Case Study

Closing the Licensing/Permit Regulatory Implementation Gap at the Sub-national Level in Bosnia and Herzegovina

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Acknowledgment
The World Bank Group’s Investment Climate Projects in Bosnia and Herzegovina wishes to thank the Kingdom of Sweden and Ministry of Finance of the Government of Austria, for their generous support in funding the Projects’ activities.

The Project team would like to also thank and acknowledge Lisa Kaestner, Practice Manager, Trade & Competitiveness Global Practice in Europe and Central Asia, and Syed Akhtar Mahmood, Lead Investment Policy Officer, Business Regulation Investment Climate, World Bank Group, for their valuable comments and peer review of this document.
Background

Bosnia and Herzegovina (BiH) is classified as a Fragile and Conflict-Affected State. It has a complex government structure which is plagued with significant political turmoil each election cycle. BiH comprises the national (federal) level government, and two entities – the Federation BiH, Republika Srpska (RS), and Brcko District – all of which have strong legislative powers affecting day-to-day business operations. The Federation BiH is further divided into 10 cantons, each with their own government and legislative powers, although ultimately they are governed by the laws of the Federation BiH. Both the Federation BiH and RS are further subdivided into 143 cities/municipalities, each with their own municipal councils. Such a complex structure gives rise to overlapping competencies, conflicting legislative provisions, and a regulatory implementation gap at the sub-national level.

This four-level government structure added complexity to the World Bank Group (WBG)’s efforts to improve the investment climate, as one of the cross-cutting tasks was to link reforms at various levels of governments, to ensure the elimination of contradictions and that their application is consistent at all levels. It was crucial, therefore, to tackle the following four overarching issues hindering the investment attractiveness of BiH:

- the regulatory burdens created by all four government levels;
- the emerging regulatory implementation gaps at the sub-national level;
- the lack of transparency of regulations;
- the lack of harmonization between the regulations promulgated by the different government levels in BiH.

The purpose of this explanatory case study is to capture the experience and lessons learned by the BiH team in reducing the regulatory implementation gap. The team was first faced with an issue of the regulatory implementation gap in 2008 upon completion of a sub-national Doing Business assessment in three cities in BiH. That is when it became clear that the same regulations have been implemented differently by the assessed three municipalities, thus creating this gap. In addition, a similar concern about sub-national regulatory implementation gaps in BiH was voiced by businesses and higher level authorities, but at the time no one could pin-point concrete causes and severity of the gap.

The aim of this paper is to analyze and describe the approach, process and tools used by the team in identifying the problem of ambiguity in the text and the inconsistency of application of the same legislation across several BiH jurisdictions; and how the team’s decisions, activities and actions contributed to and influenced the results, that is to say in closing the regulatory implementation gaps at the sub-national level. The study also revealed the causal effect of the team’s efforts in terms of enabling the private sector to realize real benefits from the implemented reforms.

This case study attempts to contribute to the theory that states that the quality of implementation is the ultimate determiner of the degree of reform success. Good laws, no matter how well worded, make no difference if they are not implemented consistently, professionally, comprehensively. This document explores the causal effect the project’s specific actions have had on closing the regulatory implementation gaps identified in the areas of entrepreneurship and the construction laws in BiH.

The study consists of four parts. The first part details how the team identified the existence of a regulatory implementation gap and its causes. The second part analyses and describes the process of addressing the specific regulatory implementation gap identified in part one. The third part provides details of the process of the regulatory simplification the team used to address the regulatory implementation gap across jurisdictions, and to link these reforms with a reduction of the administrative burden and increased transparency. Finally, the study also distills the lessons learned during this process that may be relevant for similar situations and environments elsewhere in the future. Part four cites those lessons.

1 We are making a distinction between deficiencies in the way regulations are implemented/enforced and the poor quality of implementing reforms. The former (regulatory implementation gap) is about the system as it is currently operating while the latter (reform implementation gap) is about attempts to change the system. Much of the focus of this note is on the former, i.e. changing the way the existing regulations are implemented and about how reforms supported by the project attempted to address the issue of regulatory implementation gap as it relates to licenses and permits in the former sense. However, the case study also touches upon the reform implementation gap, albeit to a lesser degree, i.e. changing the existing system of implementing reforms – quality, pace, consistency.
Part 1: Identifying the problem and its root causes
Defining the regulatory implementation gap

The regulatory implementation gap can be defined as the difference between what the laws say on the statute books and how these laws function in reality. This is a concern for many countries worldwide these days. The regulatory implementation gap is especially acute in developing/transition economies. Over the years regulators have emphasized the adoption or amendment of laws as the primary goal of policy making. The assumption was that once a law is in place its implementation will somehow automatically follow, and so the anticipated results and impacts of reforms will be eventually gained by the ‘simple’ adoption of the law. Therefore, the majority of efforts have focused first and foremost on preparing good, state-of-the-art laws.

Experience has proved this assumption wrong. Over time the gains expected from legislation have not materialized. Rather it has become evident that investing contemporaneously, in specific, targeted efforts to enable implementation is equally important and critical, especially in countries with transition economies where neither the institutional structures or existing incentives systems nor human capacities are ready to embrace the changes introduced by these new laws.

This regulatory implementation gap is likely to be wider in countries with multi-layered government structures. Such is the case with BiH where different locally-managed municipalities and cantons have the power to set their own rules, or simply bend the rules established at the entity or national level knowing they will not be held accountable for doing so. While there are significant regulatory and legislative powers at the entity level, the major part of regulatory service delivery actually happens at the local and cantonal level. Thus most small- and medium-sized businesses rely on the knowledge, professionalism and capacity of staff in local municipalities to deliver administrative services for business start-ups, investment and day-to-day operations. The largest number of business requests happen at the local and cantonal level, as this is where the most common permits needed for business operations are available. Similarly, the majority of investors (local or foreign) refer to the local and cantonal level authorities for the different permits needed related to construction and business operation activities, as well as utility connections and other permits.

There is a weak link between the local and higher (entity) levels when it comes to the interpretation and application of legislation. In other words, the same national/entity regulation is implemented differently by different municipalities and cantons (and for that matter, the same cantonal regulation is implemented differently by the various municipalities in that canton). This chain of differences in interpretation and application of the rules set out in laws creates the regulatory implementation gap that has become a serious inhibitor to doing business in BiH. It also adds further complexity for businesses trying to comply with often cumbersome regulations.

It is important to differentiate the reasons why regulatory implementation gaps happen. Typically there are four types of gaps.

1. Gap between laws and supporting bylaws, rules and regulations, i.e. the latter does not follow the spirit of the former, or supporting bylaws and regulations are non-existent.
2. Gap between the intended interpretation of the law and the actual interpretation. One of the causes of multiple interpretations of the same regulation is the quality of legislation. For instance, poor and ambiguous clauses that lead to various interpretations of the same regulation.
3. Divergence in the application of the same rules and regulations across various entities within one jurisdiction.
4. Divergence in the application of the same rules and regulations across jurisdictions.

This distinction is important as both the causes of such gaps and thus the solutions for closing them will differ. BiH experienced a combination of all four types of regulatory implementation gaps. One of the UN tools provides some quantitative data on implementation gaps. The Global Integrity Scorecard assesses the health of a country’s anticorruption framework. Its 300 indicators assess the existence, effectiveness, and citizen access to key governance and anti-corruption mechanisms. It examines areas such as government oversight and controls, anti-corruption efforts, and public administration quality and professionalism across several dimensions. It measures both legal provisions (‘in law’) and implementation of the laws across the measured dimensions (‘in practice’). As Figure 2 shows, while the GIS ‘in law’ score was rated “very strong” for BiH in 2011 (and the fourth highest of the 31 countries assessed), the implementation of those laws was considered “very weak” (the fourth lowest of the 31 participating countries).

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1 Center for International Private Enterprise and Global Integrity. Closing the Implementation Gap Between Law and Practice, 2012
2 The team didn’t conduct an in depth assessment of human resources management and incentive systems as part of the work in BiH that is described in this case study. Some human capacity development activities were implemented in the form of capacity building programs and training of both government authorities involved and private sector companies. Looking at the role of institutions, human resources management and incentives systems in enabling implementation can be a follow on work on closing regulatory implementation and reform implementation gaps in the future.
The historical trend of measuring BiH’s place in the GIS shows a slip in the issues of ‘in practice’ implementation of policies and legislation governing various areas including transparency, public sector service quality, taxation, and business permits and licensing since 2007. This contributed to the overall weak country score in the 2011 scorecard. The ‘very strong’ position in the ‘in law’ category (92) and the ‘very weak’ position in the ‘in practice’ category (35) confirm the existence of a wide gap between what the laws say on the books and how they are applied in actual practice.

Poor transparency of procedures coupled with vague requirements

There is a lack of regulatory transparency in sub-national (entity, canton, cities and municipalities) service delivery. Few cantons, and even fewer cities/municipalities, have fully transparent electronic registers where all the information about procedures for businesses is publicly available. Different interpretations of regulations adopted at higher levels by local level implementing officials, coupled with opaque requirements, lead to a lack of predictability for businesses. Businesses cannot efficiently plan their operations and channel their resources to deal with multiple paperwork requirements and interactions with officials without knowing if they will be asked to submit ‘yet another document’ without any justification as to why. Late market entrance and lost opportunities follow. And this, in turn, opens the door to petty corruption with businesses trying to find ways to overcome hurdles and get things done faster.

Figure 3 completes this cumbersome picture of the BiH business environment. On the one hand there are burdensome and multiple regulations and a myriad of administrative documents that businesses have to get to operate. On the other hand these cumbersome regulations are open to different interpretations and are inconsistently applied from municipality to municipality. This tangle of burdensome regulations and inefficient implementation creates significant barriers for business development and investments in the country. Moreover, there is an overlap in the competencies of different levels, which contributes to further complexity and inconsistency in the application of regulations and problems for businesses.

Figure 3. A maze of licenses, permits, and approvals at all four government levels significantly and unnecessarily burdens businesses

<table>
<thead>
<tr>
<th>Level</th>
<th>Total Licenses/Permits</th>
<th>Business Related</th>
</tr>
</thead>
<tbody>
<tr>
<td>State BiH level</td>
<td>102</td>
<td>355</td>
</tr>
<tr>
<td>Federation BiH level</td>
<td>389</td>
<td>319</td>
</tr>
<tr>
<td>Republika Srpska level</td>
<td>583</td>
<td>319</td>
</tr>
<tr>
<td>Cantonal level (on average)</td>
<td>208</td>
<td>161</td>
</tr>
<tr>
<td>Municipal level (on average)</td>
<td>159</td>
<td>94</td>
</tr>
</tbody>
</table>

Average annualized direct baseline costs of compliance per businesses in any given municipality - $1,979
Average annualized direct baseline costs of compliance for businesses in any given canton in Federation BiH - $2,200
Average annualized direct baseline costs of compliance for businesses dealing with Federation BiH level licenses/permits - $404

Source: official government records/data bases and T&C staff calculation
Further evidence of a regulatory implementation gap - case in point: dealing with construction regulations in BiH

One telling example pertains to construction-related regulations. These have been cited by businesses as highly inconsistent and fragmented. As a result, they amount to a regulation application which has created a wide regulatory implementation gap in BiH. Two major contributing factors have been identified: the first is the ability of local authorities to impose additional requirements on businesses along with a legal framework allowing various interpretations by municipalities. The second factor stems from the vagueness of the legal framework itself, which lends itself to varying interpretations, additional requirements and a general confusion around what exactly is required from both implementing officials and businesses.

Analysis of the practice of applying the legislation governing construction procedures in RS, for instance, revealed that the number of documents required from businesses has ratcheted up to 11, varying from municipality to municipality. The law itself stipulates the same procedure for all municipalities. However in practice it is applied differently. The time frame for receiving a response from officials also varied from 15 to 60 days depending on the specific municipality/city concerned. In addition, the list of documents required of businesses to obtain a location permit differed between municipalities within one entity (Figure 4), while the law prescribed one set of documents and a deadline of up to 60 days.

Figure 4. Inconsistent and varied interpretations of the same permit in different municipalities – an example of the requirements for obtaining a location permit as per the RS Construction Law

| Municipality/City | Total # of documents | # of original documents | # of copies | # of days to deadline  \\ |  |
|-------------------|---------------------|------------------------|-------------|------------------------|
| Banja Luka        | 9                   | 4                      | 5           | 60                     |
| Bijeljina         | 9                   | 4                      | 5           | 30                     |
| Modrica           | 10                  | 5                      | 5           | 30                     |
| Novi Grad         | 10                  | 4                      | 5           | 30                     |
| Doboj             | 10                  | 5                      | 5           | 15                     |
| Visegrad          | 11                  | 6                      | 5           | 20                     |
| Zvornik           | 9                   | 4                      | 5           | 60                     |

Similar inconsistency in applying regulations, stemming from individual municipal interpretations of the higher level law are intensified by a lack of enforcement by higher levels of governments vis-à-vis wrongful interpretations of that law by municipalities, as observed in Zenica-Doboj canton (Federation BiH). Different municipalities required a different number of documents. According to the Cantonal Construction Law that operated at the time of assessment, obtaining a construction permit required the same set of documents from businesses. In practice, however, this ranged from 7 to 11 documents with the deadline for authorities to respond ranging from 20 to 30 days, depending on the municipality (Figure 5).

5 Deadlines are stipulated in the jurisdiction specific rules. Same goes for documents and form of documents – all are stipulated in the rules, but as evident, implemented differently.
Closing the Licensing/Permit Regulatory Implementation gap at sub-national level in Bosnia and Herzegovina

The obvious question to ask is why obtaining the same permit meant addressing such different requirements in the same jurisdiction. Why did one municipality issue this permit within 20 days while others needed as much as 60 days (regardless of human capacities and IT capabilities, which appear at first glance to be similar from locality to locality)? Why did one municipality working under the same framework legislation ask a business to submit seven documents while another municipality nearby asked for 11 documents? These are the questions the T&C team posed before recommending changes.

The real reasons underlying these application inconsistencies were poor regulatory service delivery, the lack of enforcement of procedures by higher level authorities, inadequate penalties for non-compliance, and in some cases vaguely defined laws.

Further evidence of a regulatory implementation gap - case in point: starting a craft shop in the Federation BiH

The Federation BiH established a requirement for a special permit to be obtained by anybody wishing to engage in entrepreneurial activity. The Law on Entrepreneurship of the Federation BiH introduced this requirement as well as set out specific rules and requirements for obtaining it. According to this law, applicants had to submit seven documents when applying to open a crafts store. Furthermore, field implementation (based on a sample of 13 municipalities) of this law revealed that there were various inconsistencies in the number of documents asked of businesses during the application process for this particular type of activity. The number ranged from six to as many as 13 (Figure 6).

In addition to this discrepancy in the number of documents required, different municipalities asked for different types of documents, thereby widening the implementation gap even further. These were a varied mix that included the following: identity cards, citizenship certificates, certificate of legal business capacity, qualification certificate, medical certificate, verification certificate from the unemployment register, a minor offence court document certifying that no ban exists on the proposed trade activities, tax certificates, health and pension certificates, CIPS (personal ID card) certificates, a decision on meeting the minimum technical requirements, approval of allowed noise levels and a veterinary/sanitary permit. One would be very interested to hear the justifications of the necessity to submit at least half of the documents in the above ‘laundry’ list just to open a crafts store. It is obvious that no scientific or any other type of analysis was done to assess the actual risk the business would pose to society or nature. Thus, the real reason(s) why such an array of documents are required remained a conundrum.

What was even more worrisome to the T&C team is that jurisdictions are aware of the differences in the way they apply legislation. However, they don’t bother to change as they believe in their own right. In contacts with government officials, they all claim that they are properly interpreting the regulations, and that other localities (that might be asking for less or more documents) are doing it wrong. They are sure they don’t need to change anything because all of their actions are grounded in regulations. For them there is a legacy of why things are done in a particular way which justifies the reasons why no change is needed.

8 Based on T&C team discussion with the clients.

<table>
<thead>
<tr>
<th>Municipality/City</th>
<th>Total # of documents</th>
<th># of original documents</th>
<th># of copies</th>
<th># of days to deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tesanj</td>
<td>13</td>
<td>7</td>
<td>6</td>
<td>20</td>
</tr>
<tr>
<td>Zenica</td>
<td>14</td>
<td>11</td>
<td>3</td>
<td>60</td>
</tr>
<tr>
<td>Visoko</td>
<td>14</td>
<td>9</td>
<td>4</td>
<td>30</td>
</tr>
</tbody>
</table>

Figure 5. Individual residential buildings in Zenica-Doboj canton – an example of the inconsistency of application of the Cantonal Construction Law in terms of getting construction permits.

Figure 6. Law on Entrepreneurship in Federation BiH - inconsistency of application in several municipalities.

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Total # of documents</th>
<th># of original documents</th>
<th># of copies</th>
<th># of days to deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Range of documents required in 13 municipalities in the Federation BiH</td>
<td>From 6 to 13</td>
<td>From 5 to 10</td>
<td>From 1 to 3</td>
<td>Up to 15</td>
</tr>
</tbody>
</table>

BiH: Novo Sarajevo, Gorazde, Siroki Brijeg, Bihac, Tesanj, Bosanska Krupa, Srebrenik, Tuzla, Vitez, Zivinice, Ilidža, Visoko, Zenica
Part 2: Addressing the problems identified in Part 1 – process, steps, results

The ‘how’ of identifying the problem and its causes

The T&C team did a rigorous analysis of the problem and, more importantly, its causes. This analysis comprised several parallel activities. First of all, the legislation was analyzed at all levels – state, federal, cantonal and municipal. The purpose of the legal review was to identify inconsistencies in the approaches and requirements for the same regulation in the existing legislation as well as to identify areas likely to benefit by a simplification of these requirements. Local legislation was also assessed and mapped against the relevant international best practices.

Secondly, the team analyzed the practices of select municipalities in applying the legislation related to the construction area and entrepreneurial activity. This helped establish deviations in the application process against that which the legislation requires while pinpointing regulatory implementation gaps.

The above analysis of the problem and its causes was central to developing solutions, meaning specific actions to help clients to close the identified gaps by focusing on implementation.

Case in point: addressing the identified problems with BiH construction laws

Problem analysis provided the team with the important baseline of the causes of inefficiencies and inconsistencies in implementation as well as providing grounds for estimating the scope, depth and breadth of the simplification activity needed.

In the RS, the T&C team identified legal bottlenecks and a lack of specificity in the Construction Law as causes of the inconsistencies in the regulatory requirements for obtaining a location permit across municipalities. These causes refer, in addition to regulatory implementation gap, to the reform implementation gaps, i.e. inconsistency and fragmented approach to implementing reforms. The team also identified different interpretations of the legal provisions by some municipalities, coupled with their own additional requirements from businesses that added complexity. The response to these deficiencies was two-fold:

1. Preparation of a completely new Construction Law in RS
2. Assistance with the implementation of this new law at the municipal level.

The team worked very closely with the Ministry of Urban Planning and Construction RS in preparing the new law over a 10 month period. They were instrumental in having new and innovative provisions included in the law (none of which were present in the old law), namely:

- The introduction of a risk-based approach: for buildings up to 400 m², the procedures for issuing a site/urban permit were abolished if a spatial/zoning plan had been adopted in a particular locale; this also meant that obtaining pre-approvals from utility companies for buildings under 400m² was abolished.
- In general, the procedure for issuing urban permits for complex buildings was streamlined, irrespective of the existence of zoning plans: if a zoning plan was in place, then the process was significantly streamlined since there was no further need to obtain pre-approvals from utility companies, even for complex buildings. This had been a huge bottleneck for companies.
- The process and documentation for issuing a construction permit was streamlined, with the result that businesses should now be able to get a construction permit in 15 days (assuming all documentation has been completed correctly), irrespective of building size.
- The process of issuing a usage permit was likewise significantly streamlined and reduced to 15 days (assuming all documentation has been completed correctly), irrespective of building size.
- The new law also provides for faster administrative processing of major infrastructure projects.

All of these regulatory changes helped to reduce the gap as they provided for clarity, consistency, and simplicity in the implementation. But, these regulatory changes would not be enough to secure closing the gap without actual follow through with the reform that the team provided to the Ministry.

Following the adoption of the new Law (in mid-2013) and new unified requirements on the book, the T&C team worked with the ministry to implement the reform on the ground. We helped to prepare rulebooks (adopted in early 2014), and a single submission form for businesses (2014) which the ministry then distributed to all municipalities to use going forward. This was followed by further work with the ministry instructing these municipalities on how to implement the new law, including two jointly organized technical seminars/training sessions for them on best practices implementation (in 2014). Following that, the T&C team reached out to these seven municipalities together with the ministry and checked implementation on the ground to ensure that the law was being applied consistently across the board. Thereafter the ministry communicated to other municipalities to ensure the same. This has now (in 2015) demonstrably resulted in a consistent application of the new law on the ground ensuring full implementation (Figure 7), as verified by actual implementation on the ground for over a year and a half.
Closing the gap in the application of the location permits led to considerable monetary savings for businesses and citizens (Figure 8). These savings have been confirmed and verified on the ground with businesses. In total, compliance cost savings resulting from this reform amounted to $1.1 million annually.

Figure 7. Newly consistent requirements for obtaining a location permit in RS across sample municipalities

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Total # of documents</th>
<th># of original documents</th>
<th># of copies</th>
<th># of days to deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banja Luka, Bijeljina, Modrica, Novi Grad, Doboj, Visegrad, Zvornik</td>
<td>8</td>
<td>3</td>
<td>5</td>
<td>15</td>
</tr>
</tbody>
</table>

Closing the gap in the application of the location permits led to considerable monetary savings for businesses and citizens (Figure 8). These savings have been confirmed and verified on the ground with businesses. In total, compliance cost savings resulting from this reform amounted to $1.1 million annually.

In Zenica-Doboj canton, the T&C team identified the legal bottlenecks in the construction law that were generating inconsistencies in the regulatory requirements across municipalities. They also identified different interpretations of the legal provisions by some municipalities. The response to these deficiencies was similar to that implemented in Republika Srpska. It consisted of preparing a completely new construction law in Zenica-Doboj Canton, and of assisting with the implementation of this new law at the municipal level.

The Zenica-Doboj construction law was changed, and the regulatory regime simplified at the municipality level. This intervention led to the following improvements:

- For residential and business purposed buildings of up to 400 square meters in zones covered by the regulation plan, the procedure was simply eliminated.
- For residential and business purposed buildings of up to 400 square meters in zones not covered by the regulation, plus all other types of buildings, the gap for a location permit was narrowed in terms of the documentation needed in the most problematic municipalities. This was accomplished by eliminating previously required documents, namely the specified excerpt from the land registry book, deed book of possession and statements by owners of neighboring parcels.
- The municipalities were given a new common deadline for responding on business applications – just 15 days instead of the 20 or 30 that were in common use before.
- The T&C team worked with the ministry to prepare a single submission form for businesses. The ministry subsequently distributed this new form to all municipalities to use going forward.
- The T&C team reached out to three sample municipalities together with the ministry and checked the new implementation procedures on the ground, ensuring that the law was being applied with consistency across the board.

Closing the gap in the application process for location permits led to considerable monetary savings for businesses and citizens alike. In total, the compliance cost savings resulting from this reform...
amounts to $1.29 million annually, as already confirmed and verified with businesses through focus groups, interviews, and factual data.

Case in point: addressing the problems identified with launching a craft shop in the Federation BiH

As there was no interest from the government in changing the law to address some of the bottlenecks, the T&C team decided to work with the municipalities over time to narrow the gap to the largest extent possible. Thirteen municipalities were engaged in longer term regulatory simplification work (see detailed explanation of the methodology in part 3). This resulted in the following:

- The range of required documents shortened to 7-9 (the previous range was 6-13).
- The gap in the number of documents needed was substantially narrowed – a reduction of 43%.
- The gap in the number of original documents needed was likewise substantially narrowed -- a reduction of 30%.
- The gap in the number of days needed for the government to issue a permit was similarly reduced by 40%.

This demonstrates that even without changing the law, the T&C team successfully managed to work across jurisdictions to narrow the gap and reduce the regulatory burden for business.

Part 3: Closing the gap across jurisdictions and linking up with other reform processes

How this is achieved: the implementation phase - steps and timetable

Since 2008, the WBG projects have achieved $12.4 million in compliance cost savings for businesses on the sub-national level only. Furthermore, this sub-national level work was subject to an independent impact assessment in 2015 which independently verified the results of the WBG efforts in closing/narrowing the regulatory implementation gap in this stratum. Data gathered through the impact assessment revealed that there were no longer any variances in how the regulations governing construction permits are applied in locales where the projects intervened and implemented changes to the legal framework and to application practices. This means that businesses increasingly agree that it is cheaper, easier and less burdensome to obtain licenses and permits in these localities. Furthermore, the process is more transparent and predictable now across these municipalities. Impact assessment confirmed that in localities where these projects intervened the following results were achieved:

- A 6.41 percentage point increase in employment levels compared to other municipalities
- Procedure waiting times (to receive response from civil servants) reduced by 26 percent in localities where project was implemented, compared to other localities
- Increased transparency of regulatory service delivery through the use of electronic registers
- Enhanced consistency assured in the application of regulations across jurisdictions

This section describes what the typical regulatory simplification engagement looks like at the sub-national level. This is not specific to the regulations mentioned above. Rather the focus is on analyzing the entire spectrum of permits and licenses at the sub-national level to identify and pinpoint the gap and then set about narrowing it. The idea behind this detailed and meticulous process is to: 1) reduce the administrative burden for businesses; 2) increase the transparency of regulatory service delivery; and 3) reduce the regulatory implementation gap.

The project’s engagement with a municipality or canton usually lasts for up to 12 months, from its launch until the monitoring phase conducted in cooperation with businesses to verify that implementation of the new procedures is complete (Figure 9). Annex 1 presents a breakdown of indicative activities as they took place during specific intervals of the project implementation.

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5 Over 320 companies from 16 localities (8 where project work was done and 8 more comparable localities where there was no project work) surveyed on the impact of 8 comparable licenses/permits per locality (the most frequent or most burdensome were selected). Moreover, detailed statistical data analysis and interviews with municipalities and cantons were completed. Full impact assessment study and findings can be obtained separately by contacting Tarik Sahovic at tsahovic@ifc.org.

6 On average it is 4.1% cheaper on cantonal level and 23.3% on municipal level in localities where project was implemented, compared to where it wasn’t. Also, on average, firms spend 30% less time to file documents and complete procedure of applying for permit in localities where project was implemented.

8 The Electronic registry is the online repository and data base of all licenses and permits in that jurisdiction. E-registry contains all information needed regarding each of the procedures, including costs, documents, submission forms, and wait times among others. Based on impact assessment, on average, 60% of firms use e-registers, which is significant. When comparing situations before and after e-registers, the majority of firms (2/3 of those under the survey who used e-registers) confirmed that the time spent on procedures is now shorter and complexity has been reduced.
Part 4: Lessons learned

Through the process of closing the regulatory implementation gap the World Bank Group team learned some valuable lessons that will inform other similar engagements.

The importance of taking a stakeholder approach. Involving a wide group of stakeholders in the process from beginning to end is critical. Stakeholders can provide quick and realistic feedback regarding regulations implementation, for instance. They are also helpful in estimating how big the discrepancy in implementation is, what the root causes are, is and what will be most useful in eliminating the identified constraints. Engaging private sector stakeholders in consultations — both in problem identification and solution development -- is likely to result in greater support for some of the tougher reforms as well as assuring greater private sector impact.

Similarly, the public sector must be part of the process and come to feel ownership of the reforms, to accept the proposed changes more willingly and to ensure they are implemented properly.

In order to ensure stakeholders are engaged at the required level, a mix of means and tools is recommended. These can include face-to-face meetings/consultations or larger focus groups; or fact finding events structured as public-private dialogue fora and surveys.

Needless to say, it is critical to review, update and guide stakeholder views and positions toward specific issues the project is dealing with on a regular basis, especially in those environments where constant political changes are ‘business as usual’.

Local context matters. When designing the project delivery there is a need to ensure that it is localized and adjusted to client needs and to the local environment. Best practices, no matter how good they may be and how well they have worked in many countries, should be applied with caution and should be considered first in the local context and environment. Contextualization is even more important for regulatory implementation gap activity as implementation often fails when several government layers and levels are involved. There is a real need to secure the link between various governments’ levels for maximum impact.

Formalizing relations with government counterparts for greater results. Experience shows that concluding cooperation agreements with government counterparts often leads to a more comprehensive government buy-in to the project’s activities, as well as a greater interest and commitment on their part. It is recommended therefore, to persuade government counterparts to sign such agreements. Governments are usually reluctant to sign legally binding documents.

Hence, real determination is required from the project team to cause the government to agree to do so. Also, obtaining an official signature on the cooperation agreement should be done with the government not with an individual ministry. When government changes take place, ministry heads are always changed; so having a single ministry sign the agreement might not be sustainable.

Co-financing of project activities by the government further improves the likelihood of efficient implementation and the government’s determination to get results. The project on average charged clients with 9-10 percent of the project financial cost, plus in-kind contribution. However, the sum of money in this case is secondary. What is important is the government’s commitment to the cause and seriousness about changing the status quo. When clients commit any budgetary resources to project implementation, they treat the project much more seriously since they are accountable for the money spent. This basically provides much more leverage for the project in the context of client priorities. It also helps to stoke reform momentum.

The need to involve key decision makers right from the start. One of the main factors influencing project implementation is the inclusion of the main decision makers in the project, such as getting the mayor of a municipality or a local project coordinator to chair the working group/body representing the client/institution. Rome was not built in a day. It takes time for a local World Bank Group team to earn credibility and trust in the eyes of clients and stakeholders. Thus, there is a need to have somebody from the ‘inside’ of the municipality gain an in-depth understanding of what the team is trying to do why it should be done and how important it is to do it now. This person should preferably be the decision maker in the municipality, leading and inspiring others to take action. That’s why it is crucial for the team to involve this person from the very beginning, and to have continuous and consistent communication and coordination with this person throughout the process. Not surprisingly this takes time energy on the part of the team, first in finding them, then briefing him/her, convincing him/her of the rightness of the cause and ensuring that he/she stays with the team, gaining a sense of ownership of all the activities performed with help of the World Bank Group.

There is a positive side to elections too. Government elections are generally not very good for project implementation. They disrupt project work and divert the government’s attention to matters that will ensure them more votes. That said, experience has shown that it
is a general election that has the greatest negative affect on project activities. This is true for sub-national work, when the project is interacting more with and depending more on local authorities and how they behave. When general elections approach, local authorities tend to postpone necessary decisions related to such projects. Oddly, this is not the case during local elections. When these are underway, local authorities continue taking a ‘business as usual’ attitude, which obviously benefits a project.

**Use mass media and private sector stakeholders to build the pressure to perform.** Creation of public pressure via frequent publication of media reports and news about project activities can foster project implementation and mitigate some tacit internal resistance to it. Politicians always care about increasing the number of votes they can capture during the next elections. Hence, they do pay attention to what newspapers or TV programs say about their work. This spells ‘opportunity’ for such a project, initially by channeling key information about the need for particular reforms through the mass media.

**Conclusion and replicability**

Investment is a local phenomenon. Businesses select specific locales for investment but the investment climate in those locales drives the investment location decisions. Cities, subnational/regional governments, and the private sector all play defining roles in city economic outcomes. Cities tend to make economic activity more efficient. They are crucial nodes in global value chains (GVCs), and are centers of activity, where economic inputs are matched, goods traded, and knowledge shared. Various estimates claim urban areas contribute as much as 70 percent of global GDP, even though they only represent half the world’s population.

In an increasing number of countries, local governments levy taxes, impose regulations, invest in roads, provide basic services, manage urban land, and pursue economic development initiatives. While there are significant regulatory and legislative powers at the central/national level, most small- and medium-businesses rely on service delivery at the sub-national level to launch their businesses, attract investment and drive day-to-day operations. Also, most investors (local or foreign) depend on local level authorities for different construction and business operation permits, as well as utility connections and regular business operation permits. However, individual locales themselves can’t be the sole determinants of investment decisions. In many cases there is a weak link between sub-national and higher levels when it comes to business regulation-making and its subsequent enforcement process. This means sub-national level work needs to be linked with national level reforms, making the programmatic approach and synergistic effects of linked interventions complementary.

The experience of Bosnia and Herzegovina tells us that driving reform takes time, patience, attention to detail, inclusion and a clear, sequenced action plan. Ad-hoc, unstructured, disconnected actions are ineffective and do not produce results.

The BiH case essentially created a “template” for identifying why certain reforms have not worked to their full potential, in particular in the multi-layered political environment with proposed specific actions for addressing identified bottlenecks. The critical success factors of the BiH experience came from addressing these bottlenecks holistically.

This detailed and comprehensive fact-finding exercise provided a factual basis for understanding the complexity of the issues that were undermining the reform process. Work at the legislative level (essentially simplification of cumbersome regulations), coupled with implementation activities at the individual municipality and canton levels led to the removal of ambiguities in the legal text and the elimination of inconsistency in its application across jurisdictions.

The methodology applied is fairly simple and can readily be applied elsewhere with adjustment to the local context. This is very important since such reforms can’t be consolidated by taking a “cookie-cutter” approach.

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Month 1 activities: administration, scoping and capacity building

- Signing a cooperation/advisory agreement with the client.
- Finalizing a client’s adoption of the relevant legal and regulatory decisions needed to enable the project to be implemented (establishment of a municipal working group; orders out to all civil servants to cooperate on the project; issuance of strict deadlines and procedures for civil servants to observe during project implementation, and the like).
- Delivery of training to civil servants on the process of regulatory simplification and review.
- Scoping the administrative procedures and analyzing the client’s capacities, followed by the identification and selection of possible counterparts.

Month 2-3 activities: regulatory mapping and consultation process

- Completing the regulatory mapping exercise of all administrative procedures administered by the client.
- Collecting relevant economic data (and the frequency of all requests that the client has, fees, taxes, and any others).
- Preparing and launching the consultation with the local business and civil community, seeking their input on the procedures, costs, and issues. Generally, stakeholder consultation is key throughout the entire process, from problem identification to solutions development to actual implementation of the solution.

The team consults with both public sector officials at all levels and private sector companies that have undergone the process of receiving permits. This helps validate the problem, identify its scope and magnitude. Talking to businesses provides information that fosters understanding of the limitations and obstacles of specific licenses and permits and their actual implementation on the ground.

Month 4-7 activities: recommendations for regulatory simplification

- Analyzing the inventory of administrative procedures/licenses/permits.
- Analyzing the legal basis for each procedure and identification of inconsistencies within higher-level regulations.
- Comparing procedures with other locales within the same jurisdiction, and across jurisdictions with a view to harmonizing requirements.
- Drafting recommendations for simplifying selected administrative procedures. The recommendations should be accompanied by justifications as to why the proposed solution should be seen as relevant and appropriate, what it will change if implemented and with what results.
- Consulting with municipal officials on the quality of all recommendations, seek their feedback and input.
- Completing an economic analysis (compliance cost savings) of baseline costs and estimated savings.
- Finalizing recommendations for simplification and sending them for client approval.

Month 8 activities: implementation of regulatory simplification

- Design the E-Registry and complete the data entry.
- Client adopts the recommendations for streamlining procedures.
- The relevant client governing body/council adopts all necessary decisions (if any) to enable implementation of the proposed recommendations.
- Implementation procedures begin.

Month 9-12 activities: ensuring the sustainability of activities

- Establish client’s permanent regulatory reform bodies’ monitoring work vis-à-vis the E Registry and control of the flow of the new administrative procedures. This body also monitors the introduction of new procedures.
- Prepare the final inventory (meaning the final list of valid administrative procedures after the adoption and simplification processes are completed) and update the E-Registry accordingly.
- Complete implementation of the proposed changes to simplify procedures for businesses.
- Initiate evaluation of the project’s activities.
- Verify the E-Registry testing. Launch the E-Registry.
- Complete the monitoring and evaluation with businesses and verify implementation.

The above activity list is indicative. It is provided only to give an idea of the type of activities the project has been involved in and the usual time line followed in their implementation. Naturally these activities, their sequence and time frames may differ depending on the context.

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The term administrative procedure includes all permits, approvals, certificates, authorizations, estimates, assignments, consents, and payments of charges and fees, including notifications of the city/municipal administration required by third parties for operation of businesses and the day-to-day life of citizens.

Recommendations include reduction in information obligations, documentation, changing form of document submission (from original to copy, etc); reducing processing and waiting times; reducing fees, taxes; eliminating procedure/permit altogether.