Foreign Investments and Environmental Protection In FRY

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The work analyses interrelations between foreign direct investments and environmental protection in Yugoslavia/Serbia in legistrature and in space planning.It points out that globalisation and more recent tendency

in development of economic activities have innitiated a strategic allocation of capital and different models of foreign investments. It also points to different models of foreign investments, the greatest role among which may be attached to joint venture, B.O.T. investment system, concessions, multilateral investment conracts etc.

1. Introduction

Globalization of economy represents international collaboration in the field of economic activities as international trade, liberalization of markets of goods, services and factors of production, and internationalization of financial flows. Globalization means international integration of goods, technology, labour forces and capital [1]. The concept of globalisation is usually presented as a broad network of processes that can be grouped into three categories: socio-political globalization, economic globalization and technological (innovation) globalisation [2]. Results of process of globalization are a high level of economical growth, especially for developed economies, low level of unemployment rate and different environmental consequences. For the economies in transition processes to be included in globalization, it is necessary to know with which goods or firms or economic areas they are to be leaders/followers in that process of globalization.

The process of production and trade exchange globalisation initiated by direct foreign investments manifests itself through trends of spatial desegregation and/or reintegration of production and services. This originated in new spatial investment models: free zones, high tech agglomeration complexes, scientific, industrial and technology parks, enterprice zones etc. These location patterns are in fact materialised conglomerates of the spatio-developmental dimension within the production and trade internationalisation. At the same time, they perform as urban, regional and technology development models of certain developed countries, based on direct foreign investments elements. In their genesis, a major role is played by the state administration (by creating suitable conditions and impulses) and multinational corporations (in the form of direct foreign investments).

Some new tendencies of economic activities development initiated strategic solutions of capital allocation and models of foreign investments. Essential motives for direct foreign investments are administration and control of enterprises, management and knowledge application, as to achieve maximal profit, secure cheap labour force, raw materials resources, new markets, etc.

2. Foreign Investments and Environmental Protection

The spatial planning ought to enable territorial direction of market pressures upon space in accordance to socially accepted aims. The planning is a form of state intervention in managing spatial resources. It devises a platform for strategic decision making in the political and administrative arena and managerial establishment.

The spatial organisation of economic activities on attractive locations is a mode of state redistributive intervention within the economic restructuring strategy realisation, privatisation, small enterprises and entrepreneur development. To launch developmental and spatial protection processes, different ways and forms of direct foreign investments and financing are needed.

This enabled new economic activities and "new" location and development factors: urban and regional infrastructure, scientific and developmental-research (R&D) institutions, highly educated professionals, markets, agglomerate and location economies of urban centres, public services, life quality, social and large scale infrastructure, attractive physical structures, stimulating legislative and business milieu, lovely landscapes, etc. On the other hand, direct foreign investments in the expansion process and break-through on the European and world market have a better strategic position, business and marketing image if they perform in authentic, attractive locations.

The strategy of the economy restructuring cannot be formed autonomously and independently from its current environmental performances and economic conditions such as: a) market restructuring, privatisation, ownership, organization, human resource, production, technology, etc.; b) creation of stable political, legal and economic climate for private entrepreneurs and investment, c) development of small and medium enterprises, d) attracting foreign investment, e) environmental conditions and standards,etc.

It is anticipated, that in the oncoming period a substantial international capital pressure will be manifested, especially as regards the most valuable urban and some attractive locations. Development planning of attractive locations ought to be based on the acceptance the EU regulations on integrative planning, the EU directives on the effects of certain plans and programmes on the environment (Strategic Environmental Assessment - SEA), the EU directives on the environmental impact assessment (EIA) and the principles of sustainable development and Eco-management.

On the basis of the state of the environment in Serbia, according to the "EU Programme on the environment and sustainable development" [3], it is estimated that the environmental quality in the Danube Basin, Vojvodina, the Sava valley and Eastern Serbia are among the most endangered in Europe. Bearing in mind that Yugoslavia is a signatory country of the Declaration on Sustainable Development (1992) imposes the question: Did this encompass respective environmental aspects in governing the economical/industrial spatial development in our regulations on the construction of investment facilities, foreign investments, free zones, and concessions?

The existing legal acts in the domain of environmental protection and development regulate the duties and responsibilities of economic actors rather insufficiently. For example, correspondent to the Law on foreign investments in FRY [4], the import of equipment and other basic production means which represent the foreign investor's deposit is tax-free. From the environmental point of view, a free technology transfer could have negative impacts. In the same Law, the agreement on foreign investment does not contain propositions on environmental protection, and the agreement on founding an enterprise contains only a general proposition on the environmental protection. The Federal Ministry issues the foreign investment permit for economic relations with foreign countries, with no obligation to consult the Ministry of Environment of Serbia or Montengro. With the Law on foreign investments in FRY, a foreign investor may be entitled to acquire a concession for facility, plant or plant section construction, utilisation of natural or generally used goods under the condition not to endannger the environment. According to the federal Law, in the concession agreement there are no propositions on the conditions of environmental protection. With the Law on concessions, the conditions, modalities and procedure of granting concessions for using natural and generally used goods in the Republic's property are determined.

Therefore, in this paper, the framework, forms and ways of attracting direct foreign investments and their environmental consequence will be explored.

3. Theoretic Framework for Foreign Investments

The support for the strategic determination of development involves different foreign investment forms. In the consideration of proposed models of foreign investments it is necessary to explain general notions and basic elements of investment endeavours within the international capital flow. Consequently, the starting point is the regulations of the Federal Republic of Yugoslavia, Republic of Serbia and Republic of Montenegro on foreign investments.

The general theoretic framework for initiating direct foreign investments is implanted in an array of theories on direct foreign investments (theory of international investment portfolio, theory of production internationalisation, internalisation theory, eclectic paradigm, etc.). From the viewpoint of prospects and foreign investments a special importance is attributed to the eclectic paradigm. This theory assembles the significance of specific advantages, the internalisation and the position of attracting foreign capital. It is based on the OLI paradigm, i.e. interrelation of factors of specific owner advantages (Own), location and internalisation advantages. According to the eclectic theory (paradigm), which is linked to traditional location theory and location factors, attracting foreign investments is stipulated by the location factors (natural resources, infrastructure, transport costs, assistance and instruments of state intervention- revenues and taxes, etc.). However, apart form the dilemma “what” to produce, “how much” and “where”, this theory is not able to answer “how” to produce so as not to endanger natural resources, cause environmental pollution and negative effects on the environment. The answers to such questions provide the application of the principles and criteria of sustainability. This means, the theoretic framework of the eclectic and OLI paradigm, as most reliable direct foreign investment theory does not adequately take into considerationthe ecological and spatial consequences of investment projects and environmental costs.

Foreign direct investments are defined as investments which enable enterprise control from a certain country through accumulating the financial assets (stocks, obligations, banking deposits) or production means of an enterprise situated in an other country. Depending on the independence degree of decision making of the owner on the use and control of personal capital, it can be discerned between portfolio and direct investments. Portfolio investments imply foreign investments to the allotment in structure, which does not comprise decision-making and/or control of enterprise management. If the investor acquires the ownership right, control and management over the larger part of the investment project, this is seen as a direct foreign investment. Portfolio investments are carried out chiefly in the form of securities (obligations) which are issued by state institutions with the aim to secure means on the international capital market, but the owners cannot decide on their usage. The return of the invested means is carried out in a determined period of time, together with the interest, independently of the success of the investment endeavour and with minimal investor’s risks. Portfolio investments enable higher returns than banking deposits, with lesser risk and lower profits in relation to direct foreign investments. Accordingly to Vidas-Bubanja M. [5], the differences between direct foreign investments and portfolio investments are: (a) investment motives; (b) temporal sequence of investments; (c) investor type. For both types of investments it is characteristic that they do not contain ecological costs of the concrete spatial/investment project. Therefore, it is suggested to accede to basic multilateral instruments-criteria in managing sustainable development, EIA instruments (environmental impact assessment), regional and non-governmental instruments (business charter on sustainable development in accordance to eco-management, ISO standards 14000, European energy charter, etc.).

Direct foreign investments involve capital investments in enterprises over which the larger ownership, control and management rights are attained via (a) founding or construction of a new enterprise (green field operation); (b) acquisition of existing sections by merger or fusion or acquisition. In practice, it has been estimated that the largest share of direct foreign investments in transition countries unfolds in form of merger or acquisition.

Direct foreign investments imply three basic modes: horizontal, vertical and mixed. Horizontal direct foreign investments constitute the location of the production of one or more similar produces within the range of more locations and more countries. Production capacities are secured by founding a new enterprise or buying shares of existing international enterprises, which produce the same product or by merging with a foreign enterprise from the same group.

Vertical direct foreign investments involve the allocation of different production, fluctuating and research phases in the production process within the framework of more locations in different countries. Such a trend is stipulated by the high tech industrial production. In this process the skill, knowledge and experience of highly qualified personnel is the basic criteria of the allocation and selection of regional (location) production. An immense role is given to the cheap labour force, a stable political situation, assistance of state institutions, business climate, beneficial tariffs, export stimulation, and an advantageous fiscal policy. Direct foreign investments have a significant influence on the local surroundings, the transformation of local labour market, development of supplementary services and activities, employment and development level. The process of vertical integration and agglomeration of economic activities (production, services, exchange) within new spatial forms (free zones, high tech agglomerations, technology and industrial parks) has a relatively modest impact on the local surroundings because of its export oriented and ex-territorial character, a vertically confined communication system and certain “self-sufficiency” or “self-development”.

Primary mechanisms of the expansion of direct foreign investments are via founding or construction of new production sites and via the acquisition of larger or lesser share of the enterprise and via merging with foreign enterprises (take-over or joint ventures). From the development viewpoint joint ventures indicate an array of advantages in respect to acquisition and merging with existing production sections bearing in mind that this is the cheapest and more flexible mode of direct foreign investments. This is valid especially when there are different barriers regarding foreign capital. On the global level (state or regional) the effect of direct foreign investments iscarried out:

- Directly (via growth of industrial production, growth of the social product in the service sector, technology transfer, management and consulting, trade exchange);
- Indirectly (stimulating the start and functioning of market mechanisms and institutions and privatisation processes).

Especially attractive areas for direct foreign investments are infrastructure, production and the service sector. All developing countries (FRY included) are interested in such financing modes. Due to reduced financial risk, decrease and shortage of material resources in the country, infrastructure investments are very attractive as direct foreign investments are concerned. Investments in this sector are notably achieved by attracting direct foreign investments. In transition countries the privatisation of the infrastructure sector is one of the ways to attract foreign investments.

4. Forms of Direct Foreign Investments

A much more consequential role of the private capital is anticipated through direct foreign investments and portfolio investments. The selection of development strategies, privatisation, sustainable development and general socio-economic context of the area stipulate the choice of the direct foreign investments model. By the federal and republic regulations an array of foreign investments model is foreseen: (a) Investing in existing and new enterprises (joint venture agreement); (b) Concessions; (c) BOT model and modalities; (d) Founding of private companies; (e) Different agreement modalities (leasing, franchising, management); (f) Investing in and founding of enterprises in free zones; (g) Buying of enterprises which are attractive for foreign investors and in which the republic funds are involved (pension fund, fund for development and the employment agency); (h) Buying of part of the federal capital; (i) Conversion of foreign debt into foreign investment; (j) Prospects for founding enterprises in off-shore zones in Montenegro; (k) Founding of banks and other financing organisations. The priority importance ought be attached to joint venture investments in existing and new enterprises, B.O.T. investment system, concessions and other mentioned models.

Joint venture agreements on investments - The Act of foreign investments in the FRY (1996), Republic of Serbia (2002.) and Republic of Montenegro (1996.) foresee foreign investments in existing enterprises and construction/founding of new ones. Foreign investments in existing enterprises are regulated with the Investment Agreement or enterprise founding Ordinance/Agreement. The foreign investor can found a new enterprise alone or together with other foreign or domestic investors. According to the Act of foreign investments in the Republic of Serbia and Republic of Montenegro, the equipment and other production means import, as an investment of the foreign businessperson is free of taxes. From the environmental point of view, a free technology and equipment transfer (environmentally unsafe) might have potentially negative implications upon the surroundings. According to the ordinances of the Act of foreign investments in those Republics, the agreement on foreign investments does not include environmental ordinances, whereas the agreement on new enterprise founding contains a general ordinance on environmental protection (without defined obligations in respect to compliance with the environmental regulations of the Republics). The same Act foresees that a foreign businessperson might get a concession for construction/usage of a certain facility, plant or section.

Several republic Acts regulate the foreign investment domain in FRY and Montenegro: the Act on foreign investments, the Act on profit taxation, on Concessions, the Act on Republic revenues and taxes, on public enterprises, sea goods, the Act on ownership transformation, the Act on privatisation, the Act on enterprise foundation with specific business activities (off-shore business operations). The last mentioned Act defines business conditions for offshore enterprises in Montenegro, which are very stimulating and encouraging. New founded enterprises in the free trade zone (Bar, Kotor) will not be taxed with the profit taxation in the first 10 years. Also, new founded enterprises in the domain of industry and mining, agriculture and fishing, forestry, water energy are free of profit taxation in the period of first five years [6]. A new founded enterprise with a share of more than 50% is excepted from profit taxation in the period of first five years, whereas foreign capital investments may not be less than 100 000DEM. All foreign investors are free to make use of the Agency for economic restructuring and foreign investments, such as are financial conditions and demands, legal consultations and promotive activities in the domain of foreign investments.

Concessions represent legal relations between the state (concedant) and the private entrepreneur (concessor) in which the concedant renounces the right to use the public good or administer public services to the concessor for an agreed compensation which is in the public interest [7]. The Act on foreign investments and the Act on Concessions of FRY (1996.) regulate the concession domain as a model of foreign investments in detail. Prior to procuring a concession for 30 years for using renewable natural resources or public goods, the foreign investor must take part in the open bid.

B.O.T. Investment model and its modalities are a form of direct foreign investments, where the investors administer temporarily limited management and control rights over the investment commodities via an open bid/tender. This model enables the foreign investor to build, use and return to the previous owner the investment commodity (production section, infrastructure, building, plant), after an agreed period of time in which he has attained the return of investment with a profit (10-30 years). In case of public investment projects (e.g. Infrastructure) state owned, the B.O.T. system includes concession elements, because the achieved returns/effects of the project are transferred to the state, after the agreed term. Moreover, the B.O.T. model possesses the trade investment project elements, where the investments are paid back by revenues achieved through this business. This investment model is especially suitable for the realisation of capital infrastructure projects (railways, energy, airports, telecommunication, etc). It is serviceable for private investors, private investors' consortiums, international financial organisations and others. Such an investment model has several modalities:

- B.L.T. (Built-Lease-Transfer), a system where the facilities are built, leased and ultimately transferred to the owner;
- B.O.O.(Built-Own-Operate), a system where the facilities are built and planned for a long time use;
- R.O.T. (Rehabilitate-Operate-Transfer), a system where the existing facilities are rehabilitated, used and transferred to the owner;
- B.T.O. (Built-Transfer-Operate), a system where the existing facilities are built, transferred to the owner, but used by sharing the profit, chiefly with the state.

According to the Act on foreign investments of the FRY and the Republic of Serbia, the stimulation, which are applied in case of concessions, are practised also in the B.O.T. investment system.

Multilateral investment agreement - Multilateral, regional and non-governmental instruments and rules for regulating direct foreign investments are numerous. The World Bank and the OECD (1995.) make efforts to determine multilateral investment rules, which would be acceptable for all countries. The aim is to liberalise the investment regime, with certain exceptions; i.e. liberalisation rules deviations, so as to advocate particular national interests. Basic principles for foreign investments are: free foreign investments, equitable treatment of foreign and domestic investments regardless of the origin, information activity, protection from contingent new restrictions, a better sector accessibility, which until now open only to domestic investors, conflict solving mechanisms within arbitrary international institutions.

Undoubtedly, further foreign investments course will be increasingly regulated by multilateral investment agreements with all countries, which want to attract foreign investments. Such agreements will be used as a predominate mechanism of foreign investments. For example, in the trade exchange and production globalisation, the World Trade Organisation (WTO) and multinational companies intercede in favour of introducing multilateral investment agreements for the Mediterranean zone so as to facilitate trade. However, the assessment of environmental effects, as a result of development decisions/agreements and uniformly applied regulations for enterprises as regards the environmental protection has not been considered. This model of foreign capital allocation shows no precise determination in conceding to local/federal legal regulations, to the detriment of ecological effects. Zekovic S. [8,9] points to a certain “indolence” and aptitude to neglect the interest of the local community by foreign companies. This is manifested in different ways: (a) As partial restriction of government sovereignty and spatial integrity in the environmental protection domain; (b) evasion of the precaution principle in the environmental protection and development planning domain (precautionary principle); (c) avoidance of the contingent costs arisen by environmental damages to the local community or state. Therefore, this model of foreign investments is disapproved of by numerous non-governmental organisations.

5. Conclusion

The implementation of strategic development/foreign investments in FRY depends on: (a) local and domestic economy potentials in respect to economic restructuring and privatisation; (b) construction land market; (c) possibilities of attracting foreign capital; (d) policies and instruments of development management beyond spatial planning (macroeconomic, investment, credit, fiscal, industrial, environmental, regional, land use, etc) and involving relevant institutions and mechanisms of consequence for activating economic activities and land use. This encompasses the promotion of new regulatory mechanisms, the process of democratic planning, public participation in planning and development decision making. Attracting direct foreign investments is one of basic instruments for the better use of locations and potentials. The major role should be reserved to joint ventures, B.O.T. investment system, concessions, etc.

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