



# Bosnia and Herzegovina

The emergence of a new foreign direct investment screening mechanism, adapted to European issues and necessary for a serene and sustainable alignment with the Union.



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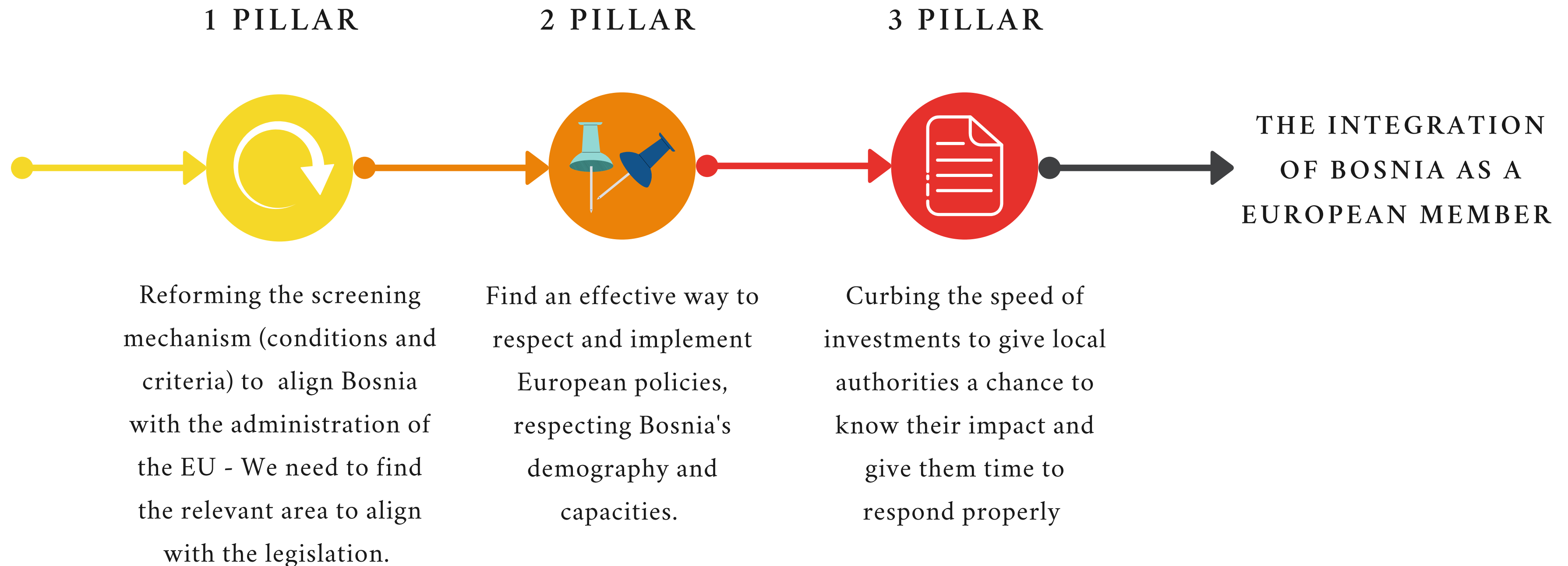
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# WHAT WE WILL BE DEVELOPING

How can Bosnia and Herzegovina align itself with the European scene by implementing an innovative and efficient screening mechanism ?



# BACKGROUND



- 1.1 Political history of Bosnia and Herzegovina
- 1.2 Overview of the BiH legal framework and environment
- 1.3 Economic Environment
- 1.4 Legal basis and relevant definitions

# Bosnia and Herzegovina in a few dates



1

March 1, 1992 - The independence of Bosnia and Herzegovina

2

Bosnia joined the Council of Europe on 24 April 2002

3

Stabilization and Association Agreement (SAA) with the European Union, entered into force on 1 June 2015 - close partnership between the EU and BiH.

4

February 2016 - application for EU Membership



# 1.1 Political History

# BOSNIA AND HERZEGOVINA - A COMPLEX COUNTRY

The subdivisions of Bosnia and Herzegovina have two parallel organisations of territorial subdivisions due to the existence of two constituent entities of the Bosnian federation.

1. Federation of Bosnia and Herzegovina [Federacija Bosne i Hercegovine]
2. Bosnian Serb Republic [Република Српска (Republika Srpska)]
3. A third entity: Brčko District located between the first two, in the north of the country, with a neutral and autonomous status, managed in part by an international supervisor mandated by the UN.





## 1.2 Overview of the BiH legal framework and environment



# 01 A "CANDIDATE COUNTRY" WAITING TO JOIN THE EUROPEAN UNION

The European Commission assessed Bosnia and Herzegovina's application for membership on the basis of the country's ability to meet the criteria set by the European Council in Copenhagen in 1993 and in Madrid in 1995.

The commission has identified 14 priorities, classified in 4 categories (Democracy/Functioning, Rule of Law, Fundamental Rights, Public Administration Reform) that the country still needs to address before it can be granted "candidate country" status for EU membership.

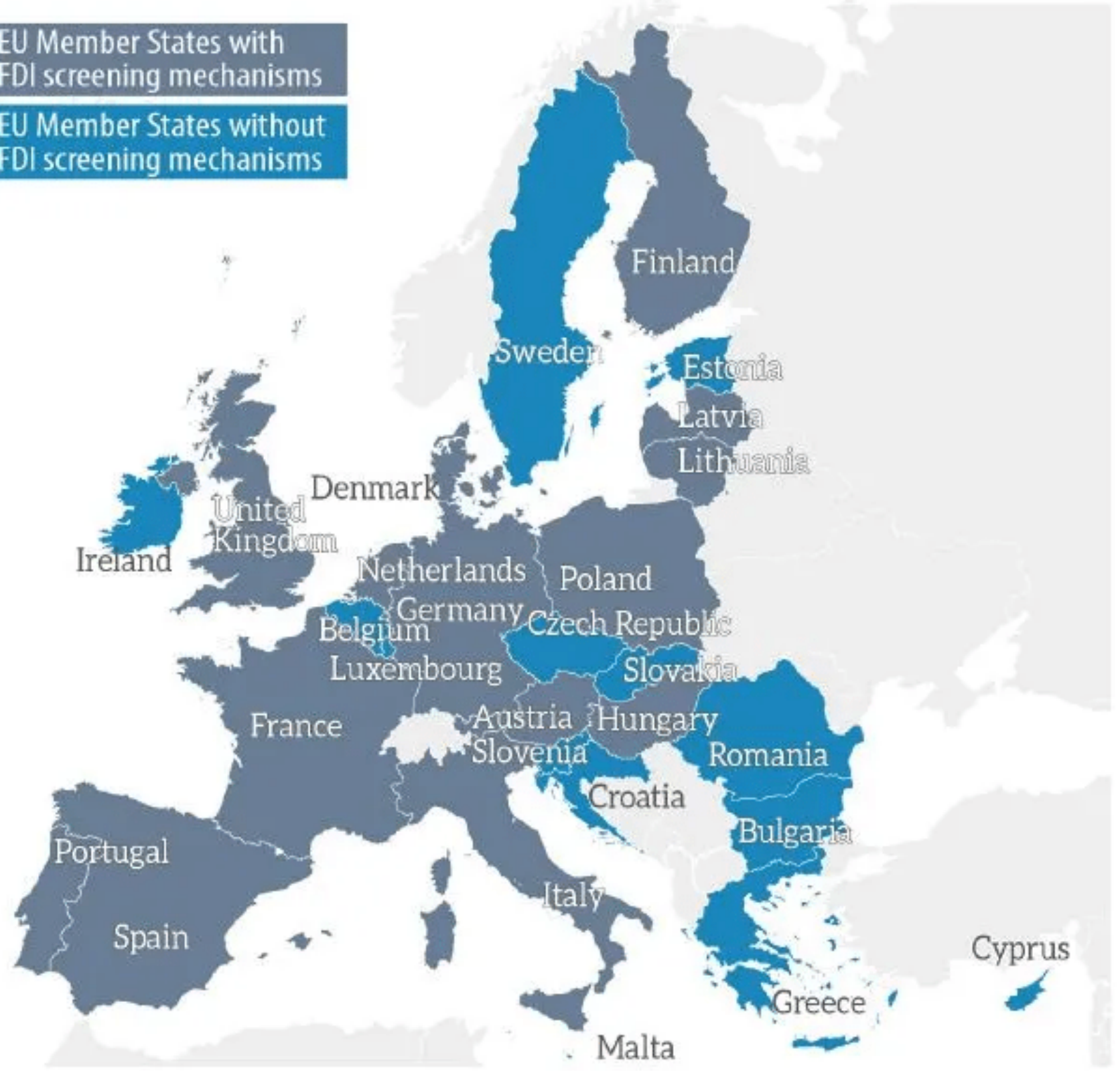
To gradually become a functioning market economy, the country needs to pay particular attention to speeding up its decision-making procedures and improving the environment for foreign direct investment as well as the efficiency and transparency of the public sector.



*European Union*

EU Member States with  
FDI screening mechanisms

EU Member States without  
FDI screening mechanisms



# 02

## REGULATION (EU) 2019/452 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 19 MARCH 2019 ESTABLISHING A FRAMEWORK FOR THE SCREENING OF FOREIGN DIRECT INVESTMENTS INTO THE UNION

Figure: Formal FDI screening mechanisms in the EU (as of April 2019).

Decentralized and fragmented FDI screening at Member State level.

Source: EPRS update of information provided by the [European Commission](#) in 2017.

# 03

## AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND BOSNIA AND HERZEGOVINA ON THE READMISSION OF PERSONS RESIDING WITHOUT AUTHORISATION - 17 SEPTEMBER 2007

First concrete step towards the visa free travel regime: facilitate people-to-people contacts as a condition for a steady development of economic, humanitarian, cultural, scientific, by facilitating the issuing of visas to nationals.

Clear European perspective for its development: an important step in EU-Belarus relations and pave the way for improved mobility of citizens, contributing to closer links between the EU and its Eastern Partnership neighbours.

Close and effective co-operation between the various structures and institutions at State and Entity level

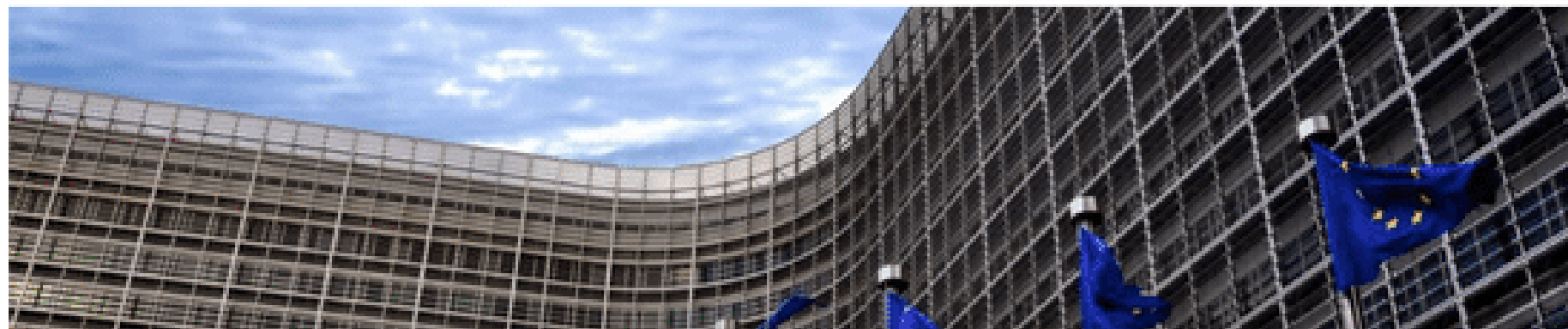




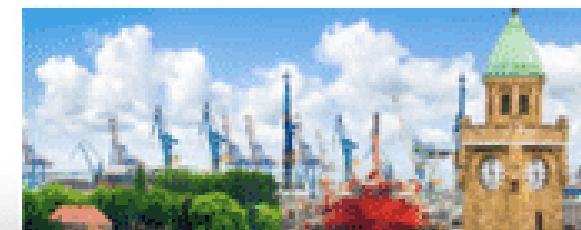
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# EU Extends Travel Ban on Persons Who Threaten Sovereignty of Bosnia & Herzegovina

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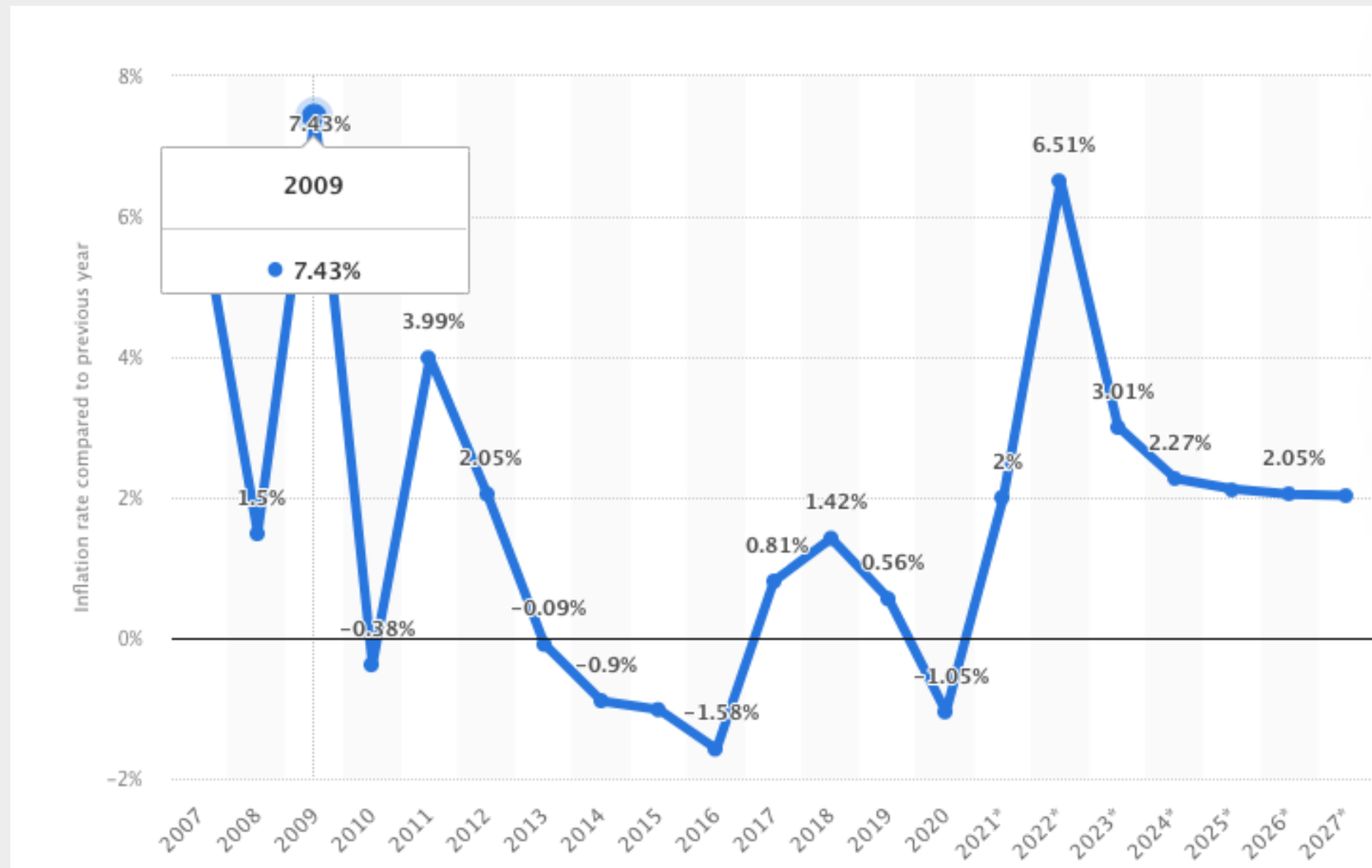


The European Union will keep its ability to impose restrictive measures against all those who threaten the sovereignty and integrity of Bosnia and Herzegovina.



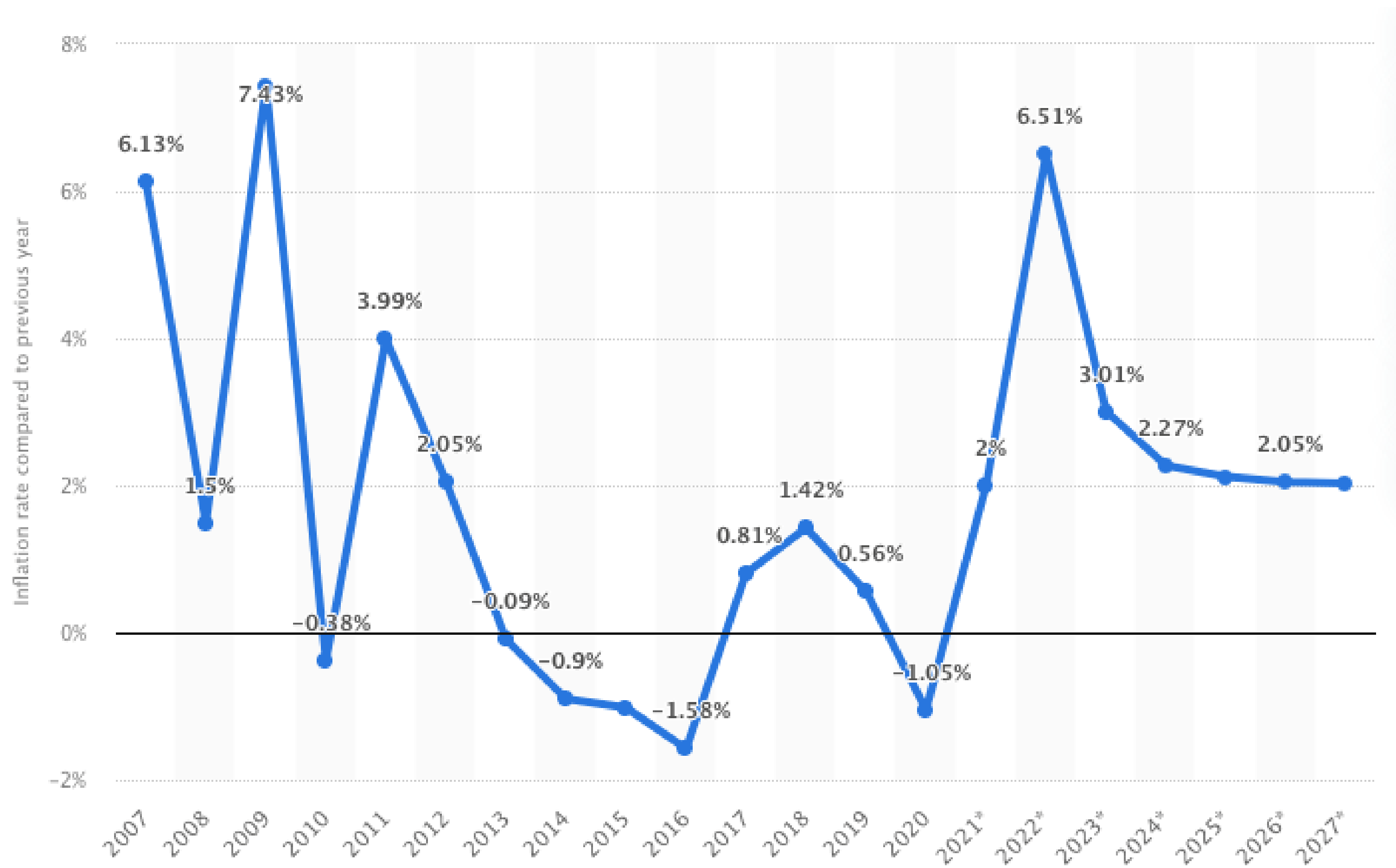
## 1.3. Economic environment

## Bosnia & Herzegovina: Inflation rate from 2006 to 2026



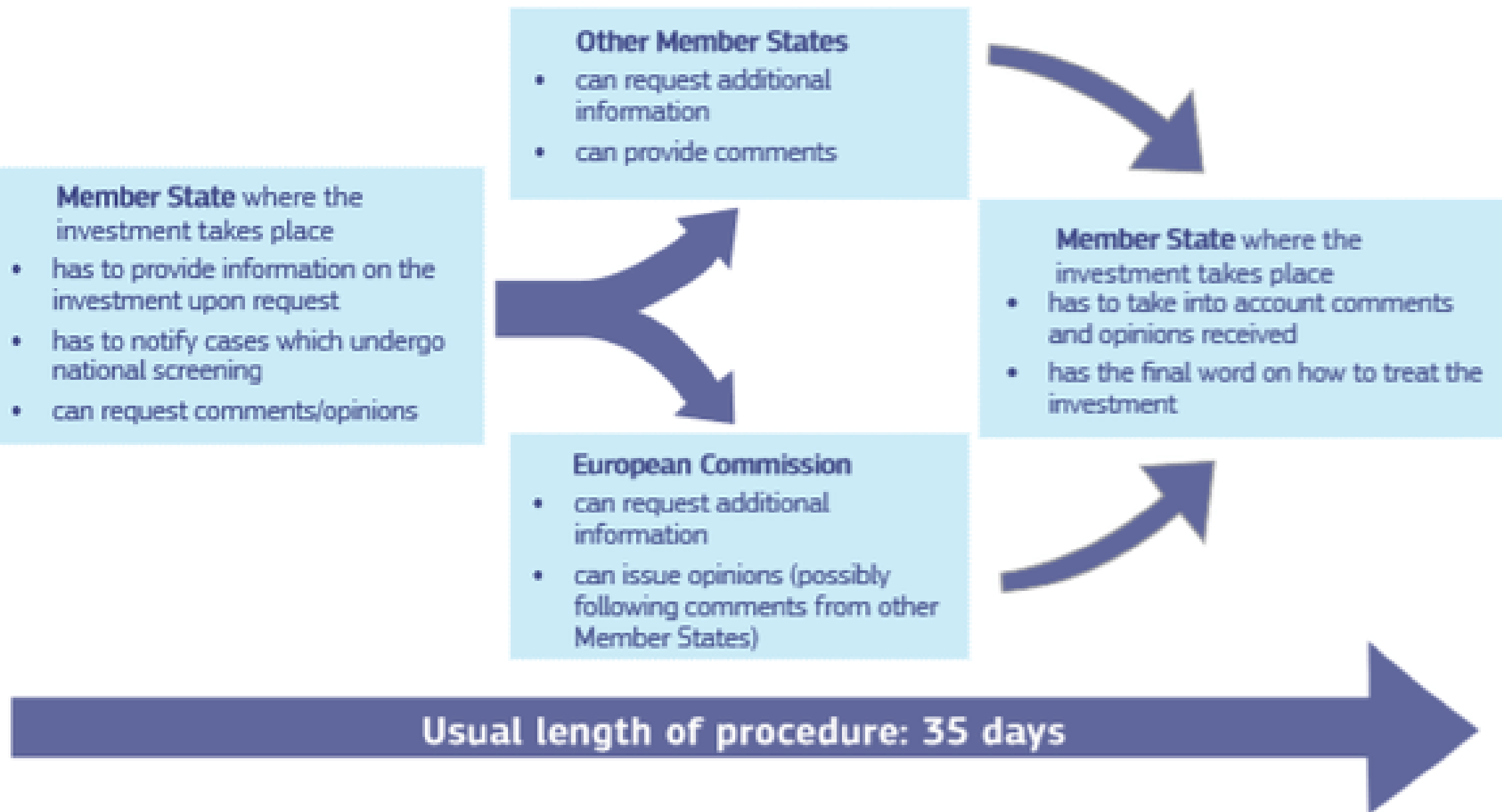
Despite a complex geopolitical context, Bosnia and Herzegovina has been able to cope with inflation and maintain a stable and investment-friendly economic environment.

# Bosnia & Herzegovina: Inflation rate from 2006 to 2026



# European Mechanism of Foreign direct Investment

The strength of an effective Screening Mechanism; being able to cooperate on inward foreign direct investment in a structured process.



**1** The regulation empowers Member States and the EC to comment on FDI that are not subject to an official screening

**2** The Regulation covers a broad range of investments which aim to establish or maintain lasting links between a non-EU investor and an undertaking carrying out economic activity in a Member State

**3** It sets out an indicative list of factors which the Member States / EC should consider when determining whether an investment is likely to affect security or public order





## 1.4. Legal Basis

## *Article 2*

### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) ‘foreign direct investment’ means an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity;
- (2) ‘foreign investor’ means a natural person of a third country or an undertaking of a third country, intending to make or having made a foreign direct investment;
- (3) ‘screening’ means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments;
- (4) ‘screening mechanism’ means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments on grounds of security or public order;
- (5) ‘foreign direct investment undergoing screening’ means a foreign direct investment undergoing a formal assessment or investigation pursuant to a screening mechanism;
- (6) ‘screening decision’ means a measure adopted in application of a screening mechanism;
- (7) ‘undertaking of a third country’ means an undertaking constituted or otherwise organized under the laws of a third country;

# CURRENT INVESTMENT CLIMATE



5. Current FDI in Bosnia
6. Legislative Framework for FDI
7. Business Regulation
8. Impact of Russian Aggression

# 05 CURRENT FDI IN BOSNIA AND HERZEGOVINA

Comparative advantages- openness to FDI, a well-educated workforce, competitive labour costs, easy access to and affordability of energy, well-developed industrial banking sector, strategic location, low levels of taxation on businesses, access to major European consumer markets.

Investors face significant regulatory obstacles related to business registration, licensing and permitting which, if modernized, would provide incentives for investment.

Promotion of benefits of FDI in BiH - challenges in the light of absence of strategic guidelines, including clear FDI objectives, as well as policy guidance.

Various policy reforms that address key regulatory and promotional efforts, harmonization of business procedures are essential for BiH to unlock its untapped potential to attract foreign direct investment (FDI).

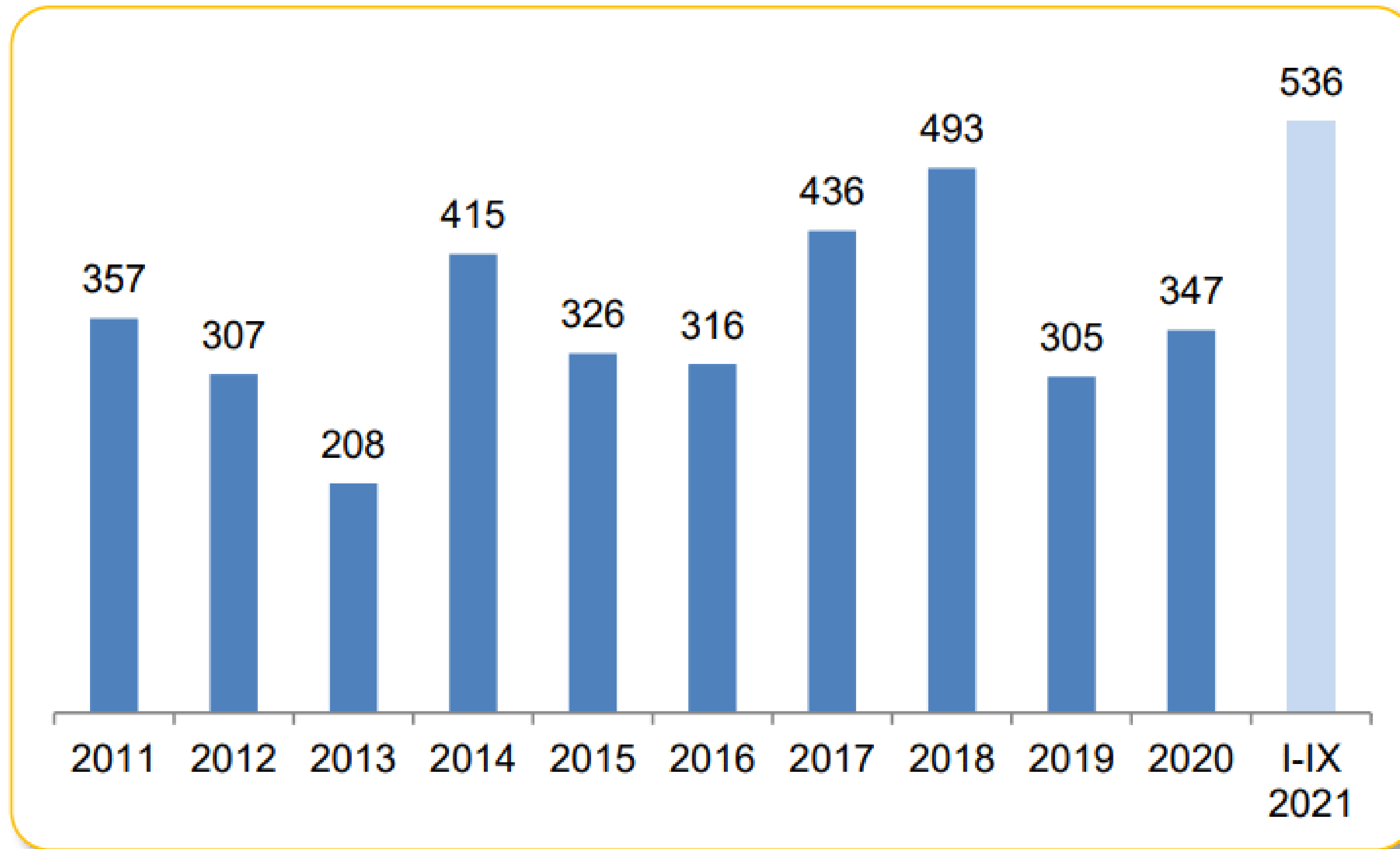




# 5.1 Investment Statistics

# 5.1 INVESTMENT STATISTICS

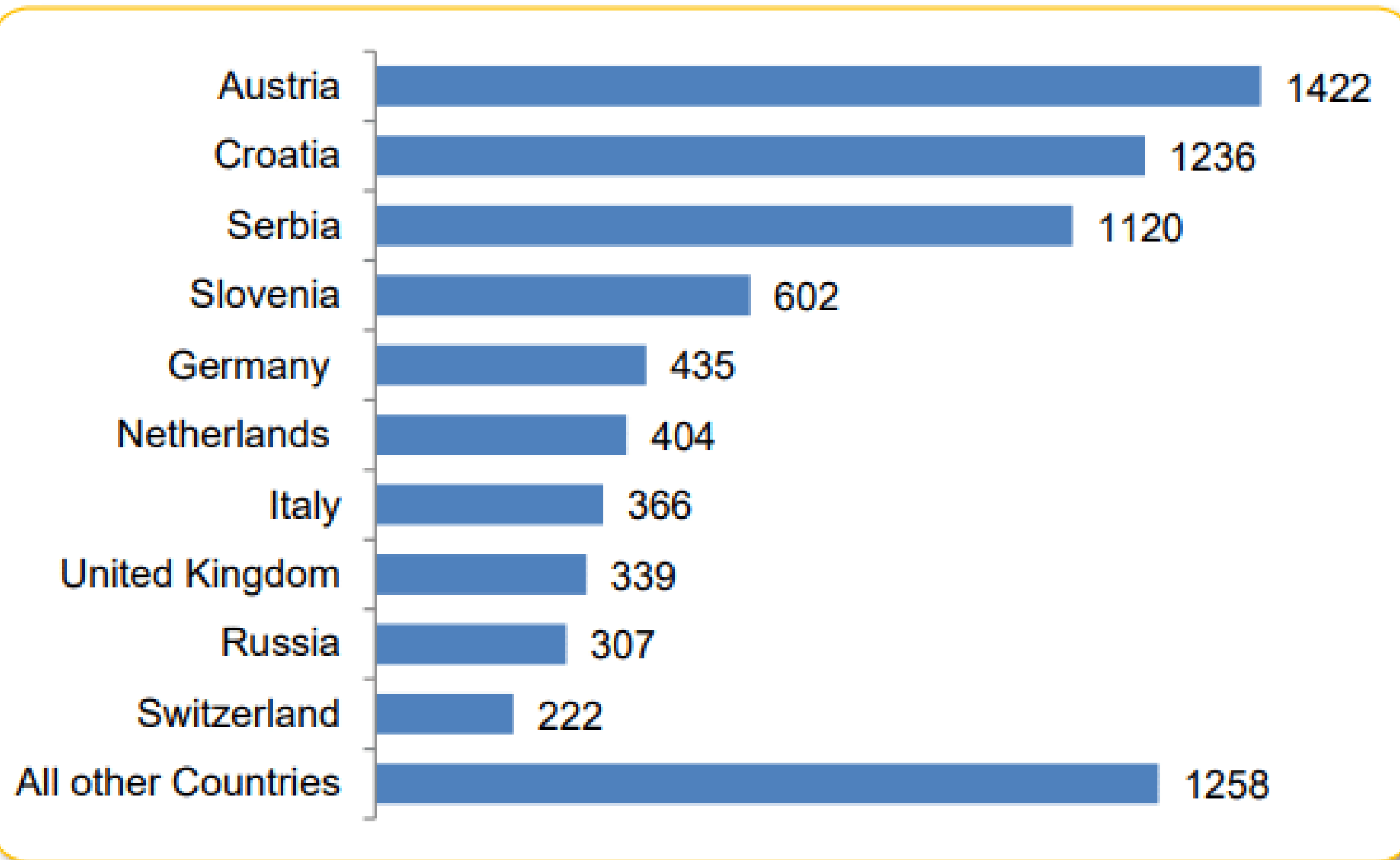
**Flow of FDI in Bosnia and Herzegovina, million EUR**



# 5.1 INVESTMENT STATISTICS

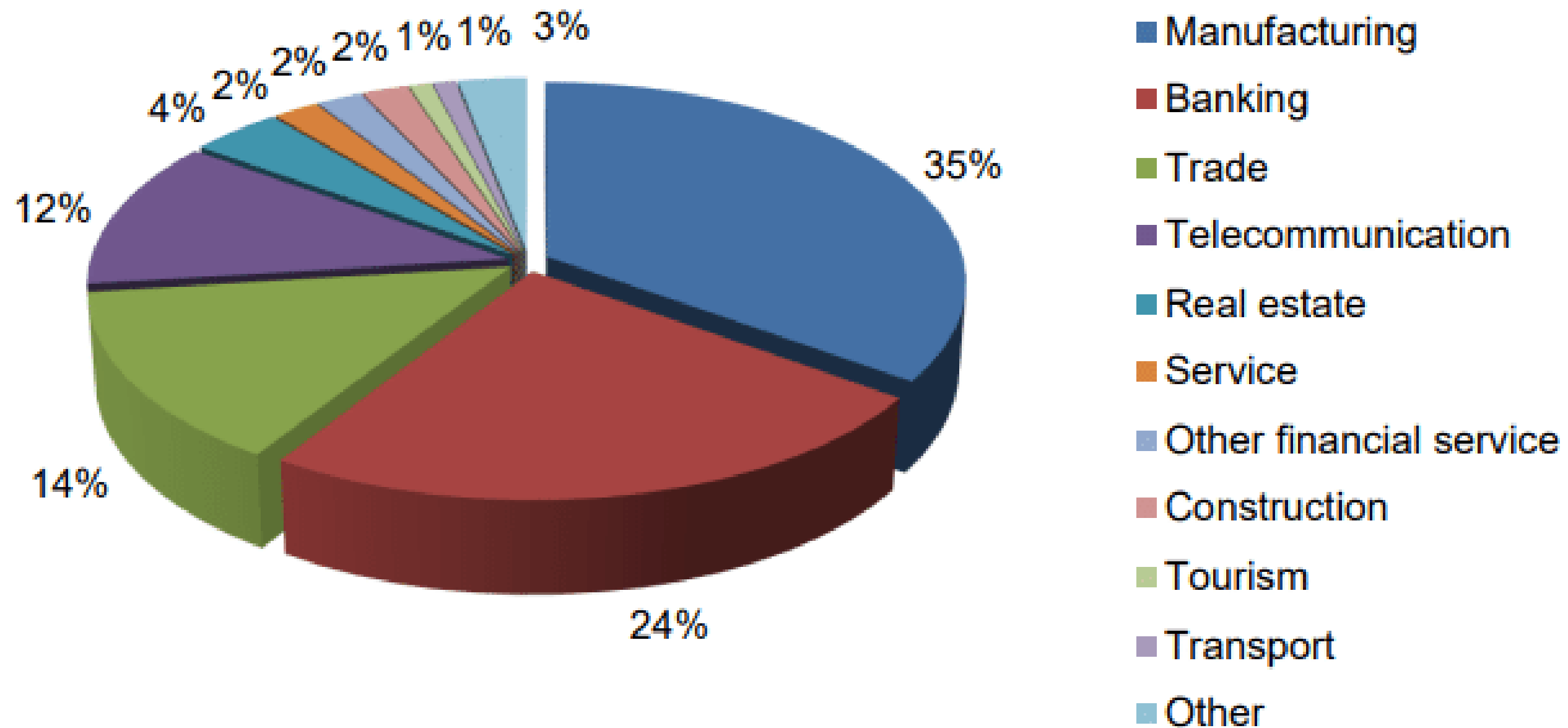
**Top investor countries in B&H, May 1994 - December 2020**  
**Total amount 7.7 billion EUR**

Million EUR



# 5.1 INVESTMENT STATISTICS

**FDI Stocks by Industry (%)**  
**May 1994 - December 2020**







# 6. Legislative Framework for FDI

## 6.1 DOMESTIC INVESTMENT LEGISLATION

Under the Law on Policy of Foreign Direct Investment foreign investors have the rights to be treated “in the same form and under the same conditions” (Article 3).

Have the “same rights and obligations as the residents” of Bosnia and Herzegovina and businesses “shall not be discriminated in any form” (Article 8).

Obstacle under Article 15 - investors “shall have the right to choose under which regime the respective investment will be governed”.

This choice is not provided to domestic investors, therefore creating a discriminatory dual regulatory regime.



# INTERNATIONAL INVESTMENT AGREEMENTS 6.2



## 39 Bilateral Investment Treaties

The majority of BITs provide national, fair and equitable treatment, and protection from expropriation.

5 other international agreements: a) the preferential trade agreement with EFTA; b) the Stabilization and Association agreement with the European Union; c) the CEFTA; d) the Energy Charter Treaty; and e) the bilateral preferential trade agreement with Turkey.

Investment Policy Framework for Sustainable Development (IPFSD) - principles of Corporate Social Responsibility (CSR)



# 7. Business Regulation

## 7.1 BUSINESS REGISTRATION PROCESS

Framework Law on Registration of Business Entities in Bosnia and Herzegovina.

13 procedures and 80 days to start a business.

Company stamps can be replaced by electronic signatures like in most countries from the EU.

Reduce the need for notary.



## LICENSES AND PERMITS 7.2



Complex procedures for obtaining business licenses and permits due to involvement of more than one level of government.

No entity has a supervision over the entire process and therefore the completion of a construction project depends on the cooperation of the institutions.

## 7.3 INSPECTION

Inspection checklists and automated Inspection Management System (IMS) that collects data, thus facilitating inspection coordination.

Business inspections have been reduced by half or more.

Clarified overlaps and duplications of jurisdictions.

Government could provide better coordinated guidance to help investors to avoid infringements and comply with the law.

Recommendation for Business Ombudsman Institution.



## TAXATION 7.4



10% corporate tax

Taxable base covered by different provisions and interpretations of entity law.

Unclear provisions related to non-residents eligible for a VAT refund.

Lack of transparency in the work of the Indirect Taxation Authority (ITA).

Free Trade Zones - exemption from VAT if the company exports more than 30% of its annual turnover.

Recommendation to abolish this tax on export in order not to violate the SCM Agreement of the WTO.



## 7.5 LABOUR REGULATIONS

Labour Code established mainly under Yugoslavian law.

No inventory of the labour and employment legislation enacted by the cantons - difficult for investors which operate in more than one canton.

Informal sector (30% – 50% of GDP) provides a vast number of unregistered jobs.

Extensive state intervention in the economy.





# 8. Impact of Russia-Ukraine war on FDI



Political tensions created by the Bosnian Serb entity which wanted to "maintain neutrality" and opposed sanctions against Russia.

Bosnian Serb leader Milorad Dodik has spoken of the independence and secession of Republika Srpska.

Bosnian Serbs can declare independence and be helped by Serbia or Russia itself.

Average annual inflation to grow from 2.5% to 6.5%.

## ON A POSITIVE NOTE...

Slovenia-based poultry producer Perutnina Ptuj, a subsidiary of Ukraine-based agricultural produce company Mironivsky Hliboproduct, announce that it was investing \$2.3m in new production capacities in 2020 in its operations in Bosnia-Herzegovina.

In top three countries to attract greenfield Foreign Direct Investment projects from Ukraine.



# SURVEY OF EXISTING SMS OPTIONS



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## 9. European Standards for FDI Screening Mechanism

## 9.1 EU FRAMEWORK FOR SMS: OVERVIEW



European States worried of lack of reciprocity and foreign purchases of strategic assets

Art.207 TFEU->Regulation (EU) 2019/452

Pole of MSs' governments (art.346 TFEU)

Derogation of a fundamental right->strict interpretation in principle, but now the Regulation is the benchmark.

## 9.1.1 PROCEDURAL OBLIGATIONS: THE COOPERATION MECHANISM



Rationale: ensure consistency of policies, lawfulness *re* EU law, other MSs forming part of Single Market to have a say on FDI.

"General" v. "Special" CM -> contact points, but MSs still "at helm".

FDIs undergoing screening (and those not)-> notification to EC and MS + list of "affected" MSs, which may provide comments.

EC can issue an opinion if 1) a MS comments 2) FDIs may affect security and public order in more than one MS 3) has relevant information.

Time bar for comments/opinions: 1) expeditiously 2) 15 days 3) 35 days if request for information 4) 15 months if not under review.

1st EC report: 80% of screened investments closed in Phase 1.



## 9.1.2 EU REQUIREMENTS FOR MSS' SUBSTANTIVE TEST



Not mandatory to adopt a SM, but EC calls upon MS to adopt one (and if adopted, bound by the Regulation)

FDI=investment entailing the establishment of a "lasting and direct link" between foreign investor and enterprise

Grounds for activation: "likely effect on security or public order", criteria (only evidentiary value) for ascertaining it.



Objective criteria (i.e. about the sector affected by the investment).

Subjective criteria (i.e. about the person of the investor).



# 9. SM laws of selected countries

# THE CHOICE OF THE COUNTRIES

## Three Guiding Principles

Similar constitutional/institutional structure

Comparable territorial extension, population and similar challenges faced by the administration

Good reputation for attractiveness to foreign investment

## 9.1 THE FEDERAL REPUBLIC OF GERMANY



Federal structure: central Gov't competence on exchange of goods and payments with foreign countries + security lies upon Länder

SM contained in the AWW, implementing the AWG (Bundestag can comment within four months of its promulgation)

Cross-sectorial (sectors relevant for the assessment for the likely effect, applies to non-EU residents, certificate of non-objection) v. Sector specific (defense sector, applies to foreigners, "likely to impair essential security interests")

Indicators of circumvention + differentiated threshold (starting: 10%) of voting rights + rule for attribution of voting rights to the acquirer if it holds more than 10% of voting rights in a third company

Contracts null and void w/o authorization + *ex officio* proceedings v. *ex parte* proceedings -> voting rights cannot be exercised before authorization

## 10.2 ITALY



Central Gov't competence on national security and public order and Regions' competences on commerce with foreign countries

Defense sector: : "threat to essential interests of security", i) impose conditions ii) oppose acts of the undertaking modifying proprietary assets iii) oppose acquisition of subjects other than the State

Sectors under art.4 of the SM Regulation: "threat to security of supply", may oppose acquisition in favour of subject outside EU/EEA (resident, seat, indicators of circumvention not defined)

Thresholds of v.r. (or equity, whatever the highest): 3 (only for defense), 10, 15, 20, 25 and 50 + duty of notification within 10 days (fine: 1% of turnover of last F.Y.)

Double check on Gov't powers: judicial review + acts updating sectors (every 3 years) and exercising powers are transmitted to Parliament

## 10.3 CZECH REPUBLIC



Similar size, history, hence face comparable challenges.

SM contained in Act No.34/2021, reversing years of perceived liberal policy towards FDI.

Sector specific (which also includes media sector and critical infrastructure) v. Cross-sectorial.

*Ex officio* proceedings allowed in the sector specific (in which there is also a mandatory consultation with the Ministry) only if there is failure to notify (punished up to 1% of turnover).

One definition of foreign investor: subject outside the EU (residence/seat).

Threshold for activation: 10% of voting rights or accession to sensitive info.

Time bars (successive terms): Ministry of Industry may initiate proceedings within 45 days of consultation, request for resolution within 90 days, decision within 45 days.

## 10.4 SLOVAK REPUBLIC



SM contained in §§9a-9e Act no.45/2011 introduced by Act no.72/2021

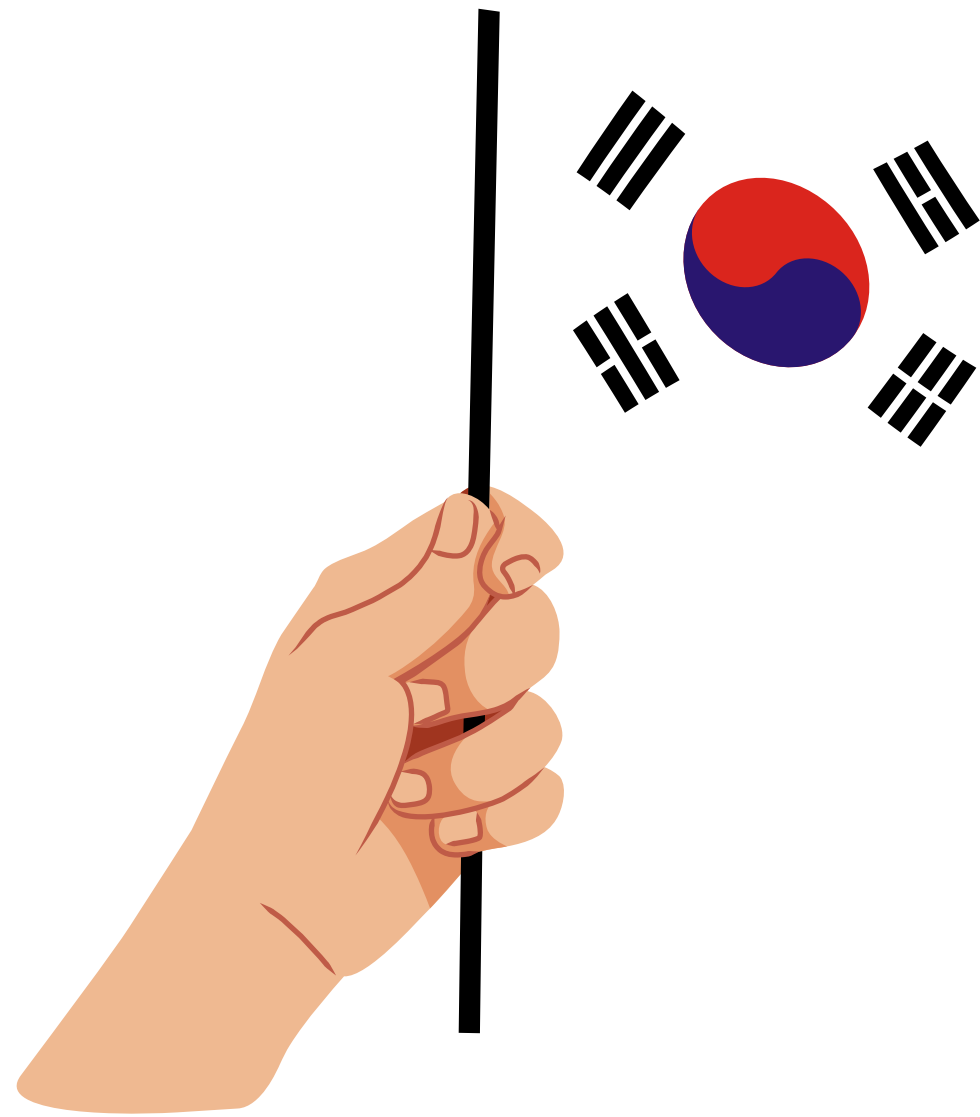
Scope: energy, metallurgic, chemical and pharmaceutical industry (responsibility of the Ministry of the Economy, final decision: Gov't, opinion of Security Council)

Grounds for exercise of SMs powers: the direct or indirect transfer disrupts the public order of Slovakia or another MS of the EU + assessment if it carries more risks than benefits

Thresholds: 10% of voting rights or comparable influence, written application to be made before conclusion of contract

Appeal to Supreme Court within 30 days of decision, has suspensive effect + failure to notify->fine from 500 to 50000 euros

## 10.5 REPUBLIC OF (SOUTH) KOREA



Friendly environment towards FDI

FIPA applies to foreign ownership of shares in Korean companies or loans thereto "in order to establish a continuous economic relationship, including participating in the management" (FI), at least 100 million won value + 10 % of voting rights or appointing a director

FI prohibited in i) forbidden sectors (posts, banks) ii) restricted sectors (newspapers, nuclear plants) if the company exceeds 1% of total sales iii) after a review of MITE after consulting with FIC

If foreign investment not caught by FIPA, FETA applies-> only obligation to report the investment

FDI Ombudsman may propose, after complaint, that the MITE authorizes w/ conditions





# Recommendations

# RECOMMENDATIONS

Aspects of SM legislation bound by the EU legislator:

if investor is a foreginer but from EU->SM should only be provided for in the defence sector, if non-Eu resident-> may also apply to other sectors

if the Law on FDI was amended so as to include sectors under art.4 of the SM Regulation, the notion of FDI should be modified, referring to voting rights (comparative consensus on 10% threshold) or other forms of active involvement in management

grounds for screening should reproduce the wording of the SM Regulation (with some margin of discretion)

Entities should in the meanwhile enter into voluntary exchange of information

Establish effective judicial remedies in case of setting up a SM (no suspensive effect, interim measures could be an option for cases of danger)

# RECOMMENDATIONS

In addition, as regards aspects in which there is no EU-bound rules on SM or business related topics:

Establish a Business Ombudsman Institution

Refer to Investment Policy Framework for Sustainable Development (IPFSD) for negotiating BITs

Clarify VAT provisions related to non-residents eligible for VAT refund

Make the procedures and decisions of the Indirect Taxation Authority (ITA) public

Abolish tax on export for companies which export more than 30%