HARMONIZATION OF THE LEGISLATION OF FOREIGN INVESTMENTS OF THE DEVELOPING COUNTRIES WITH THAT OF THE EUROPEAN

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OPEN ACCESS

How to cite this paper: Salihu, V., & Murati, B. (2023). Harmonization of the legislation of foreign investments of the developing countries with that of the European [Special issue]. *Journal of Governance & Regulation, 12*(1), 348–358. https://doi.org/10.22495/jgrv12i1siart13

ISSN Print: 2220-9352
ISSN Online: 2306-6784

Received: 31.05.2022
Accepted: 21.03.2023

JEL Classification: K00, K10, K12
DOI: 10.22495/jgrv12i1siart13

Abstract

Foreign investment plays a crucial role in a country's development. Seen from the perspective of the importance of the impact of foreign capital investment on the host and country of origin, the main purpose of this study is to analyze the compatibility of Kosovo's foreign investment legislation with that of the European Union (EU) to further emphasize the importance of the judiciary and law enforcement as influential factors in attracting foreign investment in the case of Kosovo. Through descriptive, comparative, and analytical research, this study analyses the legal framework for foreign direct investment (FDI) in Kosovo in comparison with the EU. A new database of FDI incentives shows that providing financial incentives to foreign investors is quite common for countries trying to attract investors seeking efficiency (Andersen et al., 2017). The paper concludes that the absorption of foreign investment requires well-defined policies and strategies, continuous improvements in the legal and institutional framework, political stability and sustainable economic growth, improvement and modernization of infrastructure, as well as climate improvements for the business environment and investment. Based on the Organisation for Economic Co-operation and Development (OECD, 2008), FDI is a key element in this rapidly evolving economic integration, also referred to as globalization, thus FDI provides a means of establishing direct, lasting links between economies.

Keywords: Kosovo, EU Legislation, FDI, Institutional Development, Globalization

Authors' individual contribution: Conceptualization — V.S. and B.M.; Methodology — V.S. and B.M.; Data Curation — V.S. and B.M.; Writing — Original Draft — V.S. and B.M.; Writing — Review & Editing — V.S. and B.M.

Declaration of conflicting interests: The Authors declare that there is no conflict of interest.

1. INTRODUCTION

Foreign direct investment (FDI) has aroused interest in policymakers by always trying to attract them for the purpose of economic growth. Extensive research and theoretical and empirical analysis are devoted to the influential factors of FDI including the analysis of the legal framework on foreign investment, the functioning of the judiciary, law enforcement, fiscal policy in general including that of taxes in particular, monetary policy, the development of the financial sector, including the financial markets, are therefore influential factors on the attraction of FDI. It is worth noting that developing countries with protracted transitions and stalled implementation of reforms face difficulties in attracting FDI, although the only hope for the Western Balkan countries, in particular, Kosovo, is to attract FDI. It remains the mainstay of the workforce for the sake of young people and the level of average wages in the private sector are very low compared to those of the European Union (EU).

Foreign direct investment is considered to include other forms of cooperation of broader, heterogeneous equity involving the supply of tangible and intangible assets by a foreign enterprise to a domestic firm thus these broader cooperative associations include most types of investment arrangements, such as licensing, leasing, and franchising; arrangements for starting and sharing international production; joint ventures with limited participation of foreign capital (de Mello, 1999).

Countries in transition have a particularly strong interest in attracting foreign capital. Domestic savings are often insufficient in these countries to finance their investment needs. This lack of capital affects both public and private investment (Drabek & Payne, 2002). Under the right policy environment, FDI can serve as an important tool for the development of local entrepreneurship, and can also help improve the competitive position of both the receiving ("host") and investment ("home") economy. FDI encourages the transfer of technology and knowledge between economies thus providing an opportunity for the host economy to promote its products more widely in international markets (Organisation for Economic Co-operation and Development [OECD], 2008).

Host countries in this case should take all facilitative and attractive measures to attract foreign investors by promoting economic, and political stability, favorable business climate, and legal regulations drafted in accordance with EU directives and the rule of law in order for the foreign investor to feel safe about investing in the potential host country.

Foreign direct investment stimulates economic growth in developing countries by increasing savings and investment and specifically by transferring new experience, technology, and knowledge (Mottaleb & Kalirajan, 2010). Mottaleb and Kalirajan (2010) have argued that developing countries are required to achieve a minimum level of economic development to achieve valuable FDI benefits as host country conditions show weak institutions and insufficient factors of production critically limit the positive effects of FDI.

According to the report of USAID (Manring, 2007), most often, the FDI are the search for natural resources, markets, production efficiency, strategic assets, or a combination of these. Foreign investors may be more concerned about risk and return when entering foreign markets (Fedderke & Romm, 2006). It is precisely political instability in the case of Kosovo that is an obstacle to the absorption of FDI.

Harms and Ursprung (2002) find that foreign investors invest in countries with strong democratic structures, while autocratic societies often experience policy reversals and attract less FDI.

Kosovo is a young state, with a fragile economy, emerging from the war. Immediately after the war and the entry of the KFOR (Kosovo Force), at the same time, Kosovo entered directly into a phase of transition. One of the essential factors for a successful process of economic restructuring of Kosovo as a country of the Western Balkans is undoubtedly the strengthening of the judiciary, law enforcement, economic reforms, and political stability with the sole purpose of opening the economy to foreign investors. The difficulties that Kosovo has faced in the field of economic, political, and law enforcement are great.

The main purpose of this study is to study the harmonization of Kosovo legislation with that of the EU in the field of foreign capital investment. In order to achieve the main goal of this study, the interpretation of the legal framework on FDI in Kosovo over the years, as well as the legislation of the EU, is inevitable.

How much Kosovo is prepared to attract foreign capital? First — from the legal point of view, then from the point of view of economic and financial policy, is the main object of this study. The analysis of the legal aspect and the economic and financial policy of Kosovo would be incomplete if the entire legislation of Kosovo would not be viewed in the context of the legal framework that is now in force and implemented in the member states and in the Community itself.

The level of security provided by the Kosovo legislation for concrete actions of foreign capital investment in Kosovo is further studied. This means that if this level does not provide sufficient security for the time being, can foreign capital investors, respectively, will they be able to count on additional support towards the creation of relevant legal instruments, which will not only guarantee the legal security of foreign capital invested in Kosovo. On the other hand, it will ensure the implementation of best investment practices, in accordance with the essential requirements of theory and practice contemporary.

The main objectives raised in this study are:

1. To analyze the legal framework on FDI in the case of Kosovo over the years.
2. To analyze the legal framework of FDI in the EU.

The research questions that are to be answered in this paper are:

RQ1: How important are FDI for a country's economic development?

RQ2: How important is the legislative aspect in promoting and protecting FDI?

The structure of this paper is as follows. Section 2 reviews the relevant literature. Section 3 analyses the methodology that has been used to conduct the research. Section 4 presents the results. Section 5 presents the discussion of the study. Section 6 provides the conclusions of the study.

2. LITERATURE REVIEW

Foreign direct investment is critical for developing and emerging market countries because their companies need multinational funding and expertise to expand their international sales and also they need private investment in infrastructure, energy, and water to increase jobs and wages (Amadeo, 2022). Global FDI collapsed in 2020, falling 42% from $1.5 trillion in 2019 to an estimated $859 billion, according to the United Nations Conference on Trade and Development (UNCTAD)'s (2021) *Investment Trends Monitor* published on January 24. On the other hand, *The World Investment Report 2022* launched by the UNCTAD (2022) indicates that FDI recovered to pre-pandemic levels in 2021 reaching nearly $1.6 trillion but this course is unlikely to be sustained in 2022.

An important feature of FDI is the fact that they include not only the transfer of resources but also management supervision. In other words, the subsidiary not only has a financial obligation to the parent company but is part of the same structure organizational (Krugman & Obstfeld, 2003).

In the theoretical literature, there are a number of authors who have tried to analyze the reason why FDI occurs, the influential factors of selecting a second place for investment, why FDI is so important, and also requires a legal framework to regulate all issues related to FDI, what effects they generate in the economies of the host countries and that of origin.

The production cycle theory developed by Vernon in 1966 was used to explain several types of FDI made by American companies in Western Europe after World War II in the manufacturing industry. According to Vernon (2019, as cited in Denisia, 2010, p. 55), there are four stages of the production cycle: innovation, growth, maturity, and decline.

According to Vernon (2010, as cited in Denisia, 2010), as always in the first stage of production, transnational American companies have created innovative new products primarily for domestic consumption and then exported in order to serve foreign markets. According to the production cycle theory, after World War II in Europe, the demand for products produced in the United States of America increased, thus American companies increased exports creating a technological disadvantage to international competitors. Normally, in the first stage of production, thanks to technology, manufacturers have created by standardizing the product, but there have always been companies that have copied the product. For this reason, American companies have been forced to carry out production facilities in local markets to maintain their market share in FDI zona.

The specific advantages of each country can be divided into three categories (Denisia, 2010):

- *Economic advantages*: Consist of quantitative and qualitative factors of production, transportation costs, telecommunications, market size, etc.
- *Political advantages*: Common and specific government policies affecting FDI derivation.
- *Social advantages*: Includes distance between birthplace and home, cultural diversity, attitude towards foreigners, etc.

The investment climate consists of three elements such as macroeconomic stability, business environment, and infrastructure (Manring, 2007, p. 14).

Kosovo as a country in the Western Balkans concretely with a developing economy has drafted numerous agreements towards attracting foreign direct investment. Foreign capital in general for the countries of the Western Balkans, specifically for Kosovo, is considered a significant addition to domestic savings. In general, foreign investors have invested mainly in non-tradable services of the Balkan economies, mainly in banking, telecommunications, trade, and real estate. Trade liberalization after 2000, as with the EU, and with other countries in the region, has contributed to an extraordinary increase in the volume of foreign trade, but after the lack of interest of foreign investors in the economies of the Western Balkans during the 1990s, there has been a rapid rise in FDI in the 2000s, driven by the privatization of enterprises and banks and the improvement of economic prospects (Estrin & Uvalic, 2016).

Specifically, although there have always been claims of reform and increased interstate trade liberalization agreements, the Western Balkan countries fail to attract FDI at the EU average due to the many problems inherited from the transition in the plain economic, as well as political-legal.

Foreign direct investment is very important as there are a considerable number of benefits that come from foreign investment in the host countries, including their brand, several years of experience and very professional, advanced technology, and distribution factors that also affect increase of domestic competition. The government of the Republic of Kosovo (GoK), since the declaration of independence until now, has made progress in several factors that are known to contribute to the growth of FDI, including the most favorable tax policy in the region (Gashi et al., 2019).

Many agencies have been established in Kosovo in order to promote Kosovo as a stable country for attracting foreign investors including Kosovo Investment and Enterprise Support Agency (KIESA); National Council for Economic Development (NCED); Inter-Ministerial Commission for Strategic Investments; European Investors Council (KIE); Stabilization and Association Agreement (SAA), Central European Free Trade Agreement (CEFTA). However, due to legal uncertainty, and political and economic instability, FDI in Kosovo in recent years has marked a downward trend, according to the report of the European Commission for Kosovo in 2019 (European Commission, 2019a, p. 46).

In order to attract FDI, thanks to the many benefits in terms of knowledge transfer or know-how, technology, increased competition and economic growth in general, a well-conceived legal framework is necessary in order for foreign investors be safe in the investment environment, according to the official website of the Ministry of European Integration in Kosovo (http://mei-ks.net/en/).

Kosovo, as a state, has adopted the Law on Foreign Investments, which has been reformulated over the years by the Assembly and Parliament of Kosovo and has been made public in the *Official Gazette of the Republic of Kosovo*. During the process of reviewing the literature, specifically the legal framework on FDI that will be interpreted in the following, it is worth emphasizing that the law on FDI, in the case of Kosovo, is not very specific in terms of regulating FDI in legal terms but consider as comprehensive, especially in the last law made public in 2017.

As barriers to FDI are important, the UK *Bribery Act 2010* and the *Foreign Corrupt Practices Act* have been considered important barriers to investing in an international country. The introduction of this new corporate criminal offense places a burden of proof on companies to show they have adequate procedures in place to prevent bribery. The Bribery Act also provides strict penalties for active and passive bribery by individuals as well as companies.

The Bribery Act creates four prime offences:

- Two general offences covering the offering promising or giving of an advantage, and requesting, agreeing to receive, or accepting of an advantage.
- A discrete offence of bribery of a foreign public official.

• A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or business advantage (should an offence be committed it will be a defence that the organisation has adequate procedures in place to prevent bribery).

The Republic of Kosovo is continuously creating a favorable business climate, therefore with the aim of implementing some legal guarantees and ensuring the aforementioned conditions, which are necessary for the inclusion of foreign investments, in April 2006, the Government of Kosovo drafted a Law on Foreign Investments (Law No. 02/L-33). Based on this Law, a foreign investor, defined as a natural person who is not a permanent resident of Kosovo, a business or other organization, or an association established outside the jurisdiction of Kosovo, must be guided by the principle of national treatment, which will mean that foreign enterprises will be treated the same as similar domestic enterprises.

In particular, the rights that belong to a foreign investor are (Law No. 02/L-33 of 2006):

• equal or non-discriminatory treatment;
• ongoing protection and security;
• compensation in cases of nationalization or expropriation, including the payment of interest;
• free transfer and unlimited use of income;
• protection against retroactive application of laws.

The legal system of Kosovo has been reconstructed to be in line with EU legislation. Repatriation of profits and transfer of invested capital is free and unrestricted. All laws and regulations in Kosovo are available online in English, making Kosovo's legislative system one of the most transparent in the region. Therefore, based on legislative guarantees and with the aim of promoting investment protection, it has drawn up and signed ten bilateral agreements with the USA (Overseas Private Investment Corporation — OPIC), Austria, Turkey, Albania, Montenegro, Kuwait, and Qatar, Belgium and Luxembourg, North Macedonia and Croatia.

3. RESEARCH METHODOLOGY

In order to realize the aim and purpose of the paper, relevant scientific methods are consistently applied. Since the paper aims to introduce, analyze and evaluate the legal system of Kosovo and the degree of its current harmonization with the relevant legal framework of the states and the EU itself, in order to identify the legal framework for foreign capital investment in Kosovo, first of all, we will apply the empirical method, supported by the inductive and deductive method, in close connection with the analytical method, followed by other relevant methods of interpretation juridical.

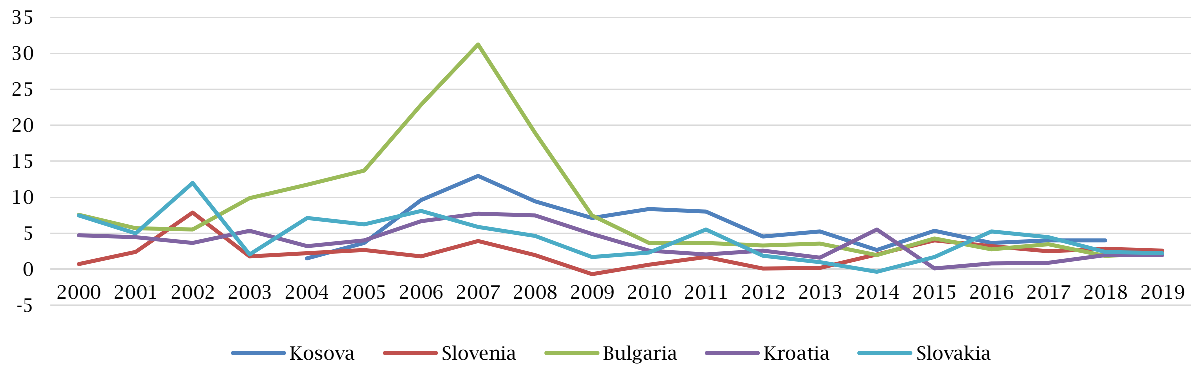
Collection and analysis of concrete legal provisions, especially those provisions that directly or indirectly regulate concrete issues of conduct and realization of investments in Kosovo, the comparative method is applied in order to see the results of studies in terms of achievements in this field. Also, in other Balkan countries, which are not yet full members of the EU. And, since the paper aims, first of all, to present, analyze and assess that in the legal system of Kosovo, there is or does not exist a proper legal framework for foreign capital investments, and since this phenomenon, the phenomenon of foreign capital investment is not specific to Kosovo but is a well-known and expressed phenomenon in the countries of the region and beyond, the implementation of the comparative method is necessary.

The data used in this study are secondary data obtained from the World Bank Indicators for Western Balkans countries for the period 2000–2020. The countries included in the analysis are the Western Balkan countries: Kosovo, Albania, Bosnia and Herzegovina, Serbia, and Montenegro, and also there is a comparison of FDI in the case of Kosovo with some youngest EU member states. This study is descriptive in nature and comparative. The results are presented with the interpretation of the law on FDI and also with tables and graphs. The following section presents the results of the study. There may be used econometric analysis as an alternative method in order to measure the impact of FDI but this is not in our case of analysis.

4. RESULTS

In this section, the results of this study are provided. Firstly, the study presents the FDI trends in the case of Kosovo in comparison with some EU young countries. In the rest of the section, the legal framework is provided — the Law on Foreign Direct Investments in the case of Kosovo and that of the EU countries.

Figure 1. FDI in the case of Kosovo and some young EU countries (2000–2019)



Source: World Bank Indicators (https://data.worldbank.org/indicator), authors' calculations.

The above graph presented the data about FDI in the case of Kosovo in comparison with the youngest EU countries for the period 2000–2019.

As we can see from the above graph, the FDI in the case of Kosovo, riched its highest value of 12.97 in 2007, and in the declining trend in 2018, the FDI riched the value of 4.01. Almost all the youngest EU countries, such as Slovenia, Bulgaria, Croatia, and Slovakia, have a fluctuation trend of FDI and in 2019 they riched 2.14, 2.19, and 2.41.

Based on Table A.1 (see Appendix), we see that in Kosovo, FDI in 2004 was 1.50 and marked a rapid growth trend whereas, in 2007, it reached 12.97, which is also the highest level. FDI in the case of Kosovo, from 2007 to 2018 marks a decreasing trend in 2018 reaching 4.01. In 2019, the FDI level in the case of Kosovo riched 4.75 and in 2020, the FDI riched the level of 5.34. Albania, in general, marks a positive trend of gradual increase where in 2001 the FDI rate in the case of Albania marks 4.11 and in 2018, it reaches 7.97. North Macedonia in 2000 recorded FDI at 5.77 and, in general, the trend over the years is down (a slight decline and increase) in 2018 reaches 5.12. Serbia in 2010, recorded an FDI of 10.25. Until 2018, the trend is fluctuating in decreasing and not a very significant increase, in 2018, FDI reaches 8.05. Regarding Bosnia and Herzegovina, we notice that FDI has a lower trend compared to all other countries of the Western Balkans, specifically in 2000, the FDI rate was 2.65 and in 2018, it reaches 2.42. Montenegro is one of the countries of the Western Balkans that has had the highest level of FDI compared to other countries, namely in 2007 the FDI rate was 25.7 and in 2018 the trend is declining to reach 8.82.

Based on 2020, for the FDI analysis of the Western Balkan countries on the road to attracting FDI, we note that Montenegro is the country with the highest FDI — followed by Serbia, Albania, North Macedonia, Kosovo, and finally Bosnia and Herzegovina. From this ranking, we conclude that Kosovo, within the Western Balkan countries, is the penultimate country in terms of FDI rate as a percentage of GDP.

4.1. Legal framework: Law on Foreign Direct Investment in Kosovo (No. 04/L-220)

Various scholars interpret and comment on the Law on Foreign Direct Investment in the case of Kosovo in different ways. According to Levitt and Botts (2019), the Law on Foreign Investment (No. 04/L-220) is the basic law that seeks to assure foreign investors that investments will be protected and treated fairly and consistently with internationally accepted standards and practices.

So, this law, at the same time, the basic law on the regulation of FDI, aims to guarantee all foreign investors for any form of investment that will be adequately protected on the basis of international practices.

Specifically, this law plays a very important role in the absorption of FDI, thus ensuring foreign investors fair treatment and the operation of the business without obstacles. The law regulates all aspects of foreign investment, addressing non-discrimination, expropriation, compliance with obligations/standards and laws, and, *inter alia*, mechanisms for resolving investment disputes.

Based on the *Official Gazette of the Republic of Kosovo* No. 1/09 of January 2014, Law No. 04/L-220 on Foreign Investments aims to regulate the protection, promotion, and encouragement of foreign investments in the Republic of Kosovo, to provide foreign investors with basic rights and guarantees, which provide assurance to foreign investors that their investments are protected and treated fairly in accordance with internationally accepted standards and practices.

In general, this law is presented in 26 separate articles that regulate the issue of FDI in the case of Kosovo. The first article generally addresses the importance of foreign direct investment. The second article of this law specifies the terms used in the law for foreign investors where the application of the law to any kind of agreement is expressed.

4.2. Legal framework: Law on Strategic Investments in the Republic of Kosovo (No. 05/L-079)

In addition to the Law on Foreign Investments, the Parliament of Kosovo has approved the Law on Strategic Investments in the Republic of Kosovo, specifically, Law No. 05/L-079 consisting of 28 articles.

Specifically, the Law on Strategic Investments (No. 05/L-079) published in the *Official Gazette of the Republic of Kosovo* No. 6/08 of February 2017, defines the criteria and procedures for obtaining strategic status investments in priority sectors of economic and social development, i.e., in the following sectors: a) energy, infrastructure and mining; b) transport and telecommunications; c) tourism; d) processing industry; e) agriculture and food industry; f) health; g) industrial and technological parks, and h) wastewater and waste management.

Based on this law, for an investment to be considered a strategic investment, it is evaluated based on criteria such as how much it affects economic growth, how it will affect the level of employment rate in the country and the implementation of new technologies, if any. impact on increasing competitiveness, if exports will increase the impact on improving welfare and living conditions for the citizens of Kosovo.

However, the law in question does not provide for any policy regarding the review of foreign investment (including transactions). There are no such specific laws in Kosovo. Legislation can generally be applied to control foreign investment for reasons of national security.

The law regulates with relevant articles: The Procedures for evaluation, selection and implementation of strategic projects; Responsibilities of the Inter-Ministerial Commission for Strategic Investments Agency for Investment and Enterprise Support, specifically the procedures for obtaining strategic investor status are different, depending on who is the initiator of the project. Initially, in accordance with Article 4 of the law, the entities that can obtain this status are: 1) foreign investors, 2) domestic investors, 3) public investment authorities and 4) any public investment authority in cooperation with any foreign or domestic investor (Law on Strategic Investments, Article 4.1) (Kosovo Chamber of Commerce, 2020).

An extremely important challenge that has been reported continuously over the years is the excessive bureaucratic requirements and the lack of an adequate legal framework to provide interested investors with various facilities (local or international) (Kosovo Chamber of Commerce, 2020). According to publication by the Kosovo Chamber of Commerce another dilemma that arises is that investors have to deal with a large number of institutions, and sometimes protracted bureaucratic procedures (such as obtaining permits and licenses) become unaffordable.

4.3. Other important laws related to FDI legal regulations in Kosovo

The Laws on FDI adopted by the Government of Kosovo in order to harmonize with international practices have imposed the need for additional laws which aim to fill the gaps from previous laws.

Other important laws related to FDI in Kosovo include (Gashi et al., 2019):

- The Company Law No. 02/L-123;
- The Law on Economic Zones No. 03/L-129;
- The Law on Arbitration No. 02/L-75 of 2007;
- The Law on the Chamber of Commerce No. 2004/7;
- The Law on Standardization (Regulation No. 2004/12);
- The Law No. 03/L-008 on Execution Procedure;
- The Law No. 05/L-057 on the Establishment of the Kosovo Credit Guarantee Fund.

Some of the laws enumerated on a reference basis over the years have been repealed and the same have been supplemented with new laws with relevant additional articles that regulate certain relations provided in advance based on the regulations of the EU. The laws that are currently in force and that regulate the issues in question are elaborated below.

The European Union has 28 member states with a population of close to 500 million people. Considering the number of member states of the EU, the importance of foreign investment is very significant. Foreign direct investment within the EU member states has a wide market and numerous options to invest. EU member states benefit from their training in many aspects, including the legal framework for FDI adopted by the European Parliament and the Council. Their member states benefit from laws across the EU, some of which are as follows in European Commission (2019c). Treaties are discussed and agreed upon by EU member states, and once the Treaty is formed, it must to be ratified by each member state in their own legislation. Regulations are created by the EU, although they must be introduced within each country individually using their respective processes. The EU provides guidelines and gives states specific goals, although they can be achieved in any way that members deem appropriate.

Decisions by the European Court of Justice (ECJ) are also binding on matters relating to the future as court decisions are generally dealt with in common law jurisdictions Commission investments for Europe and contributing to other Union projects and programs. That is why the EU maintains an open investment environment and welcomes foreign investment (European Commission, 2017).

Foreign direct investments generally take various forms of investment that are regulated by relevant regulations, laws and articles. Foreign direct investment may take the form of mergers, acquisitions or joint ventures that constitute concentrations within the scope of EU regulation (European Union, 2004).

4.4. European Union foreign direct investment legislation

The member states of the EU adhere to the legal regulations deriving from the European Parliament and the Council, however, each member state has a legitimate right to take certain actions in the field of protection and public order as well as for FDI building on previous initiatives. The Commission has proposed a regulation establishing a framework for the examination of FDI in the EU (European Commission, 2019a).

On 21 March 2019, Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, establishing a framework for the examination of FDI in the Union (the "FDI Regulation") was published in the *Official Journal of the Union European*. The FDI Regulation entered into force on 10 April 2019 and applies to transactions from 11 October, 2020. As explained in more detail below, any transaction that is not subject to EU review and ends on or after 11 July 2019, in principle can still be commented on by member states or be subject to the opinion of the European Commission ("the Commission") when the FDI Regulation becomes applicable (on 11 October 2020) (Jones Day, 2019).

FDI Regulation represents a fundamental evolution. It is the first time that the control of FDI is regulated at the level of the EU. This regulation significantly affects those investors from third countries who claim to invest in the EU. Based on EU Regulation 2019/452 of the European Parliament and Council (European Union, 2019).

5. DISCUSSION

This study addresses the importance of Kosovo legislation on FDI in comparison with EU legislation. This study includes the two most important areas of interaction between the economic and legal fields in focus on FDI. Kosovo is a young state which has faced not only economic transition reforms but also political ones as a post-war state. Kosovo as a country with many challenges has opened with rapid and positive growth of economic growth, justice reforms, legislation in general, and in particular, on investments and FDI, as well as the implementation of the judiciary, and the fight against corruption and terrorism. Seen from the prism of the importance of FDI for the economic development of a country, it is meaningless not to discuss the law, the rule of law and the judiciary. In this regard, Kosovo as a country has implemented a number of reforms in the economic field and in the country's legislation in order to attract foreign direct investment, among others Kosovo is already part of many international organizations and institutions that support FDI.

We will address the conclusions from this study in several main pillars including summaries on FDI legislation, investment climate in Kosovo; the trend of FDI over the years, remittances, and a summary of the challenges and opportunities of the state of Kosovo towards attracting FDI; Kosovo FDI legislation on attracting FDI thanks to the many benefits in terms of knowledge transfer or know-how, technology, increased competition and overall economic growth, a good legal framework is necessary in order to attract the foreign investors. In this regard, the Government of Kosovo has amended and supplemented the legislation on FDI — in accordance with EU legislation in order to create more favorable conditions for foreign and domestic investors.

In order for the legal framework in Kosovo on FDI to be complete in terms of harmonization with international practices, the need and necessity of additional laws have been imposed to regulate the progress of FDI. Regarding the procedures related to the implementation of contracts, the Law on Contested Procedure as well as the Law on Execution are taken into account. It is worth emphasizing that the legal system of Kosovo has been reconstructed to be in line with EU legislation. Also, within the EU on 21 March 2019, Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 was adopted establishing a framework for the review of foreign direct investment in the Union ("FDI Regulation") which was published in the *Official Journal of the European Union*. The FDI Regulation entered into force on 10 April 2019 and applies to transactions from 11 October 2020.

All laws and regulations in Kosovo are available online in English making Kosovo's legislative system one of the most transparent in the region. Therefore, based on legislative guarantees and in order to promote investment protection, Kosovo has drafted and signed ten Bilateral Agreements, with the USA (OPIC), Austria, Turkey, Albania, Montenegro, Kuwait, Qatar, Belgium, Luxembourg, North Macedonia, and Croatia. Based on the main elements of the investment climate including macroeconomic stability, business environment and infrastructure, it is worth noting that Kosovo has opened positively in these directions. Kosovo has been using the euro since 2002, thus significantly reducing transaction costs, and making investments from EU countries more favorable, it has fiscal discipline, and low tax rates, namely the corporate profit rate of 10%, which is a stimulating measure for businesses, has liberalized trade, has drafted a good investment policy although there is room for improvement in terms of increasing FDI attraction in terms of property rights and the privatization process.

Regarding the factors of the business environment, Kosovo has drafted and modified the number of laws on FDI, property rights, rule of law where transparency has increased, and administrative barriers have been reduced, however, obtaining a business permit must go through some institutions, which still stands as an obstacle to attracting FDI, as described in the report of the Chamber of Commerce in Kosovo. Specifically, according to the publication by the Kosovo Chamber of Commerce, another dilemma that arises is that investors have to face a large number of institutions, and sometimes prolonged bureaucratic procedures (such as obtaining permits and licenses) become unaffordable.

In terms of infrastructure, including physical, technological and social, Kosovo needs to invest in improving electricity supply, water supply, transport, information and communication technology, health and education. According to numerous research of theoretical and empirical nature, in this study, among others, we conclude that the most important sectors for investment in Kosovo and that remain attractive to foreign investors include: the information technology and telecommunications sector; industry sector; that of mining and wood processing, textiles, food products, etc. With this, Kosovo will increase exports and reduce the need for imports, which will also have positive effects on the country's economic growth. In order to achieve investments in the above-mentioned sectors as potential and profitable, political stability in the country is essential to the law and the proper functioning of the judiciary. We consider the political instability over the years in the case of Kosovo and the rule of law as the main factors that have influenced the reduction of FDI in recent years in the case of Kosovo. In addition to the tendencies for Kosovo's integration into the EU, the establishment of a large number of organizations to support FDI and membership in various centers and international institutions. Political stability is crucial for foreign investors. What balances foreign investors is the political factor in the country or the importance of political stability, the proper functioning of the judiciary and chambers of commerce, the educated population to adapt to the needs of the market. Other very important factors that Kosovo as a state should consider in order to improve FDI growth in the coming years are international financial support and remittances, law enforcement, educated and skilled population prepared against the needs of labor market.

6. CONCLUSION

Extensive research and theoretical and empirical analysis is devoted to the influential factors of FDI including the analysis of the legal framework on foreign investment, the functioning of the judiciary, law enforcement, fiscal policy in general including that of taxes in particular, monetary policy, the development of the financial sector, including the financial markets, are therefore influential factors on the attraction of FDI. It is worth noting that developing countries with protracted transitions and stalled implementation of reforms face difficulties in attracting FDI, although the only hope for the Western Balkan countries, in particular Kosovo, is to attract FDI, remains the labor force which is a key pillar for the sake of young people and the level of average wages in the private sector which are very low compared to those of the EU. However, the increase in unemployment and the projected aging of the labor force/population can influence investor decisions for new investments characteristic of EU countries. However, this could potentially indicate a decline in interest in new investments.

As more countries struggle to generate FDI efficiency and increase wages in these countries, continued success in the FDI-led growth model in this group will depend on their ability to raise the bar of technology. However, here we can emphasize that despite the fact of long transition and a long period of waiting to join the large European family, the countries of the Western Balkans, especially Kosovo, have a young workforce that is in favor of the countries. Also, it is worth noting that Kosovo is a young state, with a fragile economy, emerging from the war. Immediately after the war and the entry of the KFOR, at the same time, Kosovo entered directly into a phase of transition. One of the essential factors for a successful process of economic restructuring of Kosovo as a country of the Western Balkans is undoubtedly the strengthening of the judiciary, law enforcement, economic reforms and political stability with the sole purpose of opening the economy to foreign investors. The difficulties that Kosovo has faced in the field of economic, political and law enforcement are great. Only with a genuine economic policy accompanied by legal regulations drafted in accordance with EU regulations and the implementation of the law can developing economies claim the attraction of foreign investment in productive sectors that will orient the country towards sustainable growth. Kosovo legislation does not require FDI to be controlled, reviewed, or approved, and national laws do not discriminate against foreign investors. However, foreign investors are discouraged, among others, by high levels of corruption, slow court proceedings, lack of protection of intellectual property rights, competition from unlicensed sellers, and irregularities in public procurement procedures.

However, there are other sustainable factors that still encourage FDI in Kosovo including the pro-business attitude of the Kosovo government, the strategic location of the country, rich natural resources, an educated workforce, a flat 10% tax rate corporate and temporary exemptions from added tax (VAT) payments for new exporters. The situation in Kosovo is not ideal for the implementation of this law. The space and competencies offered to certain institutions are worrying. The law should provide a balance between the need to shorten procedures and compliance with tendering procedures which minimize the chances of corruption. The law should also serve as a protection for Kosovo's assets and resources even if investors leave.

In addition, to ease of procedures and financial incentives, Kosovo has a less conducive environment for doing business compared to all countries in the region. This study is of great interest for future research as to succeed in encouraging investment, such laws must also be supported by substantial reforms regarding the business environment and quality education of the workforce. This is because in addition to technical facilities, shortening of bureaucratic procedures, and financial incentives, investors also have requirements for political and legal security, a skilled workforce, and generally a suitable business environment. These reforms are more difficult to achieve because they require deeper reforms, time, political will, and financial resources. The main limitation of this study includes the measurement of the impact of the law on FDI trends rethought the period of analysis, thus, is very important for future research in order to analyse and measure how the law on FDI affects the FDI trend after the pandemic crisis.

REFERENCES

1. Amadeo, K. (2022, March 29). *Foreign direct investment*. The Balance. https://www.thebalancemoney.com/foreign-direct-investment-fdi-pros-cons-and-importance-3306283
2. Andersen, M. R., Kett, B., & von Uexkull, E. (2017). *Corporate tax incentives and FDI in developing countries* (Global Investment Competitiveness Report 2017/2018 Foreign Investor Perspectives and Policy Implications). World Bank. https://doi.org/10.1596/978-1-4648-1175-3_ch3
3. Cushman, D. O. (1985). Real exchange rate risk, expectations and the level of direct investment. *Review of Economics and Statistics, 67*(2), 297–308. https://doi.org/10.2307/1924729
4. de Mello, L. R. (1999). Foreign direct investment-led growth: Evidence from time series and panel data. *Oxford Economic Papers, 51*(1), 133–151. http://www.jstor.org/stable/3488595
5. Denisia, V. (2010). Foreign direct investment theories: An overview of the main FDI theories. *European Journal of Interdisciplinary Studies, 3*. https://ssrn.com/abstract=1804514
6. Drabek, Z., & Payne, W. (2002). The impact of empirical investigation of the impact of transparency on foreign direct investment. *Journal of Economic Integration, 17*(4), 777–810. https://doi.org/10.11130/jei.2002.17.4.777
7. Dunning, J. H. (1988). The eclectic paradigm of international production: A restatement and some possible extension. *Journal of International Business Studies, 19,* 1-31. https://doi.org/10.1057/palgrave.jibs.8490372
8. Estrin, S., & Uvalic, M. (2016). Foreign direct investment in the Western Balkans: what role has it played during transition? *Comparative Economic Studies, 58*(3). 455–483. http://eprints.lse.ac.uk/67004/
9. European Commission. (2017). *Proposal for a Regulation of the European Parliament and of the Council establishing a framework for the display of foreign direct investment in the European Union*. EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0487
10. European Commission. (2019a). *Commission staff working document* (Kosovo 2019 Report). https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf
11. European Commission. (2019b). *Commission staff working document on foreign direct investment in the EU*. https://trade.ec.europa.eu/doclib/html/157724.htm
12. European Commission. (2019c). *Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast)*. EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1024
13. European Union. (2004). Council Regulation (EC) No 139/2004. EUR-Lex. http://data.europa.eu/eli/reg/2004/139/oj
14. European Union. (2019). 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. EUR-Lex. http://data.europa.eu/eli/reg/2019/452/oj

15. Fedderke, J. W., & Romm, A. T. (2006). Growth impact and determinants of foreign direct investment into South Africa, 1956–2003. *Economic Modelling, 23*(5), 738–760. https://doi.org/10.1016/j.econmod.2005.10.005
16. Gashi, B. Z., Ajeti, S., & Beqiri, G. (2019). *Foreign direct investment in Kosovo: The investment climate, potential and barriers*. Institute for Free Market Economy (IFME). https://t.ly/KJY9P
17. Haaland, J. I., & Wooton, I. (1999). International competition for multinational investment. *The Scandinavian Journal of Economics, 101*(4), 631–649. https://doi.org/10.1111/1467-9442.00177
18. Harms, P., & Ursprung, H. (2002). Do civil and political repression really boost foreign direct investments? *Economic Inquiry, 40*(4), 651–663. https://doi.org/10.1093/ei/40.4.651
19. Hejazi, W., & Pauly, P. (2003). Motivation for FDI and domestic capital formation. *Journal of International Business Studies, 34,* 282–289. https://doi.org/10.1057/palgrave.jibs.8400030
20. Jones Day. (2019). *Screening of foreign direct investments in the EU under the new FDI regulation* (White Paper). https://www.jonesday.com/en/insights/2019/04/screening-of-foreign-direct-investments
21. Kosovo Chamber of Commerce. (2020). *Policy spotlight: Law on strategic investment*. https://www.amchamksv.org/wp-content/uploads/2020/05/Policy-Spotlight-Strategic-Investments.pdf
22. Krugman, P. R., & Obstfeld, M. (2003). *International economics: Theory and economic policy*. Pearson Education International. http://course.sdu.edu.cn/g2s/ewebeditor/uploadfile/20120417191243_590081573385.pdf
23. Law No. 02/L-33 on Foreign Investment Law. (2006). Assembly of Kosovo. http://old.kuvendikosoves.org/common/docs/ligjet/2005_02-L33_en.pdf
24. Law No. 02/L-75 on Arbitration. (2008). *Official Gazette of the Republic of Kosovo, 37*. https://gzk.rks-gov.net/ActDetail.aspx?ActID=2579
25. Law No. 04/L-159 on Economic Zones. (2013). *Official Gazette of the Republic of Kosovo, 6/12*. https://gzk.rks-gov.net/ActDetail.aspx?ActID=8654&langid=2
26. Law No. 04/L-220 on Foreign Investments. (2014). *Official Gazette of the Republic of Kosovo, 1*. https://www.italaw.com/sites/default/files/laws/italaw7116.pdf
27. Law No. 05/L-028 on Personal Income Tax. (2015). *Official Gazette of the Republic of Kosova, 22*. https://mf.rks-gov.net/desk/inc/media/5756FD6C-CA77-4A0C-9139-A01A1ACBFEE7.pdf
28. Law No. 05/L-029 on Corporate Income Tax. (2015). *Official Gazette of the Republic of Kosovo, 24*. https://mf.rks-gov.net/desk/inc/media/59DAD736-EEDF-4CE1-82A1-DEA473CF64AD.pdf
29. Law No. 05/L-037 on Value Added Tax. (2015). *Official Gazette of the Republic of Kosovo, 23*. https://mf.rks-gov.net/desk/inc/media/F8871713-07D4-43B5-B11A-C8618626BB27.pdf
30. Law No. 05/L-057 on the Establishment of the Kosovo Credit Guarantee Fund. (2016). *Official Gazette of the Republic of Kosovo, 2*. https://bqk-kos.org/repository/docs/korniza_ligjore/english/The%20Law%20on%20Establishment%20of%20the%20Kosovo%20Credit%20Guarantee%20Fund.pdf
31. Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo. (2017). *Official Gazette of the Republic of Kosovo, 6*. https://gzk.rks-gov.net/ActDetail.aspx?ActID=13319
32. Law No. 05/L-118 on Amending and Supplementing Law No. 04/L-139 on Executive Procedure. (2017). *Official Gazette of the Republic of Kosovo, 15*. https://md.rks-gov.net/desk/inc/media/69AEC87B-6E47-4CC0-A103-50E80C37011E.pdf
33. Law No. 06/L-016 For Commercial Companies. (2018). *Official Gazette of the Republic of Kosovo*.
34. Law No. 06/L-019 on Standardization. (2018). *Official Gazette of the Republic of Kosovo, 2*. https://aks.rks-gov.net/images/upload/law_no._06_l019_on_standardization.pdf
35. Levitt, M., & Botts, B. (2019). *Foreign direct investment regimes 2020: A practical cross-border insight into FDI screening regimes*. Global Legal Group (GLG). http://www.bogalaw.com/pdf/FDI20_Chapter%2017%20-%20Kosovo.pdf
36. Manring, R. (2007). *Foreign direct investment: Putting it to work in developing countries*. USAID. https://www.investmentmap.org/docs/FDI_Putting-it-to-Work-in-Developing-Countries.pdf
37. Mottaleb, K., & Kalirajan, K. (2010). Determinants of foreign direct investment in developing countries: A comparative analysis. *Margin: The Journal of Applied Economic Research*, *4*(4), 369–404. https://doi.org/10.1177/097380101000400401
38. Organisation for Economic Co-operation and Development (OECD). (2008). *OECD benchmark definition of foreign direct investment* (4th ed.). https://www.oecd.org/daf/inv/investmentstatisticsandanalysis/40193734.pdf
39. United Nations Conference on Trade and Development (UNCTAD). (2021, January 24). *Global foreign direct investment fell by 42% in 2020, outlook remains weak*. https://unctad.org/news/global-foreign-direct-investment-fell-42-2020-outlook-remains-weak
40. United Nations Conference on Trade and Development (UNCTAD). (2022). *World investment report 2022: International tax reforms and sustainable investment*. https://worldinvestmentreport.unctad.org/world-investment-report-2022/

APPENDIX

Table A.1. FDI in the case of Western Balkan countries (2000–2020) (Part 1)

Country	*ID*	*Year*	*GDP growth (Annual %)*	*Foreign direct investment, net outflows (% of GDP)*
North Macedonia	1	2000	4,549135783	0,048972806
North Macedonia	1	2001	-3,067256625	0,628396438
North Macedonia	1	2002	1,493665472	0,217088131
North Macedonia	1	2003	2,222601657	0,031925061
North Macedonia	1	2004	4,67408958	-0,22400275
North Macedonia	1	2005	4,724088642	0,816452006
North Macedonia	1	2006	5,137025162	0,050760932
North Macedonia	1	2007	6,473486858	0,39964276
North Macedonia	1	2008	5,47200139	0,112887621
North Macedonia	1	2009	-0,358614857	0,787115579
North Macedonia	1	2010	3,358750858	1,005455186
North Macedonia	1	2011	2,339886045	0,324049893
North Macedonia	1	2012	-0,456183224	1,769145409
North Macedonia	1	2013	2,925257665	0,901136324
North Macedonia	1	2014	3,629123513	-1,764696827
North Macedonia	1	2015	3,85586514	0,658654651
North Macedonia	1	2016	2,848205194	1,874040459
North Macedonia	1	2017	1,081772738	1,611390336
North Macedonia	1	2018	2,88059671	-0,508754497
North Macedonia	1	2019	3,910419538	1,154440577
North Macedonia	1	2020	-5,208444057	-1,386489738
Bosnia and Herzegovina	2	2000	12,76546946	
Bosnia and Herzegovina	2	2001	2,423313172	
Bosnia and Herzegovina	2	2002	5,027444207	
Bosnia and Herzegovina	2	2003	3,867138795	
Bosnia and Herzegovina	2	2004	6,325266169	1,784730777
Bosnia and Herzegovina	2	2005	3,89717799	0,146476027
Bosnia and Herzegovina	2	2006	5,414003571	0,636093192
Bosnia and Herzegovina	2	2007	5,857126342	0,409404322
Bosnia and Herzegovina	2	2008	5,443831035	0,206394428
Bosnia and Herzegovina	2	2009	-3,00445593	-0,530762232
Bosnia and Herzegovina	2	2010	0,86566926	0,472613728
Bosnia and Herzegovina	2	2011	0,959511247	-0,025881367
Bosnia and Herzegovina	2	2012	-0,821836474	0,346088571
Bosnia and Herzegovina	2	2013	2,349856663	0,47468912
Bosnia and Herzegovina	2	2014	1,153851092	0,053668896
Bosnia and Herzegovina	2	2015	3,089164152	0,584062074
Bosnia and Herzegovina	2	2016	3,149806916	0,023008407
Bosnia and Herzegovina	2	2017	3,171434875	0,557348063
Bosnia and Herzegovina	2	2018	3,740071092	0,094086795
Bosnia and Herzegovina	2	2019	2,831002603	0,606824676
Bosnia and Herzegovina	2	2020	-3,196950134	0,398001916
Albania	3	2000	6,946216585	
Albania	3	2001	8,293312636	
Albania	3	2002	4,536524157	
Albania	3	2003	5,528637464	
Albania	3	2004	5,51466791	0,189345822
Albania	3	2005	5,526424241	0,050440721
Albania	3	2006	5,902659038	0,118029608
Albania	3	2007	5,983259523	0,045988301
Albania	3	2008	7,500041428	2,840817485
Albania	3	2009	3,354289352	3,276700044
Albania	3	2010	3,70693815	0,388922861
Albania	3	2011	2,545406145	1,567711519
Albania	3	2012	1,4172428	0,675159004
Albania	3	2013	1,00201754	0,222675719
Albania	3	2014	1,774448855	0,571867614
Albania	3	2015	2,218726372	0,696510055
Albania	3	2016	3,314980684	0,059342794
Albania	3	2017	3,8022274	-0,815504362
Albania	3	2018	4,019359686	-0,029778353
Albania	3	2019	2,113419982	0,259585947
Albania	3	2020	-3,955397927	0,336508931

Table A.1. FDI in the case of Western Balkan countries (2000–2020) (Part 2)

Country	*ID*	*Year*	*GDP growth (Annual %)*	*Foreign direct investment, net outflows (% of GDP)*
Montenegro	4	2000	3,100000184	
Montenegro	4	2001	1,099842719	
Montenegro	4	2002	1,90393392	
Montenegro	4	2003	2,482659361	
Montenegro	4	2004	4,426052958	
Montenegro	4	2005	4,180601527	
Montenegro	4	2006	8,566419508	
Montenegro	4	2007	6,810150125	4,325928613
Montenegro	4	2008	7,222752592	2,425989666
Montenegro	4	2009	-5,795096995	1,101418029
Montenegro	4	2010	2,734331082	0,654939293
Montenegro	4	2011	3,228451021	0,395958924
Montenegro	4	2012	-2,723790771	0,681415984
Montenegro	4	2013	3,548979912	0,395335907
Montenegro	4	2014	1,783698581	0,607722473
Montenegro	4	2015	3,390381397	0,305777551
Montenegro	4	2016	2,949280321	-4,226524104
Montenegro	4	2017	4,716465276	0,228561608
Montenegro	4	2018	5,077888811	1,936325456
Montenegro	4	2019	4,062944992	1,372783779
Montenegro	4	2020	-15,30689376	-0,100250744
Serbia	5	2000	6,13181309	
Serbia	5	2001	6,878774765	
Serbia	5	2002	6,380405304	
Serbia	5	2003	4,387757023	
Serbia	5	2004	9,028196928	
Serbia	5	2005	5,530347121	
Serbia	5	2006	5,107790141	
Serbia	5	2007	6,439525554	2,178676698
Serbia	5	2008	5,655576622	0,629377075
Serbia	5	2009	-2,731751989	0,103910867
Serbia	5	2010	0,731044553	0,4605811
Serbia	5	2011	2,036276689	0,628926993
Serbia	5	2012	-0,681542369	0,755521023
Serbia	5	2013	2,892636734	0,685690486
Serbia	5	2014	-1,58951032	0,745223247
Serbia	5	2015	1,806059265	0,868170097
Serbia	5	2016	3,338586765	0,620218676
Serbia	5	2017	2,101163847	0,338410006
Serbia	5	2018	4,495121293	0,707144231
Serbia	5	2019	4,331734906	0,574171184
Serbia	5	2020	-0,944596516	0,243543494
Kosovo	6	2000		
Kosovo	6	2001		
Kosovo	6	2002		
Kosovo	6	2003		
Kosovo	6	2004		
Kosovo	6	2005		
Kosovo	6	2006		
Kosovo	6	2007		
Kosovo	6	2008		0,70840874
Kosovo	6	2009	5,034883829	0,290918522
Kosovo	6	2010	4,939924047	0,937464082
Kosovo	6	2011	6,319886223	0,111255209
Kosovo	6	2012	1,712195174	0,327872232
Kosovo	6	2013	5,340908175	0,592845833
Kosovo	6	2014	3,348804311	0,501985819
Kosovo	6	2015	5,916270444	0,652430048
Kosovo	6	2016	5,571756507	0,704200067
Kosovo	6	2017	4,825690427	0,698006237
Kosovo	6	2018	3,406631008	0,692223673
Kosovo	6	2019	4,756830619	0,935946998
Kosovo	6	2020	-5,340275302	0,886238115