reality."

POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

The NEEAP states that the achievement of its targets is partly dependent on the planning and establishment of a number of horizontal instruments underpinning the energy efficiency agenda. Such measures envisaged in the NEEAP include developing an energy efficiency law detailing new sector requirements, obligations and financing incentives; energy efficient public procurement rules; the training of energy efficiency professionals (that is, energy auditors,

industry inspectors, and so on) who would ensure the implementation of the new regime; and consumer information and capacity building programmes.

The creation of a government agency that would be responsible for an overall scheme tasked with project identification, technical assistance management and grant distribution is a key institutional measure. Ongoing EBRD policy dialogue, including work on the country's first EE law, plans to bring more clarity on the institutional framework supporting EE in the country.

The NEEAP tackles energy waste in five sectors of the Georgian economy. By decreasing order of size of their potential energy savings, these are: energy transformation and distribution; transport; industry; the public sector and buildings.

ENERGY TRANSFORMATION, TRANSMISSION AND DISTRIBUTION

The only significant energy transformation in Georgia is of natural gas into electricity. In 2014 the net efficiency ratio for gas transformation was 34.6 per cent – meaning that in Georgia, for every 1 kWh of electricity produced from natural gas-fired plants, almost 3 kWh of natural gas needs to be burnt. An efficient system would only require 2 kWh of natural gas per kWh of electricity produced.

The Plan urges an investment of €726 million to improve the efficiency of gas and hydropower plants in Georgia as well as of the transmission and distribution system. These improvements would represent 43.5 per cent of all energy savings resulting from the NEEAP by 2020, making it the most important single sector for the Plan.

TRANSPORT

In 2015, the most recent year for which figures are available, transport accounted for 34.7 per cent of all energy consumed in Georgia[1] and improvements in this area would generate 36.1 per cent of the savings the NEEAP seeks to achieve by 2020. Road transport consumes the vast majority of energy in the sector. There is no official data on the fuel efficiency of passenger vehicles in Georgia, but it is assumed ` to be far below that of the EU given that 91 per cent of these vehicles are older than 10 years.

The NEEAP recommends introducing mandatory technical inspections for vehicles to enhance their energy performance. It also recommends replacing the existing, very inefficient municipal bus fleet with new, gas-powered vehicles. Other actions seek to improve urban road infrastructure and transportation systems and to raise public awareness in order to encourage a shift from cars to public transport, cycling and walking. In total, measures in the transport sector would involve an investment of more than €421 million.

INDUSTRY

This sector accounted for 14.7[2] per cent of the energy used in Georgia in 2015 and consumption is expected to grow substantially between now and 2030 as a result of economic development. The main industries in Georgia are non-metallic minerals (notably cement), chemicals and iron and steel production.

Industry-specific actions listed in the NEEAP would account for 12.8 per cent of targeted energy savings by 2020. These include work to improve the availability of data and an investment project in the cement industry. Horizontal measures

featured in the Plan would introduce incentive-based and mandatory schemes to stimulate better energy performance in industry; create energy audit and management systems and certification schemes for the sector; and bring in financing schemes for energy efficiency. These measures are required by or are strongly encouraged by the EED and would need to be accompanied by primary or secondary legislation for their full implementation.

BUILDINGS AND THE PUBLIC SECTOR

The Plan recommends energy efficiency improvements in schools and other public buildings; it also outlines plans for the development of a national energy efficiency information system for public building stock and street lighting; and the introduction of efficient lighting systems in public buildings and in street lighting.

Regarding private buildings, the NEEAP urges the introduction of regulations leading to more efficient lighting in residential and commercial premises, which is expected to take place as the country transposes the EU Ecodesign Directive into Georgian law. Horizontal measures featured in the Plan call for the transposition of the EPBD into Georgian law and its enforcement, for example by implementing qualification, accreditation and certification schemes for buildings and having energy efficiency standards for new buildings.

Remon notes that "new buildings in Georgia consume nearly twice as much energy per square metre as do equivalent buildings in neighbouring EU countries such as Bulgaria. Regulatory reforms would greatly help to bridge this gap, while also supporting the establishment of a supply chain for energy efficient materials and technologies in Georgia."

CHANGING ATTITUDES

In the two years it has taken to develop the NEEAP, the attitude of Georgia's national and municipal authorities towards energy efficiency has evolved considerably. The process involved 100 organisations, including most national ministries and major municipalities, many rounds of stakeholder consultations and engagement with the private sector and international partners.

"The process of NEEAP development has truly been participatory, making its successful implementation all the more likely," says Vesselina.

Now that the first NEEAP is on the verge of adoption, the EBRD and its partners in the international community plan to continue working with Georgia to ensure that it creates policies and implements investments which lead to greater energy efficiency, more economic development and increased energy security.

"The development and adoption of the NEEAP point the country in the right direction," says Vesselina, "although there are still a number of steps remaining to ensure implementation."

"... the EBRD and its partners in the international community plan to continue working with Georgia to ensure that it creates policies and implements investments which lead to greater energy efficiency."

1 http://geostat.ge/?action=page&&p_id=2288&lang=eng [last accessed 22 November 2017].

2 *Ibid.*

MAKING ELECTRONIC PUBLIC PROCUREMENT WORK FOR SMEs IN TUNISIA

Almost immediately after the Jasmine Revolution of 2011 in Tunisia, officials in the new government began reforming public procurement in a bid to give taxpayers better value for money. Two years later, Tunisia adopted a new public procurement law that sought to modernise the country's heavily centralised, paper-based public procurement system.

In particular, the 2013 law introduced an electronic procurement platform – the Tunisia online e-procurement system, known as TUNEPS. Modelled on a highly successful Korean e-procurement system, TUNEPS was intended to make the public procurement process more transparent, streamlined and cost-effective for contracting authorities and suppliers alike.

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By moving most stages of the procurement system online, TUNEPS reduced the scope for discretionary decisions associated with face-to-face meetings and paper-based transactions. It also promised to open up important new opportunities for companies outside the capital Tunis and for small and medium-sized enterprises (SMEs), which make up 90 per cent of all companies in Tunisia. This is because the previous procurement system had in practice favoured large businesses and effectively blocked smaller firms from accessing this market.

Given that public procurement accounts for 18 per cent of Tunisia's gross national product,[1] creating more procurement opportunities for SMEs through TUNEPS should have represented an important economic boost for them, as well as for the 56 per cent of Tunisian workers they employ.

THE MISSING LINK

"But there was a significant problem," says Eliza Niewiadomska, Associate Director in the Legal Transition Programme (LTP) responsible for its public procurement activities. "Most small value procurement was still conducted outside TUNEPS. And as this constitutes a big share of public procurement in Tunisia, this meant that a very large amount of public purchasing was being done using the inefficient and non-transparent old system.

"This failure to link up TUNEPS and small value procurement was particularly detrimental to SMEs, which are vital for a country's economic and social development, as well as for job creation."

Small value procurement is defined in Tunisia as procurement for goods, works or services below thresholds that range from 200,000 to 50,000 Tunisian dinars (approximately €69,000 to €17,000), depending on the type of contract. As an indication of its importance, small value procurement accounted for 40 per cent of the goods, services and consulting work and 20 per cent of the construction work purchased by the Ministry of Facilities, according to a 2015 survey.[2]

There were several reasons why TUNEPS failed to capture below-threshold transactions. The new procurement law mentioned small value procurement only briefly and did not cover online small value procurement at all, resulting in a wide variety of practices among public buyers. Mostly, they continued to invite their preferred suppliers to submit bids by post, which made it difficult for competitors – especially small ones with limited resources – to find out what opportunities were available and submit rival bids.

Furthermore, although it was possible to carry small value procurement on TUNEPS, certain features of the system – such as the use of electronic certified signatures – made it unattractive to many companies, particularly SMEs. Lastly, a large number of suppliers and public buyers was simply unaware of how TUNEPS worked and its potential benefits as the Tunisian authorities had not promoted the system widely.

HOW THE EBRD HELPED

At the request of the Tunisian government, the EBRD therefore launched a joint technical cooperation (TC) project with the Republic of Korea's Knowledge Sharing Program (KSP) and the EBRD Korean TC Fund. Together, they sought to improve the processes for online small value procurement in Tunisia and to encourage buyers and suppliers to use TUNEPS for these transactions.

Under the umbrella of the Bank's Small Business Initiative, the joint TC project focused on four elements: reforming the law so that it covered below-threshold procurement on TUNEPS; improving the system's e-shopping mall for processing small-value purchases; developing a new TUNEPS help desk; and reaching out to SMEs and public buyers in order to help them understand the benefits of TUNEPS and how to use it.

The first strand of the project involved working with the High Commission for Public Procurement (HAICOP), which is the government body tasked with overseeing public procurement policy in Tunisia and with operating TUNEPS. With support from consultants, the Bank and the KSP helped HAICOP to benchmark Tunisian legislation against international best practice and draft a new decree that regulated small-value purchases made on TUNEPS. This was adopted in January 2017 and came into force two months later.

THE E-SHOPPING MALL

As well as regulating online small-value procurement for the first time, the new legal framework simplified procedures for small value procurement on TUNEPS's e-shopping mall. As its name suggests, this is a virtual marketplace that brings together large numbers of buyers and suppliers from across Tunisia in one location.

"The e-shopping mall allows SMEs to compete on a level playing field with other companies for small value procurement," says Eliza. "Its free online submission mechanism also makes it much easier and cheaper for SMEs in remote regions to participate in public tenders. And it demonstrates that smaller businesses can compete for these contracts and win them."

Suppliers can select which region they want to receive e-shopping mall procurement notices from, meaning they can choose whether to receive notices from their local area only or from across Tunisia. This increases the overall level of competition between suppliers, which helps to reduce costs for buyers, as well as simplifying the procurement process.

"The e-shopping mall allows SMEs to compete on a level playing field with other companies for small value procurement."

"Normally, I would have to travel to Tunis, which takes an entire day, to get hold of tender documents," says Rachid Dagdoug, manager of Day Machines, an SME that makes medical supplies and is based in the city of Sfax. "On top of that, I would have to pay a fee. Today, a public tender notification published by the Ministry of Health on TUNEPS caught my attention and I was able to download all the documents related to the technical specifications of the tender online."

A HELP DESK THAT WORKS

The next focus area for the TC project was improving the help desk that provides support to TUNEPS users. This had only one phone line, resulting in very long waiting times for callers. Help desk staff varied in how well they dealt with calls and struggled to resolve and keep track of the technical issues flagged up by TUNEPS users. Overall, public buyers and suppliers were very dissatisfied with the service provided.

The EBRD project, funded by the EBRD Korean TC Fund, helped to develop a help desk management system with a strong emphasis on improving levels of customer service and on making the facility a one-call, one-stop service. The help desk introduced more phone lines to reduce call waiting times and began offering online support to users. It also developed automated systems for handling technical service requests and recording how they were handled.

"This is one of the first help desks in the public sector in Tunisia," says Philip Engels, the LTP Project Officer for Tunisia. "Its advisers are available for users to have live conversations with, online or over the phone, throughout the working day. For small entrepreneurs getting to know TUNEPS, this is a major source of support. It also serves as a model for other public bodies in Tunisia seeking to engage better with citizens."

REACHING OUT TO SUPPLIERS AND BUYERS

The final phase of the TC project involved raising awareness of the benefits of TUNEPS among SMEs and contracting authorities across Tunisia and training them on how to use the system.

As a first step, HAICOP launched an online campaign publicising the benefits of e-procurement for below-threshold transactions, along with an online tutorial on submitting proposals on the e-shopping mall.

Next, the project delivered 46 training workshops throughout Tunisia. These drew almost 800 small businesses and 900 representatives of contracting authorities including schools, hospitals and local administrations. As part of the workshop programme, the EBRD worked with the National Agency for Electronic Certification (ANCE) on simplified registration and on obtaining the certified electronic signatures that workshop participants need in order to submit their bids on TUNEPS.

"Bidding for government contracts is something that was totally new to many of the small entrepreneurs who attended our workshops," says Philip. "We had to explain to them that, under TUNEPS, they stood a good chance of winning these contracts, which they had previously thought were out of their reach. We also guided them through the process of identifying procurement opportunities on TUNEPS, submitting a bid through the e-shopping mall and, just as importantly, challenging bid decisions they may be unhappy with."

Staff from HAICOP and members of the ANCE delivered the workshops alongside the Bank's trainers and international experts. Workshops for suppliers were facilitated by local chambers of commerce and two large business associations: the Confederation of Tunisian Citizen Enterprises (CONECT) and the Tunisian Union of Industry, Commerce and Handicrafts (UTICA). Workshops for contracting authorities were organised in cooperation with local government, the governorates in particular.

"We are very grateful to CONECT and UTICA for allowing us to use their membership lists, which meant we could invite large numbers of high-potential SMEs to our workshops," says Eliza. "This was essential for creating momentum among small businesses and making online small-value procurement a living reality in Tunisia."

Following the completion of the TC project, the EBRD is now working with HAICOP on a project to improve the complaints procedures and make COSEM – the authority in charge of complaints – more independent and more sensitive to the needs of the private sector. Through these projects, the Bank and its donors are helping to build more trust between Tunisia's government and citizens.

"As well as creating more business opportunities for SMEs in regional towns in Tunisia, public procurement reforms improve the openness and efficiency of the procurement system and this helps to reassure voters that their taxes are being well spent by people who are accountable for their decisions," says Eliza.

She adds: "At a time of continuing political uncertainty in many parts of the EBRD region, the importance of legal reforms that seek to raise standards of governance and give citizens more confidence in the actions of public officials cannot be overstated."

1 OECD (2013), *OECD Integrity Review of Tunisia: The Public Sector Framework*, OECD Public Governance Reviews, OECD Publishing.

2 Support for Facilitating Participation from Small and Medium Enterprises (SMEs) in Public Tenders Conducted on the Tunisian E-Procurement System (TUNEPS), Knowledge Sharing Program, 2016.

SUPPORT FOR HIGH-SPEED BROADBAND INFRASTRUCTURE IN SERBIA

We are fast approaching the stage where access to high-speed broadband internet will be as important to the quality of life and economic prospects of citizens as the availability of other utilities such as electricity and telecommunications.

Although there has been good progress in delivering connectivity in the EBRD's countries of operations, many parts of these countries still lack effective broadband coverage. Even the most economically advanced part of the region, central Europe and the Baltic states, lags behind in this respect: it had an average of 22.72 fixed broadband subscriptions per 100 people in 2016, compared with a Euro area average of 34.31. In Europe and Central Asia, excluding high income countries, the rate was 15.88.[1]

Although there has been good progress in delivering connectivity in the EBRD's countries of operations, many parts of these countries still lack effective broadband coverage.

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Developing and transition countries increasingly appreciate that they need widespread fast internet access in order to move closer to being knowledge-based economies and competing effectively in today's global market. States are also becoming increasingly aware of how broadband connectivity contributes to learning, civic and social cohesion, entertainment and the delivery of public services. More and more governments, including some in the EBRD region, are using or are considering using the internet for elections, the filing of tax returns and other essential services.[2]

NEXT GENERATION ACCESS

Affordable, high-speed broadband,[3] known as Next Generation Access (NGA) broadband, is fundamental to this connectivity. Governments in the EBRD region, however, often have very limited funds at their disposal for the large-scale investment necessary to deploy NGA infrastructure. They also frequently lack the technical expertise that private broadband operators possess. As a result, many countries have largely relied on commercial investors for the development of NGA broadband. But because of the less certain returns associated with investing in NGA infrastructure outside larger urban centres, fast internet access has been mainly restricted to cities and towns.

Governments therefore need to determine how they can continue to stimulate private investment in those areas where the market is likely to satisfy the need for effective broadband supply, while also making provision for NGA infrastructure in areas where it makes less commercial sense in the short to medium term. They will also need to cater for those remote regions where it is unlikely the service will ever be provided on a commercially viable basis.

As part of its response to this situation, the EBRD designed its Accelerating Broadband Connectivity (ABC) Initiative. It is a four-pronged instrument that can offer to governmental authorities: (i) support on policy, legal and regulatory development; (ii) assistance with design and implementation planning and financial and investment modelling; (iii) help with piloting the chosen design; and (iv) assistance with accessing finance to cover the cost of pilot projects and full-scale deployment.

"States are becoming increasingly aware of how broadband connectivity contributes to learning, civic and social cohesion, entertainment and the delivery of public services."

THE ABC INITIATIVE IN SERBIA

One of the first countries to partner with the EBRD on deployment of the ABC Initiative is Serbia. Since 2016, the Bank and the Serbian authorities have been working on a plan for accelerating the roll-out of NGA infrastructure across the country. This work benefited from donor support from the EBRD Shareholder Special Fund.

The initial stages of the Serbia project identified seven main tasks that it needed to complete in order to increase fast broadband coverage in Serbia:

- identify approaches that have attracted investment in the roll-out of superfast broadband infrastructure in other countries around the world
- evaluate the suitability of adopting those approaches in Serbia, making adaptations where necessary
- draw on global experience to design and provide cost estimates for Serbia-specific network variations
- model financing and investment business cases
- analyse cost against the forecast for the broader benefit to the economy
- recommend specific approaches for adoption by the Serbian government
- propose a pilot to prove the approaches recommended.

In order to complete these tasks, the EBRD had to analyse legal and regulatory frameworks; study and forecast levels of demand for broadband services; design broadband infrastructure networks; identify different cost scenarios and their associated benefits; devise financing options; and design a pilot scheme.

"Since 2016, the Bank and the Serbian authorities have been working on a plan for accelerating the roll-out of Next Generation Access infrastructure across the country. This work benefited from donor support from the EBRD Shareholder Special Fund."

GENERAL CONCLUSIONS

From this work, we drew several general conclusions that will guide the work of the ABC Initiative in Serbia and, ultimately, other countries. First, we found that there are multiple approaches to attracting investment in NGA infrastructure. Countries such as Croatia, France, Ireland and Poland drew on different models with varying degrees of public and private involvement in the design, financing, construction and operational phases. Furthermore, in most cases the particular model used at the outset tended to evolve as officials adapted it to their country's specific circumstances.

This examination of the experience of other countries identified three overarching categories of financing and operational model:

- publicly funded network build, lease to private operator
- privately funded network build and operate, with upfront capital expenditure subsidy or operational revenue subsidy
- publicly funded network build and operate (usually for areas where private investment is not viable, for example, sparsely populated rural areas).

We also realised that funding assumptions can change over time. Most of the EBRD countries considered for deployment of the ABC Initiative have little or no access to the type of support funds that were available in Croatia, France, Ireland and Poland. The nature, type and availability of funding might, however, change during implementation of an ABC programme, which would alter financing assumptions.

Another important conclusion is that governments need to create an environment that maximises private investment at the outset. Experience from other countries clearly shows that private participation in broadband infrastructure programmes makes any public funds used go significantly further. Private involvement also helps to create a programme that is commercially sustainable in the long term, as opposed to one that continually relies on state aid and other subsidy programmes.

Lastly, we concluded that some of the models may require a government to negotiate access to

infrastructure, such as poles and ducts, owned by established operators. In such cases, officials would need to engage in adequate and timely consultations with operators in order to minimise the length and difficulty of the negotiation process.

COUNTRY-SPECIFIC RECOMMENDATIONS

Completion of the seven tasks mentioned above will help the ABC project to develop specific legal, regulatory, financial and operational recommendations for Serbia. At the outset, one of the key directions was to help maximise the extent to which the market could be covered on a commercially viable basis. So, our analysis of the legal and regulatory frameworks should enable us to recommend new laws or adjustments to existing ones in order to better enable competitive wholesale broadband internet offers and facilitate infrastructure sharing.

Second, we will look to identify differing levels of engagement by the authorities according to local market conditions. It is likely that there will be "areas of no intervention", that is regions where the market is sufficiently vibrant to support increased broadband provision on a purely commercial basis over the next five years. We will also look to identify "areas of intervention", that is regions which network operators do not consider commercially viable in the near to medium term or, in some cases, at all.

On that basis, we aim to recommend specific types of government intervention for access network programmes in these "areas of intervention", with the nature and level of intervention varying according to the level extent of market failure and area characteristics. We hope that such intervention will represent a form of public-private partnership that will, ideally, improve the economic prospects of these parts of Serbia.

Our analysis takes into account factors such as differences in population density, topography and market characteristics across Serbia. Given these differences, we will examine whether the ABC project would be better implemented as a series of smaller individual projects, rather than a larger nationwide project. To that end we will identify numerous sub-projects throughout the country that will involve a combination of the financing and operating models identified from examining other countries' successful experience (as indicated above). The expectation is that a variation or combination of those models will apply depending on a given area's characteristics.

From a technical perspective, fibre-to-the-home (FTTH) appears to be the only technology that is likely to satisfy future demand for speed, resilience and longevity. However, in those parts of a country where this solution is not economically viable, even when social benefits are taken into account, fixed wireless broadband solutions may be more viable.

As this journal went to press, we were working with the Serbian government to approve our recommendations and design a pilot to trial this flexible approach in selected parts of the country. Depending on how successful such a pilot is we will seek to extend the ABC Initiative to the rest of Serbia. Subsequently, we hope to offer a similar approach to other of the EBRD's countries of operations.

1 https://data.worldbank.org/indicator/IT.NET.BBND.P2 (last accessed 19 December 2017).

2 See article on smart contracts, broadband and crowdfunding in this journal.

3 Commonly understood as delivering speeds above 30 megabits per second (Mbps).

A LEGAL CHALLENGE FOR THE BELT AND ROAD INITIATIVE

At the beginning of May 2017, the first freight train service from the United Kingdom to Yiwu in Zhejiang Province, eastern China, completed its 12,000-kilometre journey. The landmark trip was made possible by the Belt and Road Initiative, a key part of which are new rail connections between east Asia and western Europe. This is a visionary project promoted, and in many cases financed, by the People's Republic of China.

The new network of rail routes, which echoes the ancient Silk Road, more than halves the time required to move goods between east Asia and Europe, compared with maritime transport. It also makes the process safer, more reliable and potentially cheaper than transporting goods by sea.

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The Belt and Road Initiative is the principal reason for the recent dramatic increase in Eurasian rail trade. A study by consultancy firm Roland Berger for the International Union of Railways (known by its French acronym UIC) noted that, between 2014 and 2016 – a period that coincided with the progressive introduction of the initiative's new routes – Eurasian trade by rail expanded from about 25,000 twenty-foot equivalent units (TEUs) per year to 145,000.

The UIC study predicts that this will reach 636,000 TEUs per year, equivalent to 27 trainloads per day, by 2027. Others expect the 1 million TEUs per year barrier to be breached before 2020.

"The new network of rail routes, which echoes the ancient Silk Road, more than halves the time required to move goods between east Asia and Europe, compared with maritime transport."

NEW INVESTMENT NEEDED

This expansion has the potential to deliver a major economic boost to the countries crossed by these rail routes, many of which are EBRD economies. But in order to meet the rising demand for rail freight transport and enjoy the benefits of the railway boom, these states will need more rolling stock.

Unfortunately, many of these countries are struggling to finance their existing rail infrastructure and operations. As a result, public and private operators in these countries will likely need to obtain other sources of credit, including private credit, so that they can procure new equipment.

Financial institutions, including banks (such as the EBRD) and pension funds, along with private investment funds are ready to provide credit secured on rolling stock or to lease locomotives and wagons to operators without recourse to sovereign credit. But the availability and cost of this finance will depend on the integrity of the collateral at their disposal.

MORE RISK, HIGHER COSTS

As things stand, the integrity of rolling stock as collateral is doubtful for two main reasons. First, there is no global harmonisation when it comes to property law in relation to railway equipment. This creates a great deal of uncertainty over the rights of creditors claiming security against rolling stock running through multiple countries with potentially very different legal systems and approaches to securing the title interests of non-possessory creditors. For example, the ability of a private creditor to repossess and redeploy rolling stock across the rail system is open to question. This is particularly critical where the operator or debtor is not an investment-grade credit.

The second reason for rolling stock as collateral being considered a weak form of security is that it can be difficult to clearly establish who holds ownership and security interests in the equipment. The rail sector has no national public registries in which title and security interests may be recorded and there is no common system for uniquely identifying rolling stock (whereas both facilities exist in the aviation industry).

The additional risk arising from these legal uncertainties translates into limited private credit for public or private operators seeking to purchase rail equipment. It also raises costs when such credit is available. Inevitably, this places the rail sector at a competitive disadvantage compared with other transport modes, despite the sound economic, social and environmental reasons for choosing rail.

Anything that can reduce creditor risk and lower costs will therefore help to secure the success of the Belt and Road Initiative and contribute to economic growth in the countries that it crosses. Fortunately, a solution is at hand.

A NEW SYSTEM OF RIGHTS

The Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment is a new, ground-breaking global treaty that will make it much easier for the private sector to finance railway rolling stock worldwide. The protocol provides a new system of rights for the providers of private credit for rolling stock, secured lenders, lessors and vendors selling under a conditional sale agreement.

Their interests will be registered and searchable on a public online international registry based in Luxembourg that can be consulted 24 hours a day, seven days a week. The registry will also issue unique identification numbers for all items of rolling stock globally, ensuring that every creditor and operator can correctly identify and track rolling stock wherever it is in the world.

The protocol applies to rolling stock in the broadest sense: every vehicle that runs on tracks; or on, above, or below a guideway. And the protocol will allow parties to choose which law they wish to apply to any financing, regardless of where the debtor or the rolling stock is located.

TOWARDS AN EXPANDED RAIL INDUSTRY

The Cape Town Convention and the aviation protocol thereto were adopted in 2001 and went into operation in 2006. Both are in force in close to 70 countries and the system is tried and tested. The Luxembourg Protocol has been ratified by the European Union (in respect of its competences), Gabon and Luxembourg. It has been signed by France, Germany, Italy, Mozambique, Sweden, Switzerland and the United Kingdom – which are all moving towards ratification. Other European and non-European countries are working on the adoption of the Protocol.

In the EBRD region, Hungary and Ukraine have shown considerable interest. To that end, in September 2017, the LTP organised a seminar in Kiev titled *How the Luxembourg Protocol will Transform the Rail Sector in Ukraine and Beyond*. Among the speakers at the seminar were Volodymyr Omelyan, Minister of Infrastructure of Ukraine; Mark Magaletsky, Associate Director and Head of Infrastructure with the EBRD in Ukraine; Anna Veneziano, Deputy Secretary-General of the International Institute for the Unification of Private Law (UNIDROIT); registrar-designate Elizabeth Hirst from Regulis SA, the company that has been awarded the contract to run the international registry; and the authors of this article.

Minister Omelyan set out his clear support for the protocol. The seminar looked in detail at the different benefits it would bring to the rail sector in Ukraine and considered some of the technical issues that would need to be dealt with as part of the adoption process. The Legal Transition Programme of the EBRD is happy to provide technical assistance to the Ukrainian government on this journey.

We expect the protocol to enter into force and the international registry to commence operations in 2019. Once in place, the Luxembourg Protocol should reduce creditor risk, thereby facilitating more and cheaper finance from the private sector to support the procurement of much-needed new rolling stock.

It should also lower the barriers to entry for smaller, dynamic but more lightly capitalised operators, and facilitate operating leases of rolling stock. This will lead to more standardised equipment and create economies of scale for manufacturers and their customers.

SUPPORT FOR THE BELT

In the context of the Belt and Road Initiative, the protocol will not just provide an excellent new legal framework for rolling stock finance generally. It will also provide a common set of rules and creditor protections, regardless of the physical location of the rolling stock or the debtor, making the legal position easier to understand and enforce for creditors and foreign investors.

Consequently, any owner, lessor or operator running rolling stock through the various legal jurisdictions on the Belt connecting Europe and Asia can do so confident that their property and creditor rights will be respected. The overall result will be a more competitive and vibrant rail industry worldwide.

1 Chairman of the Rail Working Group, a not-for-profit rail industry association based in Switzerland. More information is available at http://www.railworkinggroup.org/about-us/ (last accessed 13 December 2017).

INSIGHTS AND RECOMMENDATIONS FROM THE LATEST PUBLIC-PRIVATE PARTNERSHIPS LAWS ASSESSMENT

Efficient and transparent policies are vital for the effective functioning of the infrastructure sector (which includes, for example, transport and energy and water supply, as well as social infrastructure for education and health care), as are legal and institutional frameworks that encourage private sector participation. Over the past 15 years, the EBRD has conducted a number of assessments looking at the effectiveness of legislative frameworks governing public-private partnerships (PPPs) in the EBRD region.

These compare the legal frameworks in the various countries with internationally accepted standards and best practices, identifying strengths and weaknesses in terms of both extensiveness (law on the books) and effectiveness (law in practice). With international standards and trends in the PPP sector constantly evolving, the EBRD performed its latest assessment in 2017;[1] the previous one was carried out in 2011.[2]

The findings of these assessments are used to develop practical recommendations for policy-makers, helping them to address, through technical assistance, any weaknesses identified in the national PPP framework.

METHODOLOGY

The EBRD PPP Laws Assessments examine both concessions and non-concessions Private Finance Initiative-type PPPs. For definitions and methodologies details see the EBRD Transition Report 2017-18 (Annex 3.1: legal frameworks governing public-private partnerships: insights and recommendations, as part of the Infrastructure section) or the EBRD website (refer note 2).

The two-part assessments are based on a set of criteria developed by the EBRD. Part I looks at the comprehensiveness of legal rules, while Part II deals with issues of policy, institutional framework, the workability of the PPP regime overall and lessons learned from the implementation of PPP projects. The EBRD 2017 PPP Laws Assessment was sponsored by the EBRD Shareholder Special Fund.

In the 2017 assessment, which was carried out on the basis of laws and regulations as at 30 June 2017,[3] some countries in the EBRD region were subject to a more detailed evaluation. First, all countries were assessed using a range of public resources (legislation, national reports, legal articles, research findings and press coverage). Second, a select group, which consisted of 12 countries[4] was in addition subjected to a more extensive assessment, which included interviews with national authorities and private sector stakeholders. The assessment's findings were then verified by qualified local lawyers, with each country being given a score.

"Efficient and transparent policies are vital for the effective functioning of the infrastructure sector as are legal and institutional frameworks that encourage private sector participation. "

Over the past 15 years, the EBRD has conducted a number of assessments looking at the effectiveness of legislative frameworks governing public-private partnerships in the EBRD region.

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The countries were placed in five groups on the basis of the EBRD's assessment of their compliance with international standards and the effectiveness of their legal frameworks.

FINDINGS ON COMPLIANCE

Mongolia, which displayed a very high level of compliance in the 2011 assessment, has maintained that ranking. Its Concessions Act, which was adopted in 2010, represents a comprehensive legal framework governing both concessions and Private Finance Initiative (PFI)-type PPPs. Serbia, meanwhile, has significantly improved its ranking since the 2011 assessment and now boasts a comprehensive and very highly compliant legal framework governing PPP projects.

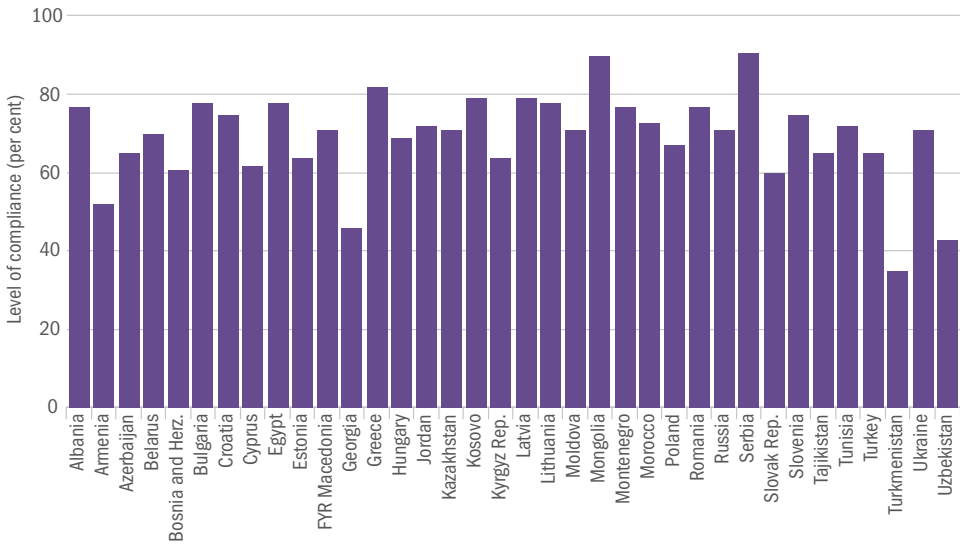
A large number of countries have been placed in the highly compliant category on account of their sophisticated legal frameworks, their transparent procurement practices, their easy access to justice (including arbitration), and the fact that a range of security instruments are available, all of which facilitate financing.

Moderately compliant countries are characterised by a business-friendly environment and fairly well-developed legal frameworks, which provide for opportunities to establish PPP projects. Core aspects, such as: (i) the legal framework; and (ii) guidelines or flexibility as regards the contents of a project agreement, the selection of a private partner and the availability of reliable security instruments, are covered by laws and regulations, although not always in a comprehensive and clear manner. This can cause scepticism and increase the risks perceived by investors.

Low-compliance countries continue to face challenges in the core assessment areas. These countries typically recognise PPPs, but have so far failed to establish an appropriate legal framework.

"A large number of countries have been placed in the highly compliant category on account of their sophisticated legal frameworks, their transparent procurement practices, their easy access to justice (including arbitration), and the fact that a range of security instruments are available, all of which facilitate financing."

CHART 1 COMPLIANCE WITH INTERNATIONALLY ACCEPTED STANDARDS AND BEST PRACTICES



SOURCE: EBRD (2017). Note: Although it had not yet been adopted at the time of the assessment, so was not taken into consideration, Georgia's new PPP Law, which is due to be finalised and adopted shortly, should significantly improve its PPP framework and make it more compliant with internationally accepted standards and best practices.

FINDINGS ON EFFECTIVENESS

The effective implementation of laws is a challenge in many countries. Where countries do not have dedicated legislative frameworks specific to concessions or PFI-type PPPs, or they have low-compliance frameworks, the reasons for such a lack of effectiveness are fairly clear. Investors expect legal certainty regarding the scope of a law's application and may be discouraged if a PPP project is only governed by general laws, such as the country's civil code or an investment law.

The reasons for modest levels of effectiveness even in high-compliance countries seem to be twofold. It may be that in some countries public authorities and local investors do not regard concessions or PFI-type schemes as an effective means of improving their countries' infrastructure. On the other hand, there may be countries where the process of adjusting legislation has been undertaken, but no significant transactions have taken place to date.

WHAT CAN POLICY-MAKERS DO?

Establish a firm policy that will be adhered to irrespective of political developments

A comprehensive policy document and/or clear strategic guidelines will indicate a country's commitment to supporting PPPs in achieving national development goals. Policy documents are particularly welcome in low-compliance countries, but some high-compliance countries also need to make more effort in this area in order to ensure that their policy documents are successfully implemented.

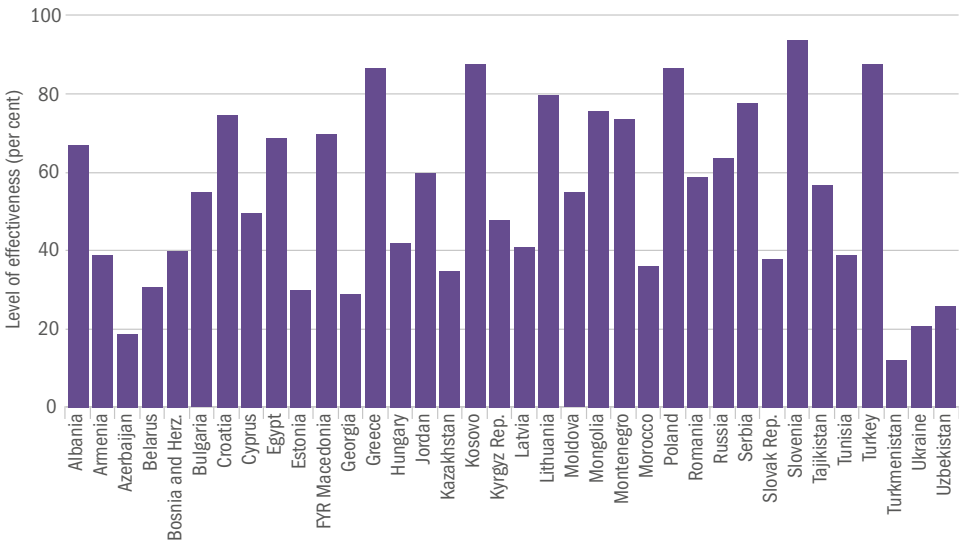
Extol the benefits of PPPs in public

PPP projects need additional promotion, especially in countries with small numbers of transactions, preferably by means of awareness-raising campaigns run nationally. The public often have limited knowledge about the benefits and advantages of PPPs, which may lead to resistance. PPPs are often regarded as expensive models that favour private partners and facilitate the privatisation of public wealth and services via the back door. This is especially true if PPPs have previously been associated with corruption or negative experiences in the form of failed projects, bad management or a lack of feasibility studies.

Develop a set of template documents

Even in the presence of well-established legal frameworks, many countries need assistance in order to facilitate and expedite PPP projects, given their complexity. Template documents (such as tender forms or standard heads of contract terms) drawn up by a government PPP unit can provide useful guidance to public entities when it comes to the development and negotiation of PPPs, especially if those template documents incorporate the standards expected by investors.

CHART 2 EFFECTIVENESS OF POLITICAL AND INSTITUTIONAL FRAMEWORKS AND BUSINESS ENVIRONMENTS



SOURCE: EBRD (2017). Note: Although it had not yet been adopted at the time of the assessment, so was not taken into consideration, Georgia's new PPP Law, which is due to be finalised and adopted shortly, should significantly improve its PPP framework and make it more compliant with internationally accepted standards and best practices.

Enhance the institutional framework

Countries with well-developed legal frameworks usually have a dedicated unit or body dealing specifically with PPPs. These bodies are established by law and have predefined competences that guarantee their involvement in the selection, preparation, oversight and implementation of projects. The institutional framework is a weak point for most countries with moderate and low levels of compliance. These countries should focus on establishing dedicated bodies which deal solely with concessions and other PPPs.

Enhance the legal framework

All high-compliance countries have dedicated legal frameworks addressing issues such as project selection, tender procedures and contracting in an effective manner. The scope of such frameworks needs to be clearly defined (with clarity, for example, regarding the definition of a PPP, the sectors concerned, the competent authorities, the eligibility of private entities and the use of public procurement law for certain procedures in PFI-type PPPs in EU countries) in order to ensure legal certainty and limit the risk of challenges to the validity of PPP contracts. Although most countries now have a dedicated legal framework governing PPPs, some do not.

Variety/flexibility in terms of models

Some countries adopt a PPP law in addition to a concession law, while others opt for a single piece of legislation covering both concessions and other PPPs. Many countries recognise the need to provide for a wide range of PPP arrangements (including Build Operate Transfer models). Countries with a limited range of PPP arrangements can be expected to engage in further legislative activity with a view to providing for greater flexibility in terms of models.

Feasibility studies

An economic feasibility study ascertaining the viability and financial sustainability of a project over the lifetime of the contract (as well as the project's socio-economic benefits and environmental impact) is an essential element of the preparatory process. In many countries, however, such studies are still not mandatory, or the requirements governing them are not clearly specified. In most cases, no such studies are performed, which highlights the need to make them mandatory. At the same time, the required evaluation should not be excessively complex or costly.

Selection of private partners

Private partners must be chosen by means of a fair and transparent selection process. Exemptions allowing for direct negotiations should be limited, and legislation should contain clear rules on the choice of tender procedure. Tenderers have a lot at stake when pitching for PPP projects, and the cost of participating in a tender procedure can be very high. Quick and effective legal remedies in the event of appeals against the decisions of the contracting authority will provide valuable protection for investors, while minimising delays to the award process.

Establish a "one-stop shop" for permits

Policy-makers often focus solely on the award procedure itself. However, private entities face many other legal issues when it comes to PPPs, particularly regarding the permits required for construction and operations. Such problems can be addressed by means of a "one-stop shop" incorporating other permits that need to be obtained in connection with the PPP contract.

Provide for reliable security instruments

The bankability of a project is dependent on the availability of reliable security instruments relating to the rights and assets of the private partner in the project and other instruments that can be used to contractually secure the private partner's cash flow in favour of lenders. In order to stabilise a private partner or a project company in turbulent economic times, direct agreements and step-in rights are required. The option of government support and guarantees regarding the contracting authority's proper fulfilment of its obligations will also significantly reduce risks relating to the financing of projects.

Provide for international arbitration and enforcement of arbitral awards

Privately financed infrastructure projects require reliable dispute resolution mechanisms that are trusted by investors. International arbitration is a key dispute resolution instrument, and the absence of a provision enabling international arbitration is sometimes regarded by investors as a deal-breaker or as an indication of significant political risk.

CONCLUSION

A significant number of countries have amended their legislation since the 2011 assessment, either building on laws adopted before 2011 or introducing laws governing non-concession PPPs in addition to existing legislation on concessions. Highly and very highly compliant countries have the potential to establish significant numbers of PPPs in the next 10 years. However, their current transaction record seems to point to the under-utilisation of such instruments, partly reflecting a perceived lack of political desire to promote the use of PPPs, as well as the need to train public officials.

Moderately compliant countries have supportive business environments and fairly well-developed legal frameworks, providing opportunities for the establishment of PPP projects. However, core areas relating to project selection, tender procedures and, in particular, the bankability of projects need to be improved further in order to increase transparency and legal certainty.

Lastly, countries with low and very low levels of compliance need to adopt dedicated legislation governing PPPs or improve their legal frameworks in other ways. All countries should continue to enhance their institutional capacities, preferably by establishing a specialist unit tasked with developing, actively promoting and supervising state-of-the-art PPP solutions.

The Legal Transition Programme uses its regular PPP Laws Assessments, as well as its participation in (or, in some cases, leading of) major standard-setting initiatives, in order to pursue policy dialogue with the authorities in its countries of operations. It advises governments on any identified gaps and on how to improve legislative, regulatory or institutional frameworks.

References

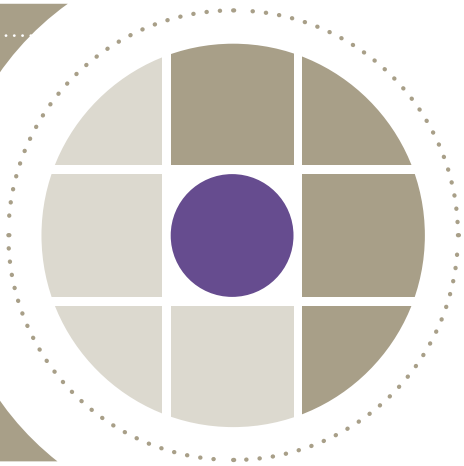
EBRD (2012), Concession/PPP Laws Assessment 2011.
EBRD (2017), Concession/PPP Laws Assessment 2017.

1 See EBRD (2017). This article summarises the *Transition Report 2017-18* 's legal annex, which presents more detailed findings from the 2017 assessment.

2 See EBRD (2012). www.ebrd.com/what-we-do/sectors/legal-reform/ppp-concessions/sector-assessment.html

3 In exceptional cases, significant legislative developments occurring in July 2017 were also taken into consideration, in order to ensure the completeness and accuracy of the assessment.

4 Albania, Armenia, Croatia, Egypt, Jordan, Kazakhstan, Lithuania, Mongolia, Poland, Romania, Russia and Turkey.



STRENGTHENING ECONOMIC GOVERNANCE THROUGH STATE INSTITUTIONAL CAPACITY-BUILDING

Promoting private sector development is at the core of the EBRD's transition mandate. Over time, however, it has become clear that the transition to a market economy is not possible without also improving the quality of public and private sector institutions and ensuring they work well with each other.

This understanding has prompted the Bank to renew its emphasis on institutional capacity-building, in particular through its Investment Climate and Governance Initiative (ICGI), which aims to improve the business environment and quality of economic governance in the EBRD's countries of operations. As a result, in recent years the Bank has been piloting new products in the area of state institutional capacity-building and has achieved some visible results.

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Many teams across the EBRD are involved in different aspects of this work. This ranges from training judges in commercial law, to providing state-of-the-art tools and methods to sectoral regulators, to enhancing environment ministries' ability to utilise global climate change funds. The EBRD's Governance and Political Affairs (GPA) team, however, is specifically tasked with helping to build capacity in state institutions responsible for economic governance.

Given the very large institutional capacity deficits in almost all of the EBRD's countries of operations and the need to make the best use of the Bank's resources, it is essential that GPA experts be highly selective in choosing which projects in this area to support. The team uses four key criteria in making its decision:

1. **Is there a clear, private sector-related need?** All EBRD state institutional capacity-building projects should support the development of the private sector and/or the enhancement of economic governance in a way that is directly relevant to the private sector.
2. **Is the government committed to the project?** It is essential to have strong and unequivocal buy-in at the highest political levels for these projects to be effective and sustainable over the medium and longer terms.
3. **What are the experiences and planned projects of other international financial institutions (IFIs) and bilateral donors in this area?** It is essential to learn from the positive and negative experiences of others and to avoid duplication of other ongoing or planned activities.
4. **Does the EBRD have the expertise required to implement the project?** To be effective, building capacity in state institutions requires a detailed understanding of both the potential institutional roadblocks to reform and the key stakeholders involved.

Once we are satisfied that all of these criteria have been met, the EBRD works closely with the beneficiary to design a technical cooperation (TC) project that delivers substantive impact, is sustainable (typically involving knowledge transfer) and promises to be cost-effective.

"Once all of the criteria have been met, the EBRD works closely with the beneficiary to design a technical cooperation project that delivers substantive impact, is sustainable and promises to be cost-effective."

REFORMING THE INSPECTIONS REGIME IN SERBIA

State inspections are among the most frequently cited obstacles to investment across the Bank's countries of operations. Fire, tax and health and safety inspectorates, for example, perform important state functions but in many economies they are seen as burdensome, bureaucratic and opaque. This in turn leads many companies, particularly micro and small enterprises, to remain in the "grey" economy, thereby exacerbating the problems associated with the informal sector and reducing fiscal revenues.

Inspections regimes are extraordinarily complex and constitute a valuable source of rents for the many parties involved. It is therefore often very difficult to reform and streamline state inspection processes and inspectorates, even under highly committed, reform-minded governments. This has certainly been the case in Serbia.

Working closely with a reform-minded minister (Ana Brnabić, who in 2017 became prime minister), the EBRD agreed to provide funding for a Support Division to serve as the technical secretariat to the inter-ministerial Coordination Commission for Inspections Reform and to a number of sectoral working groups. Importantly, the Support Division is mandated to provide technical and legal training for staff in the ministries and agencies represented on the Coordination Commission, including inspectorates. This is an example of how TC projects transfer expertise to local officials and ensure that their effect is long-lasting. This TC project benefited from donor support from the EBRD Shareholder Special Fund.

Through a detailed results framework designed with the Serbian government, the EBRD is able to monitor the output of the Support Division and measure progress in the implementation of reforms against specific milestones and deliverables.

It is worth noting that the work of the Support Division builds on a previous project for the drafting of an inspections law that was funded by the United States Agency for International Aid (USAID). By sharing the lessons learned from that project, USAID provided a valuable example of coordination among donors.

"State inspections are among the most frequently cited obstacles to investment across the Bank's countries of operations."

IMPROVING PUBLIC ADMINISTRATION IN UKRAINE

Ukraine has launched critical reforms in recent years but many have stalled due to the country's ineffective public administration. As a result, the government has not been able to promote and sustain economic and social development over extended periods of time. In particular, the inadequate framework for investments has created a serious challenge to the resumption of financial flows to the country.

Within the context of Ukraine's EU-funded Public Administration Reform efforts, the Bank launched a comprehensive reforms architecture project to fill these institutional capacity gaps. Over 150 local experts funded by the EBRD-managed Ukraine Multi-Donor Account (MDA) are temporarily engaged in a number of cross-sectoral Reform Support Teams located in key ministries and agencies. They are responsible for driving sectoral and public administration change.

In addition, a Reforms Delivery Office, which reports to the prime minister, oversees cross-cutting reforms and coordinated delivery of the government action plan. A high-level advisory group provides strategic

guidance to the prime minister on how to implement reforms effectively, based on international best practice. The last piece of the project is the National Reforms Council, which guides and provides endorsement of national reform priorities.

The project has added stimulus to the sectoral reform process inside a number of institutions, accelerated the pace of public administration reform and improved coordination among stakeholders across government. The expectation is that the donor-funded experts will become part of the civil service, as part of the ongoing public administration reform.

STATE OWNERSHIP POLICY IN UKRAINE

Comprehensive reform of the state-owned enterprise (SOE) sector is a priority for the Ukrainian government and the International Monetary Fund has endorsed this goal. Improving the corporate governance of SOEs and creating a well-structured and predictable legal environment for them are required in order to encourage foreign investors to participate in any privatisation these enterprises may undergo.

To support the government in this area, the Bank has conducted an analysis of best international practice concerning the separation of state ownership and regulatory functions in relation to key SOEs. This work, also funded by the Ukraine MDA, will inform a state ownership policy that will detail the manner in which the government exercises direct ownership; government objectives for state ownership; the state's expectations of SOEs; the government's approach to the remuneration of key SOE personnel; the basic framework for the state's administration of its ownership; and the relationship between the board of directors, management and shareholders.

Because of the importance of state ownership and the significant weight of SOEs in the Ukrainian economy, good governance in these enterprises is also expected to have a significant positive influence on the rest of the corporate sector and the economy as a whole. The state ownership policy and its implementation should help to establish practices, behaviours and a business culture that create value for investors and stakeholders and generate trust in the Ukrainian economy and its institutions.

CAPACITY-BUILDING IN COMPETITION AUTHORITIES

The development of sound and effective competition frameworks is fundamental to achieving the Bank's purpose of fostering the transition towards open market economies in the EBRD region. The Bank plays an important role in helping its countries of operations to improve national competition law frameworks and their implementation.

The EBRD's Economics, Policy and Governance (EPG) department and Legal Transition Programme (LTP) have worked on a variety of successful TC projects in the competition policy and law sector focusing on three key areas: building the capacity of national competition authorities; providing judicial training in competition law; and offering support for legislative reforms.

In Serbia, for example, with support from the UK Good Governance Fund, the EBRD has helped the Commission for the Protection of Competition (CPC) to enhance its capacity to use econometrics and interact with regulators. It has also helped the body to strengthen its powers to conduct unannounced inspections of business premises.

Furthermore, the Bank has supported the CPC with the development of its advocacy strategy. Competition

authorities play an important advocacy role, especially in those countries where the culture of competition is still weak and where government intervention interferes with free competition. The project has been successful and the CPC has significantly improved its track record over the last few years, as acknowledged by the European Union in its 2016 accession report. The report noted that, in relation to competition law, the implementation of the legislative framework is improving in Serbia; the CPC's decisions are increasingly upheld by the appeals courts; and competition advocacy activities have intensified.

A new project with the CPC to pursue this capacity building work is now being developed. In addition, the Bank is exploring the possibility of forming a partnership with the CPC to strengthen cooperation between competition authorities in the Western Balkans region. The creation of a common platform would contribute to the harmonisation of competition law and its enforcement across the region.

LEARNING LESSONS

Building capacity in state institutions responsible for economic governance is a relatively new field for the EBRD. The Bank has therefore established a community of practice – an in-house network of experts – to share knowledge and experience in this area across the Bank. This will help to ensure that best practice standards are disseminated across the various EBRD teams engaged in this crucial work and build up a database of successful projects. This will further enhance the Bank's ability to put together innovative, yet robust, new projects that strengthen state institutions and build local capacity to deliver economic reforms.

"The Bank is exploring the possibility of forming a partnership with the CPC to strengthen cooperation between competition authorities in the Western Balkans region. The creation of a common platform would contribute to the harmonisation of competition law and its enforcement across the region."

1 Additional EBRD contributors were Olyana Gordiyenko and Anastasia Rodina from the GPA team; Lorenzo Ciari and Bojana Reiner from the Country Economics and Policy team; and Andrea Schwaiger from the Sector Economics and Policy team. All three teams are part of the Bank's Economics, Policy and Governance department.

Glossary

DFI	development finance institution
EBRD	European Bank for Reconstruction and Development
EE	energy efficiency
EU	European Union
FinTech	financial technology
ICGI	Investment Climate and Governance Initiative
ICT	information and communications technology
IFI	international financial institution
IMF	International Monetary Fund
IPO	initial public offering
LTP	Legal Transition Programme
NDC	nationally determined contribution
NEEAP	National Energy Efficiency Action Plan (Georgia)
NGA	Next Generation Access (broadband)
PFI	Private Finance Initiative
PPP	public-private partnership
SEMED	southern and eastern Mediterranean
SME	small and medium-sized enterprise
SOE	state-owned enterprise
TC	technical cooperation
TUNEPS	Tunisia online e-procurement system

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