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Panel discussion: Property Rights and the Protection of International Investment. The case of Turkey, Lithuania, Romania, Bulgaria, Czechia, Georgia, and Poland

Foreign Direct Investment In Post-Totalitarian Bulgaria

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(draft paper

The purpose of this note is to examine the evolution of Foreign Direct Investment (FDI) in the Bulgarian economy since the dismantlement of the totalitarian communist State. With the recognition and protection of private property that one could expect to result from this change of political regime, investments from abroad should have quickly become a reality. The fact, however, is that FDIs in Bulgaria began to expand only in the late 1990s, i.e. almost a decade after the disappearance of the totalitarian State. On the other hand, their progression has been remarkable since they began to grow. The average FDI flows for the period 1997-2004 amounted for 42 % of the gross fixed capital formation, which is by far the highest ratio of the whole CEE region (UNCTAD 2006a, 2006b). The following two tables illustrate this recent tendency and provide some additional information as to the allocation and origin of FDIs.

Table 1. FDI in Bulgaria by host industry (stocks in million euros)

Industry	1999	2000	2001	2002	2003	2004*	2005*
Total	**2173,8**	**2900,9**	**3323,6**	**3902,3**	**4946,2**	**6768,7**	**8530,7**
Transport, storage and communication	261,8	215,4	264,3	469,0	569,7	1207,5	2229,3
Manufacturing	1049,7	1227,4	1454,7	1481,9	1754,0	1900,2	1747,0
Financial intermediation	212,6	530,6	508,1	662,2	925,5	1351,6	1744,0
Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods	216,1	435,0	582,9	633,6	871,5	1203,8	1093,2
Real estate, renting and business activities	104,8	202,4	196,5	251,1	416,2	531,4	769,5
Construction	41,8	78,7	82,9	104,3	75,9	164,2	279,3
Non-classified	46,0	26,1	26,4	2,6	26,5	83,4	271,0

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Hotels and restaurants	32,1	57,3	62,6	78,2	84,9	108,3	141,7
Mining and quarrying	29,5	25,4	33,3	27,6	51,3	65,7	91,2
Other community, social and personal service activities	9,5	16,3	22,6	39,4	55,1	54,0	66,8
Electricity, gas and water supply	162,4	67,7	71,0	133,5	73,7	47,3	64,6
Agriculture, hunting and forestry	5,3	16,6	16,6	17,2	40,7	46,3	29,5
Fishing	0,7	1,0	0,2	0,3	0,3	2,9	3,0
Education	0,2	0,3	0,8	0,5	0,2	0,7	0,7
Health and social work	1,4	0,7	0,7	0,9	0,7	1,5	-0,1

* 2004 data are revised as of April 4, 2005. Preliminary 2005 data. Source: BNB (2006b).

Table 2. Top 20 FDIs in Bulgaria by their nationality (stocks in million euros)

Country	1999	2000	2001	2002	2003	2004*	2005*
Total	**2173,8**	**2900,9**	**3323,6**	**3902,3**	**4946,2**	**6768,7**	**8530,7**
Austria	122,2	203,8	297,7	579,5	671,1	1235,1	2415,6
Greece	95,7	233,4	273,4	472,4	532,6	635,3	863,7
Cyprus	209,1	290,9	289,7	357,6	433,5	473,3	529,9
Germany	419,4	353,8	326,0	438,0	428,9	520,5	522,0
Italy	37,2	314,7	308,0	329,4	412,4	482,3	515,9
USA	260,0	281,2	320,4	332,4	363,0	451,2	496,3
Belgium and Luxembourg	135,1	149,4	292,2	220,3	250,9	460,0	457,1
Netherlands	79,9	205,4	315,1	176,3	466,5	625,8	415,1
Great Britain	239,2	220,4	238,5	225,7	292,6	344,1	379,4
Hungary	8,2	6,4	8,9	18,3	178,1	250,6	343,6
France	59,7	101,6	114,9	134,5	135,7	185,4	184,4
British Virgin Islands	-0,9	21,7	25,6	94,3	62,6	125,1	181,1
Switzerland	76,6	95,3	103,1	107,5	194,4	298,1	135,4
Turkey	41,4	57,7	49,6	91,4	71,7	98,0	114,4
Ireland	4,9	11,9	3,7	1,0	2,4	18,6	94,1
Denmark	1,3	2,6	2,6	15,6	44,2	41,1	71,5
Liechtenstein	8,9	15,6	25,2	27,8	39,1	62,6	66,6
Russia	145,5	33,2	37,9	31,3	49,4	49,4	57,7
Canada	0,9	2,0	2,2	1,7	8,7	32,6	46,2
Spain	57,2	2,0	7,0	6,7	10,5	17,4	41,2

* 2004 data are revised as of April 4, 2005. Preliminary 2005 data. Source: BNB (2006b).

This particularity in the evolution of FDIs in Bulgaria since 1990 requires an explanation. In the first place, it is highly unlikely that only FDIs underwent such a two-stage development. Consequently, we begin our analysis by an overview of the general macroeconomic changes in the Bulgarian economy. The domestic macroeconomic situation should not however be taken as an immediate determinant of FDIs. As a matter of fact, macroeconomic data is produced by individuals acting within a given environment that itself is subject to change. In order to better understand the context within which FDIs are carried out, we will consecrate our second section to a more detailed survey of the microeconomic environment in Bulgaria. Only then will we be able to assess wholly, in our third section, the economic and legal aspects of FDIs in Bulgaria. We will conclude this note with some policy suggestions, and an attempt to qualify the height of FDIs in Bulgaria.

I. Bulgaria's Macroeconomic Background

Bulgaria's economic progress since the end of the totalitarian communist regime is clearly marked by two distinct periods. The first period goes from 1990 to 1997. Even though the privatization process has already started in 1992, it has been very slow, and by the end of 1996 it accounted for the transfer to private owners of only 10,84 % of the State-controlled assets subject to privatization.[2] In the context of a politically unstable climate, the socialist government rule (1993-1997) brought about substantial budget deficits, and announced a suspension on the payment of the State's debt to foreign creditors. It has been chosen to solve the financial difficulties through inflation. Thus, in 1996-1997, Bulgarians experienced their first hyperinflation in modern post-totalitarian history. Subsequent bank runs and the dollarization of the economy led one third of the banks to publicly avow their bankruptcy. Real GDP per capita reached its pre-1990 level.

The government that took power in 1997 oriented its efforts towards stabilization of the economy and creation of the conditions for the missed economic growth. Fiscal discipline was secured through the implementation of a currency board agreement, still in force today, that transformed the national currency, the lev, into a simple multiple, initially of the Deutsche Mark, currently of the euro (1, 95583 leva represent 1 euro). Strict regulation of the bank sector was introduced. This monetary reform naturally solved the problem of hyperinflation, but did not eliminate inflation itself, given the nature of the present-day media of exchange used in the world. In particular, from 1998 to 2005, the average annual growth rate of the quantity of media of exchange in the Bulgarian economy was 16,5 %. This steady increase in the quantity of money translated itself into a steady, even though relatively slower, erosion of money's purchasing power. Monetary prices of consumers' goods in the Bulgarian economy increased in average by 7,15 % per year over the period 1998-2005.

The most important reform that was achieved was related, however, to privatization. The new anti-communist government (1997-2001) privatized 66,96 % of the state-owned assets subject to privatization. The government that succeeded in 2001, and ruled until 2005 (the Tsarist government, so to speak), followed the same policy, even though at a substantially

[2] For these and any other data about the privatization in Bulgaria, cf. Privatization Agency (2006) as well as http://www.priv.government.bg/apnew/Root/index.php?magic=0.62.0.0.2. State-owned assets *subject to privatization* exclude infrastructure assets from the total possessed by the State.

slower rate. Only 9,2 % of the state-owned assets subject to privatization were ceded to private owners. Up to day, 89,39 % of the state-controlled non-current assets subject to privatization have been transferred to the private sector of the economy. Or to put it differently, “The total amount of non-current assets privatized amounts to 59,03 % compared to the amount of all state-owned assets” (Privatization Agency 2006a). Despite this relatively slow speed of reducing State property, shown in Table 3, economic growth did appear. In average, real GDP grew by 4,5% per year since 1998. By the end of 2005, the GDP per capita reached 2771 euros per year.

Table 3. Percent of privatized assets in the total amount of the state-owned assets

	Privatization Agency[3]	All State Bodies	Center for Mass Privatization	TOTAL
1993	0.32%	0.37%		**0.37%**
1994	1.47%	1.63%		**1.63%**
1995	0.50%	1.07%		**1.07%**
1996	3.53%	4.09%		**4.09%**
1997	2.38%	3.78%	14.58%	**18.36%**
1998	1.76%	4.47%		**4.47%**
1999	13.99%	16.96%		**16.96%**
2000	2.32%	4.43%		**4.43%**
2001	0.60%	0.97%		**0.97%**
2002	0.99%	1.16%		**1.16%**
2003	1.36%	1.36%		**1.36%**
2004	2,58%	2,58%		**2,58%**
2005	1,51%	1,51%		**1,51%**
2006	0,06%	0,06%		**0,06%**
TOTAL	**33,38%**	**44,45%**	**14,58%**	**59,03%**

Source: Privatization Agency (2006b).

If most macroeconomic indicators were unsatisfactory until 1997, they are all improving, even though slowly and not always constantly, since 1998. Thus, unemployment increased until 2001, when it reached 17,3 % of the active population, but it has been decreasing since (10,7 % at the end of 2005). Average wages and salaries are increasing, but at the end of 2005 they remained still at the low level of 163,4 euros per month. The openness of the economy remained relatively constant during the period, with imports culminating at 64,5 % of GDP and exports reaching 44,1 % of DGP at the end of 2005. Gross capital formation is continuously increasing. From 9,4 % of GDP in 1993, it reached 15, 1% of GDP in 1998, and

[3] The Privatization Agency to which the Privatization and Post-Privatization Control Agency succeeded in 2002 was in charge of organizing the privatization of the big assets. Small assets were privatized by the ministries that controlled them. Since 2002, all assets are privatized by the new Agency.

attained an average of 23 % of GDP for the last 5 years. The very structure of the economy, estimated by the distribution of the gross added value into agricultural, industrial and tertiary components, undergone significant changes. In 1998, agriculture accounted for 26,2 % of the total added value, industry for 27,9 % and services for 45,9 % respectively. In terms of property, 56,7% of the GDP was generated by the private sector. In 2005, agriculture accounted for 9,3 % of the gross added value, industry for 30,4 %, and services for 60,3 %. The private contribution to GDP rose to 68,2% of the total.[4] While the contribution of the industrial sector remained relatively stable, the tertiary increased significantly at the expense of the agriculture.[5]

Considering the public sector, total tax revenues of the State remained relatively constant at a level around 30 % of GDP. However, tax revenues do present a tendency for increasing during the last 5 years, reaching 34,5 % of GDP at the end of 2005. Total government expenses remain relatively constant at the level of 40 % of GDP, of which non-interest expenses constitute the most significant, and slowly increasing, part, reaching 38,1 % of GDP. Owe to the importance of non-tax revenues and grants (8,4 % of GDP), the overall budget is well balanced, and presents even a surplus of 3,2 % of GDP for 2005. Government debt has been significantly decreasing since 2001, when it was 69,9 % of GDP. It went down to 31,9 % of GDP by the end of 2005. This decrease is mostly due to a reduction of the external debt of the public sector. However, the gross external debt of the country increased during the last five years because of an offsetting, and more important, tendency with regards to the evolution of the gross external debt of the private sector.

Having reviewed the current macroeconomic situation in Bulgaria and its recent evolution, let us now examine more specifically the general business environment and in particular the way it is being affected by Bulgaria's modern State.

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[4] For the data on the distribution of the GDP, cf. National Statistical Institute (2006a).

[5] If analyzed in terms of employment, the tendency of a decrease of the public sector has to be qualified. In 2001, 779 384 of all 1 889 874 employed in the economy, i.e. 41,23%, were employed by the public sector. In 2004, this percentage fell down to 33,87% of all 2 152 301 employed. In nominal terms, all employed by the public sector did decrease by 50 491. However, the size of the public administration increased during the same period by 22 843 administrative workers, i.e. by 23,83 % (idem., 2006b). It must therefore be concluded that the tendency of a decrease in public property goes hand in hand with the consolidation of Bulgaria's modern democratic State. We therefore observe the transition from a collectivist State engaged mainly in the monopolistic production of economic goods into a democratic state engaged mainly in expropriation and redistribution.

II. Business Environment And Government Intervention

Economic activity and perception of revenue on the territory of Bulgaria is subject to regulation and taxation by the Bulgarian government. Value-added tax is currently established at 20 percent.[6] Corporate income tax has fallen from 23,5 % in 2003, to 19,5 % in 2004 to 15 % in 2005 (lowest in the region, 16 % in Romania). Personal income tax is collected on an annual base, according to a progressive scale, the first 90 euros per month being free from taxation. Marginal rates of taxation are of three levels, 20%, 22% and 24 % (down from 29 % in 2004), the latter being the highest. Even though taxation of the product of labor seems relatively low, social security payments are an additional means of confiscation of private income to be taken into consideration. Social security costs to the account of the employer amount to 23,6 to 24,3 % of the monthly salary, to which one has to add 12,3 % that are imposed on the employee. Despite the high cost of the fiat social security system, labor costs in Bulgaria were the lowest in the region by the end of 2005, namely 1,1 USD/hour (1,4 USD/hour in Romania, 2,4 USD/hours in Turkey, 13,7 USD/hour in Greece, with an average in the European Union of 28,3 USD/hour).

Exchanges of goods and services between Bulgarians and foreigners were subject to an average tariff rate of 9,6 % in 2004 (up from 1,5 % in 2002). However, additional difficulties for foreign trade arise from non-tariff barriers that the US Department of Commerce identifies as “excessive documentation requirements, slow processing of shipments, and corruption” (Heritage Foundation, 2006, p.1).

Labor legislation stipulates an 8-hour working day, with a 24-hour rest period required during a 7-day period. A minimum monthly gross salary of 82 euros is imposed. Termination of labor contracts of employees other than senior managers requires a sufficient justification. Notice periods are usually 30 days. Legally fixed compensations in case of termination of the labor contract based on “mutual consent” must not be lower than 4 monthly gross salaries. Upon dismissal due to staff reduction, closing-down of a productive facility, reduction of the volume of work or work interruption for more than 15 working days, unemployment compensations paid by the former employer amount to 1 monthly gross salary. Employment of foreign persons requires a permit. A temporary work permit is valid one year, and can be renewed twice. All foreign persons that have a permanent residence permit can be employed in the same way as Bulgarian citizens. The total of employees who are foreign citizens cannot

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[6] All data herein quoted come from InvestBulgaria Agency (2006a, pp. 4-16).

exceed 10 % of the total workforce, however. All employers must register a new labor contract with the National Agency of Revenues within three days of its conclusion.

Human capital quality is very positively assessed by analysts. The education is estimated to be among Europe top 5 %. 7 % of the workforce has engineering degrees. English language is studied by 70 % of students. Post-totalitarian emigration, even though expatriates are typically of the age of the active population, is considered to have a negligible effect on the potential for development of the economy (Gächter 2002)

Registration of companies in Bulgaria is relatively easy. For example, registration of a limited liability company requires the presentation of 11 documents to the Commercial Register of the local District Court, takes one to two weeks, and costs around 125 euros. Registration of trade representative office of a foreign person requires producing 8 documents, takes 3 days and costs 100 USD. However, starting real economic activity is significantly more cumbersome. Various certificates are required, and the administrative agents supposed to furnish them seem to be of a very low efficiency, unless incited by non-legally required financial means. The US Department of Commerce characterizes the situation in the following terms: “An abundance of licensing and regulatory regimes, their sometimes arbitrary interpretation and enforcement by the bureaucracy, and the incentives thus created for corruption, have long been seen as an impediment to investment” (ibid., p.2).

Infrastructures in Bulgaria are relatively poor. Roads, state-owned, are in a bad shape, and the percent of highways comparatively to the total length of roads is negligible. The first end-to-end highway to connect the capital city of Sofia to the Black Sea coast is to be built by 2009. Financed by a 35-year concession to a consortium between Portuguese firms (51 %) and the Bulgarian government (49 %), the project does not seem to have begun yet. Railways, all of which are state-owned, are old, slow, and of low efficiency too. There are a significant number of airports. Airport traffic of passengers grows by roughly 20 % per year, reaching 1 605 000 passengers in 2004 for the airport of Sofia, and 1 334 000 and 1 353 000 passengers for the airports of Varna and Bourgas respectively (the two biggest coastal cities).

It appears from our survey of the microeconomic conditions in Bulgaria, that the fiscal burden on enterprises is relatively low, and has been decreasing in recent years, in comparison to taxation in other European countries. On the other hand, however, general conditions for doing business are spoiled by a high degree of administrative regulation that goes hand in hand with corruption and low efficiency of the infrastructure. Let us now try to describe and explain, within that context, the evolution of FDIs in Bulgaria.

III. Foreign Direct Investment: Economic And Legal Aspects

Foreign direct investment in Bulgaria is of two types due to the particular structure of ownership in the country at the end of the totalitarian regime. The first type, which could be called FDI from privatization, consists in the acquisition by foreigners of state-owned property. The second type, which could be called Greenfield FDI or FDI from expansion, consists in the acquisition of property that has already been private and/or in expanding an existent private property. The following table gives an idea of the extent of both types of FDI.

Table 4. Flows of FDI in Bulgaria, 1992-2004 (in million US dollars)

Year (1)	Greenfield and Expansion FDI (2)	FDI from Privatization (3)	Total FDI (4)	GDP (5)	G and E FDI /GDP (2)/(5)	Total FDI /GDP (4)/(5)
1992	34,4		34,4	8605	0,40%	0,40%
1993	80,4	22	102,4	10812	0,74%	0,95%
1994	76,7	134,2	210,9	9484	0,81%	2,22%
1995	136,6	26	162,6	13055	1,05%	1,25%
1996	180	76,4	256,4	10368	1,74%	2,47%
1997	214,8	421,4	636,2	10198	2,11%	6,24%
1998	404,4	215,6	620	12735	3,18%	4,87%
1999	592,1	226,7	818,8	12946	4,57%	6,32%
2000	635,5	366	1001,5	12597	5,04%	7,95%
2001	793,7	19,2	812,9	13599	5,84%	5,98%
2002	839,7	130	969,7	15651	5,37%	6,20%
2003	1732,8	364,1	2096,9	19860	8,72%	10,56%
2004	1667,3	1216	2883,3	24131	6,91%	11,95%

Source: InvestBulgaria Agency (2006d).

The table suggests that FDI from privatization was not the most important type of FDI, except for 2004, when the big national telecommunications company and most of the electric distribution plants were sold by the government to foreigners. We have also to note that the dynamics of this type of FDI is mostly determined by the State's discretionary decision to sell parts of its property or not. In this respect, table 4 shows how much unstable politicians' behavior may be. On the other hand, FDI from privatization is doomed to disappear once the privatization process has been completed. Finally, this type of FDI does not consist into an increase of net investments in the Bulgarian economy, but only into a transfer of an already existent property. This implies that FDIs from privatization are not a net investment at all.[7] Therefore, an economic analysis that aspires to explain the evolution of FDIs and their overall effect on the economy should concentrate on greenfield and expansion FDIs only. Legally, however, FDIs from privatization have to comply, in addition to other laws, with the Privatization and Post-Privatization Control Act, first voted in 2002, and last amended in 2005.[8]

Focusing our attention on the Greenfield and Expansion FDIs, we can notice that this type of FDI shows a steady increase, unless maybe for 2004, in nominal terms as well as comparatively to GDP. Here again, two periods must be distinguished, namely before 1997, and after 1997. As a matter of fact, the Encouragement of Investment Act was adopted at this time, and it is perfectly understandable that FDIs increased after the adoption of this new piece of legislation. Also, since the implementation of the currency board, all restrictions on imports and exports of capital were abrogated. Thus, a favorable environment for investments was created, and we should now analyze it in more details, especially from a legalistic standpoint.

The most essential legal fact that has to be mentioned first is that Bulgarian law does not differentiate between investments made by residents and investments made be foreigners. This is one of the central provisions of the 1997 Act.[9] The legislation on investments, therefore, does not discriminate at all against foreigners. Investment projects, which shall all be realized within three years and create new jobs in order to be considered eligible for encouragement by the government (InvestBulgaria Agency, 2006b, art.12), fall into three classes: first class for investments over 70 million leva, second class for investments from 40 to 70 million leva, and third class for investments from 10 to 40 million leva (idem., 2006c, art.2). In addition, the Encouragement of Investment Act provides a certain number of real incentives that vary according to the size of the investment. First, an InvestBulgaria Agency is created, whose role is to facilitate the implementation of the investment project. For third-class projects, the Agency provides pre-developed information materials, information about

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[7] We do not affirm here that this transfer of existing property does not increase efficiency of property management. However, we do want to stress upon the fact that these two issues have to be examined independent from one another.

[8] This Act replaced the original law on privatization, first voted in 1992.

[9] One may even suggest that the absence of discrimination toward foreigners is already solidly grounded in the Bulgarian Constitution: “The investments and economic activity of Bulgarian and foreign citizens and legal persons shall enjoy the protection of the law” (Bulgarian Parliament, 2006, art.19(3)).

potential partners in the country, and information about all the administrative procedures. For second-class projects, the Agency offers also individual administrative servicing with respect to all central and regional bodies of the Executive. First-class projects benefit, in addition, from individual information and administrative services, as well as from assistance with real-estate “titling” issues. Also, they may require infrastructure building support from the government (idem., 2006b, art.12).

In addition, the Encouragement of Investment Act provides significant tax incentives. Investment projects in the manufacturing industry in regions of high unemployment benefit from complete corporate tax exemption, even though some additional conditions have to be met.[10] Thus, all business sites and premises of the taxpayer have to be located in the respective high unemployment region. The tax exemption takes the form of a tax credit that has to be reinvested in the company. The investor is also obliged to make an additional investment that amounts to at least 25 % of the tax credit. The assets thereby acquired could not be disposed of within 5 years, unless in cases of mergers and reorganization. Another complete tax exemption of VAT is granted for the import of goods necessary for completion of the investment project. Finally, the corporate tax base is reduced by the amount of expenditures made for research and development in cooperation with research institutes and/or universities.

Notwithstanding taxation of income, foreign property in Bulgaria is generally well-protected by the law. Bulgaria’s post-totalitarian State, in its foundational document, acknowledges that “Private property shall be inviolable” (Bulgarian Parliament 2006, art.17(3)). However, private property may be violated and encroached by the government if there is no other way to satisfy important State and municipal needs: “Property may be taken by eminent domain for state and municipal needs solely in pursuance of a law subject to the condition that these needs cannot be satisfied in another manner and after an advance and equivalent compensation” (ibid., art 17(5)). It must be added here that foreigners are prohibited from acquiring and owning land, even though this prohibition will disappear soon, with Bulgaria’s expected accession to the European Union (ibid., art 22(1)). In any case, this provision has not been a real obstacle to foreign investors, provided that they can acquire property on the account of a moral person registered in Bulgaria. An important provision of the Encouragement of Investment Act is that if an international agreement stipulates more favorable conditions for foreigners than the domestic legislation, then the most advantageous

[10] The list of the high unemployment regions is annually approved by the Minister of Finance.

conditions should apply: “If an international agreement, party to which is the Republic of Bulgaria, stipulates more favorable conditions for carrying out economic activity by foreigners the more favorable conditions shall apply according to the international agreement“ (InvestBulgaria Agency 2006b, art.3).[11]

Concerning international treaties, the Bulgarian government has signed the convention for the establishment of the Multilateral Investment Guarantee Agency (MIGA) as well as of the International Center for Settlement of Investment Disputes (ICSID). As of June 2005, Bulgaria had already signed 62 BITs (Bilateral investment treaties), of which 56 were in force by April 2006. In that direction, the continuous tendency for the Bulgarian government in recent years has been to engage in an increasing number of BITs. In 2000, Bulgaria already ranked 15th among the top 30 countries in terms of BITs concluded (UNCTAD 2000, p. 18). In addition, 58 double taxation prevention treaties are in operation (InvestBulgaria Agency 2006a, p. 4), and discussions for a treaty on double taxation with the US government are in progress.[12]

It can be concluded that FDIs are well protected in Bulgaria, and that the Bulgarian government shows a stable and positive attitude towards the protection of foreigners’ property rights. This, together with a relatively attractive taxation, is certainly an important factor explaining the progress and the very high levels of FDIs in Bulgaria. The correct attitude of the Bulgarian government towards foreigners’ property and the satisfactory legal protection FDIs enjoy in Bulgaria are illustrated by the fact that only one international dispute opposes currently the Bulgarian government to a foreign investor at the ICSID.[13]

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[11] Once again, one can see here the strict application of a provision contained already in the Constitution: “Any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for the Republic of Bulgaria, shall be part of the domestic law of the land. Any such treaty shall take priority over any conflicting standards of domestic legislation” (ibid., art.5(4)).

[12] The only impediment to the treaty seems to be the US government’s reluctance to make a concession concerning its strong desire to obtain a change in the Bulgarian law that would allow to investigate bank accounts without a prior decision by a court of law (AmCham in Bulgaria 2006).

[13] The case, opposing Plama Consortium Limited to the Bulgarian government, concerns an oil refinery in northern Bulgaria, which was privatized in 1996, but was acquired by its current owners in 1998 after having gone bankrupt. In addition to previous controversies related to the legal ownership of the company, the current owners dispute the fact that the Environmental Protection Act voted by the Bulgarian Parliament in 2002 puts the entire liability on the company and absolves the Bulgarian government of any responsibility. For the moment,

The very satisfactory legal aspects of investing in Bulgaria since the 1997 Act clearly explain the significant amounts of FDIs in that country. It would be quite impossible and rather awkward to conclude this very empirical note by a resume of its content. Instead, it would be more suitable to close it with a final section that suggests some policy measures for making investment conditions still more attractive. It would also be the right place to position FDIs within some other important international flows between residents in Bulgaria and non-residents.

IV. Conclusion: Policy Measures And Quasi-FDIs

Provided that there is a clear link established between FDIs and their protection against any form of expropriation, only one policy measure could be suggested: abolish any impediment to start quickly business and abolish any confiscation, in monetary or regulatory form, of the investment results. The Bulgarian government has done a lot in this direction in terms of tax reduction and tax exemptions. Our policy conclusion is that this effort should be continued, until complete abrogation of any taxation. Much less has been done, however, with respect to governmental regulation of economic activity. Starting business, as reported by the Workd Bank, takes in average 32 days, and this number has remained constant for recent years (World Bank 2006). Corruption is estimated at a very high level, especially in the judiciary, i.e. in that body of the State that supposedly is responsible for the application of law. The practical implication of the improper functioning of the legal system is that a lawless state of arbitrary rules is created. Much has to be done in this direction by the future Bulgarian governments.

One positive fact of the law on investments in Bulgaria is that no discrimination is made on the base of the nationality of the investor. However, a discrimination does exist according to the size of the investment project. This discrimination should be abolished too, through an extension of the current most favorable conditions to all investments, irrespective of their size. We suggest also that the more favorable regime of corporate income taxation should be extended to personal income taxation. Even though the economic nature of profit is indeed different from that of contractually determined revenues, there is no reason to tax the latter more than the former.

Also, the privatization of all infrastructures seems to be an immediate necessity. Investors need the guarantee that they can quickly and at a low cost ship their production and generally

the case became notorious in international law for the difficulties it rose in determining whether the ICSID had jurisdiction over it or not. On the case, cf. International Institute for Sustainable Development (2005).

communicate with their partners and customers. The current condition of the state-owned infrastructure does not allow for this. Much more competition is needed in road building and exploitation, and in telecommunications.

Finally, if FDIs are investments undertaken by non-residents, then investments in Bulgaria carried out by Bulgarian emigrants should be taken into account too. This remark, which may seem odd analytically, turns out to be statistically very important. Legal Bulgarian emigration abroad since 1989 amounts to some 700 000 individuals, which is roughly 9 % of the total population. According to the United Nations, 100 000 Bulgarians leave the country every year (Dimitrova 2006). These emigrants are typically very much oriented toward saving an important part of their incomes. Systematically they send one part of these savings to their family members, or in order to acquire real estate property in view of their future return in Bulgaria. The amounts sent back are quite considerable, as indicated by the following table.

Table 5. Monetary flows from emigration (in million euros).

Year	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
Current Transfers	170,2	233,3	305,9	472,5	531,7	613	815,1	765,5

Source: BNB (2006c)

Recently, only a few weeks ago, the Bulgarian National Bank announced that a new, more correct, methodology of reporting current bank transfers from abroad accounts for additional 818,4 million euros for the period 2001-2005 (Standart Daily, 2006). Distributing this amount equally among the five years, the thus corrected data can then be easily compared to Greenfield or Expansion FDIs:

Table 6. Monetary flows from emigration compared to FDI

Year	**2001**	**2002**	**2003**	**2004**	**2005**
Private Current Transfers (in million Euros)	636,18	695,38	776,68	978,78	929,18
Greenfield and Expansion FDI (in million dollars)	793,7	839,7	1732,8	1667,3	

Source: BNB (2006c)

It appears that the monetary flows from Bulgarian expatriates, for the period 2001-2004, are equivalent to three fourths of the amount of FDIs, at an exchange rate of 1,2 US dollars for 1 euro. When it is recognized that much of the expatriates, especially if their stay abroad is illegal, do not use the services of financial institutions in order to transfer their savings, it appears that monetary flows from Bulgarians abroad into the Bulgarian economy are probably equal to FDIs.[14] It is true that one part of the savings thereby received is used for the purchase of consumption goods. However, much of the current transfers serve to acquire real-estate property and certainly contribute to explain the boom in the construction as well as in other industrial sectors.

It appears therefore that Bulgarian emigrants are another very important category of non-resident direct investment in the country. An immediate policy conclusion is that the Bulgarian government should secure their property in Bulgaria and increase as much as possible the incentives for non-resident Bulgarians to invest their savings into Bulgaria. A general tax cut of any kind of taxation seems to be the best measure in that direction.

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[14] The importance of current transfers from emigrants is even bigger if another, we believe necessary, adjustment is applied to the gross data. All contemporary banks are fractional-reserve banks. Any investment into a fractional-reserve bank is equivalent to the purchase of the right to open deposits financed by circulation credit based on thin air. If this is indeed an investment from the standpoint of the individual banker, there is no net investment, in terms of increased property, for the whole of the economy. It would not even be unreasonable to subtract these amounts from the gross investment, for due compensation of the expected damages in terms of misallocated real savings brought about by the operation of a fractional-reserve banking system.

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