

PROMOTING JUDICIAL COOPERATION IN SUPPORT OF ECONOMIC DEVELOPMENT IN THE WESTERN BALKANS



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ACRONYMS AND ABBREVIATION

BB	Balkan Barometer
CEFTA	Central European Free Trade Agreement
CEPEJ	European Commission for the Efficiency of Justice
CoE	Council of Europe
CR	Clearance Rate
CRM	Common Regional Market
DT	Disposition Time
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
EIP	EU Economic and Investment Plan
EU	European Union
EUROJUST	European Union Agency for Criminal Justice Cooperation
EUROPOL	European Union Law Enforcement Agency
FDI	Foreign Direct Investment
FTA	Free Trade Agreements
HCCH	Hague Conference on Private International Law
IRAP	Harmonised Individual Action Plans of Investment Policies
MAP REA	Multi-annual Action Plan for a Regional Economic Area
MILA	Mutual Legal Assistance Instruments
PILA	Private International Law Acts
RCC	Regional Cooperation Council
REA	Regional Economic Area
SAA	Stabilisation and Association Agreement
SEE	South East Europe
SEE JTI	South East Europe Judicial Training Institutions
SME	Small and Medium-sized Enterprises
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCITRAL	United Nation Commission on International Trade Law
WB WGJ	Western Balkans Working Group on Justice
WB6	Western Balkan Six

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EXECUTIVE SUMMARY



The transformation of the Western Balkans region into an economic area and investment hub has been an issue of priority for European Union and Western Balkans six (WB6) economies. Closer judicial cooperation in civil and criminal matters among WB6 economies contributes to this priority. The legal framework of the WB6 on judicial cooperation in civil and criminal matters is considered to be generally in line with international standards. The WB6 economies (except Kosovo*) are part of international organisations and they are engaged in the process of aligning their legislation with the EU acquis. The benefits of the current WB6 judicial cooperation have been reaped due to the existing bilateral agreements between the region's economies on mutual legal assistance in civil and criminal matters. However, different studies, including this one, underline that judicial cooperation in civil matters could be improved if the existing bilateral agreements of WB6 are replaced by a regional agreement. Judicial cooperation in criminal matters remains a "work in progress" in WB6. Efforts have been made to improve legislation but its implementation is not always effective in practice. Rule of law is the cornerstone of judicial cooperation.

The indispensable role of RCC is envisaged in this report. RCC ensures the proficient assessment of any regional developments and facilitates discussions by bringing together key stakeholders (state actors, magistrates, business and experts) from the WB6. In order to foster judicial cooperation as a prerequisite for economic integration, this report suggests the following actions to be taken by WB6, preferably under the auspices of RCC:

WB6 should further improve the legal framework on judicial cooperation in civil and commercial matters by:

- Endorsing a regional convention on jurisdiction, recognition and enforcement of judgments in civil and commercial matters;
- Adhering to the Hague Convention on the recognition and enforcement of judgments in civil and commercial matters;
- Continuing the process of alignment of national legislation with the EU acquis;
- Ensuring the effective implementation of rules on judicial cooperation in criminal matters.

WB6 should built trust by:

- Improving judicial performance, in particular judicial independence and judicial efficiency;
- Improving anticorruption index;
- Increasing cooperation and exchange of good practices between courts.

WB6 should work on developing common networks by:

- Further developing activities under the RCC-established WB WGJ and SEE JTI networks;
- Creating a platform providing necessary information on judicial cooperation in civil and commercial matters, laws, institutions and good practice.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

1. INTRODUCTION



Regional economic integration of Western Balkans Six economies (hereinafter: WB6 economies), namely Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia and Serbia, has been part of the European Union (EU) agenda for a long time. Nevertheless, it has acquired renewed attention during the last decade. EU strategies on WB6 regional economic integration have been designed based on the theoretical prerequisite that a bigger economic market is beneficial not only for their economic development but also for their EU integration process¹. The recently adopted EU Economic and Investment Plan (EIP) acknowledges the complementarity of the WB6 regional economic integration with EU-WB6 economic integration. Indeed, the EIP states that an enhanced market integration of the WB6 could lead to an additional 6.7% of GDP growth to the region².

WB6 economies are part of a free trade area, while the latest initiatives, such as the creation of Regional Economic Area (REA)³ and Common Regional Market (CRM)⁴, have put an emphasis on the establishment of a regional market in line with the EU internal market and four freedoms.

The example of the EU internal market shows that economic cooperation and free movement cannot be developed without judicial cooperation. Transforming the region into an important economic area and investment hub means also having a proficient judicial cooperation, aimed at facilitating the procedures and fostering mobility of businesses and individuals. The relationship between economic development and judicial cooperation is found in in the "Justice" Dimension of the South East Europe (SEE) 2020 Strategy⁵. The rationale behind this dimension is that cross border/boundary judicial cooperation within the SEE can support the free flow of goods and services, as well as the establishment of businesses and investments⁶. The quality of regional cooperation is perceived as important or very important by 84% of large companies of the WB (vs 64% for Small and Medium-sized Enterprises, SME)⁷.

Benefits of the rules on judicial cooperation are not only economical. They promote legal certainty and ensure effective access to justice. By providing the level playing field, they create judicial access also for private persons and SMEs⁸. Thus, they ensure implementation of the rights provided by Article 6 (fair trial) of the European Convention on Human Rights⁹ and Article 47 (judicial protection) of EU Charter of Fundamental Rights¹⁰. Judicial cooperation rules cannot be applicable in the absence of application of the rule of law principles. The

1 Western Balkans: Regional Economic Area, European Commission Paper, 12 July 2017
https://ec.europa.eu/commission/presscorner/detail/hr/MEMO_17_1967.

2 COM (2020) 641, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *An Economic and Investment Plan for the Western Balkans, Brussels*, 6.10.2020, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1811.

3 REA was endorsed by the WB leaders in Trieste Summit on 12 July 2017. Trieste Declaration
https://www.esteri.it/mae/en/sala_stampa/archivionotizie/approfondimenti/trieste-western-balkan-summit-declaration.html.

4 CRM was endorsed in Sofia Summit on 10.11.2020. Sofia Declaration, Regional Cooperation Council | 5th Ministerial Meeting on Environment and Climate Action in the Western Balkans - Introductory remarks by RCC SG, www.rcc.int.

5 South East Europe 2020 Strategy: Jobs and Prosperity in a Europe Perspective, (2013)
<https://www.rcc.int/pages/86/south-east-europe-2020-strategy>.

6 *ibid*.

7 Balkan Barometer (2020) Business Opinion Analytical Report RCC p.142 <https://www.rcc.int/pubs/96/balkan-barometer-2020-business-opinion-survey>.

8 Batman, A., et al. (2015), *European Civil Procedure Law: A Role Model for Potential Candidate States in the Western Balkan Region?* p.3.

9 Convention for the Protection of Human Rights and Fundamental Freedoms (1953), Treaty no.005, Rome, 04/11/1950.

10 Charter of Fundamental Rights of the European Union (2012), OJ C 326, 26.10.2012.

rule of law principles, in particular those related to the performance of justice institutions, are fundamental for proper implementation of judicial cooperation legislation.

This report provides an overview of the existing legal framework of the WB6 economies on judicial cooperation in criminal and civil/commercial matters. The report highlights whether the existing legal framework is sufficient enough to promote judicial cooperation and foster free circulation of judgments. It summarises some of the main findings on the rule of law performance of WB6, in particular those related to judicial performance.

The general analysis is based on desk research. The relevant information was collected from different studies and reports analysing the rules on judicial cooperation in criminal and civil matters and the rule of law performance of the WB6.

2. REGIONAL ECONOMIC INTEGRATION ACHIEVEMENTS AND GOALS



In the last two decades EU has supported many initiatives to promote regional economic integration of the WB6 economies. The Central European Free Trade Agreement (CEFTA) came into force in 2007, and it substituted the bilateral free trade agreements signed in the framework of the Stability Pact¹¹. CEFTA remains a cornerstone of the regional trade cooperation of the WB6 economies focusing on the elimination of trade barriers for goods and services, ensuring transparency and providing arbitration for resolving disputes among parties¹².

Studies show that the introduction of CEFTA led to more success than the bilateral Free Trade Agreements (FTAs) between WB6 economies and it increased intraregional trade by 37.7% (compared to the positive impact of bilateral FTAs on regional exports equalling 13.9%)¹³. Moreover, the latest SEE2020 annual report on implementation shows an increase of exports in the region, leading to 94% achievement of the SEE2020 trade balance target¹⁴.

The Berlin Process, initiated in 2014¹⁵, reinforced regional integration in the WB6 region. The process expanded further and led to the endorsement by the WB6 Leaders of an ambitious Action Plan aiming to create a Regional Economic Area (REA). Thus, the *Multi-annual Action Plan for a Regional Economic Area* (MAP REA) was endorsed in July 2017¹⁶, at the Trieste Summit held in the framework of the Berlin Process. The MAP REA objectives built on the commitments agreed within CEFTA and SEE 2020 Strategy, and on EU principles reflected in the Stabilisation and Association Agreements (SAA).

More precisely, REA aim has been "to transform [the] Region in which goods, services, investments, and skilled people move freely without tariffs, quotas or other unnecessary barriers"¹⁷. Indeed, the MAP REA has foreseen skills and mobility as one of the main pillars together with: trade, investment and digital integration. The implementation of the MAP REA concluded with achievements such as the Western Balkans Roaming Agreement¹⁸, annual organisation of the Western Balkans Digital Summit; endorsement and validation of the Regional Investment Reform Agenda (RIRA) and subsequent adoption of IRAPs (harmonised Individual Action Plans of investment policies); agreement on the creation of a regional database of Research Infrastructure; and so forth¹⁹.

In the enhanced agenda following REA, the WB6 economies have put forward an Action Plan for a Common Regional Market (CRM)²⁰ 2021-2024, based on the four freedoms of the EU and expanded by the digital, innovation and industry, and investment areas. The Declaration on CRM and the endorsement of the CRM Action Plan by the Leaders of the Western Balkans at the Sofia Summit recognised the need for deeper economic cooperation with the EU, in light of the post-pandemic recovery efforts²¹.

¹¹ <https://cefta.int/>

¹² Implementing the CEFTA 2006 Agreement: Reaping the benefits of trade and investment integration in South East Europe, https://www.oecd.org/global-relations/Reaping_the_benefits_of_trade_and_investment.pdf

¹³ Weiss, S. (2020) *Pushing on a string? An evaluation of regional economic cooperation in the WB*, p.9.

¹⁴ South East Europe 2020: Annual Report on Implementation 2019, p.16, <https://www.rcc.int/docs/479/south-east-europe-2020-2019-annual-report-on-implementation-rn>.

¹⁵ Berlin Process started in 2014. The first WB conference was held on 28 august 2014. Information on the process is available at <https://berlinprocess.info>

¹⁶ MAP REA, RCC https://www.rcc.int/priority_areas/39/multi-annual-action-plan-for-a-regional-economic-area-in-the-western-balkans--map

¹⁷ *ibid.*

¹⁸ The agreement was found useful by 40% of the business community in the region. BB, Business Opinion, p.51.

¹⁹ SEE 2020 Annual Report on Implementation 2019, *supra* note 14.

²⁰ CRM Action Plan 2021-2024, <https://www.rcc.int/events/1394/shaping-the-common-regional-market-crm-2021-2024-action-plan>

²¹ Western Balkan Leader's Declaration on Common Regional Market (2020), 9.11.2020 <https://www.rcc.int/docs/544/declaration-on-common-regional-market>

The CRM ambitious agenda is consisted of targeted actions in four key areas:

- **regional trade area: free movement of goods, services, capital and people**, including crosscutting measures, such as the Green Lanes, to align with EU-compliant rules and standards and provide opportunities for companies and citizens;
- **regional investment area**, to align investment policies with the EU standards and best international practices and promote the region to foreign investors;
- **regional digital area**, to integrate the Western Balkans into the pan-European digital market; and
- **regional industrial and innovation area**, to transform the industrial sectors, shape value chains they belong to, and prepare them for the realities of today and challenges of tomorrow.

The CRM foresees rules and regulations aiming to be aligned with the core principles governing the EU internal market (based on the four freedoms approach through mutual recognition arrangements, removing obstacles, and cutting costs and time needed for goods, services, capital and people to move freely across the region)²².

Boosting mobility is one of the objectives of the CRM. According to the Sofia Summit Declaration, more efforts are required to remove the barriers to free movement of people²³. These efforts shall be embodied through the initiative to sign a Regional Agreement for free movement with ID cards, which might affect several sectors across the region. The CRM 2021-2024 Action Plan foresees the following measures that aim to increase mobility of individuals on the basis of ID cards: signing a Western Balkans Agreement on Freedom of Movement and Stay and a Western Balkans Agreement on Freedom of Movement of Third-Party Citizens²⁴.

Needless to say, the introduction of economic integration based on the EU four freedoms approach helps regional economic integration of WB6. Therefore, the adoption of the agreements foreseen in the joint Action Plan (CRM) shall accelerate regional economic integration.

3. JUDICIAL COOPERATION IN WB6



²² CRM Action Plan 2021-2024, supra note 20.

²³ Sofia Declaration, supra note 4.

²⁴ CRM Action Plan 2021-2024, supra note 20.

3.1 JUDICIAL COOPERATION IN CIVIL AND CRIMINAL MATTERS: THE EU EXAMPLE

As the Treaty on the Functioning of the EU (TFEU) defines it, 'an internal market comprises an area without internal frontiers in which free movements of goods, persons, services and capital is ensured'²⁵. In the framework of European integration, actions on judicial cooperation in civil and criminal matters came along as the need to support the better functioning of the internal market as well as establish the area of freedom, security and justice²⁶.

The Tampere European Council of 1999 concluded that "in a genuine European area of justice, individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States". This confirmed their commitment to establish a genuine area of justice "where people can approach courts and authorities in any Member State as easily as in their own"²⁷. Thus, EU institutions were engaged in the process of putting forward the catalogue of measures in the area of judicial cooperation in civil and criminal matters. Moreover, dedicated structures such as EUROJUST²⁸, EUROPOL²⁹, or EJM in Civil and Commercial Matters³⁰ were created to ensure judicial cooperation among Member States.

The EU legislation on judicial cooperation in criminal and civil matters is based on the principles of *mutual recognition and mutual trust*³¹. The principle of mutual recognition means that one Member State recognises the judicial or administrative act of another Member State and treats them as if they were acts of the state itself, despite the differences in the legal systems³². The EU has also recognised that it would be hard to apply the principle of mutual recognition of judicial decisions (the principle which serves as the very basis of judicial cooperation between the Member States) without developing the principle of *mutual trust* between the Member States. The EU does not define mutual trust. However, based on the interpretation given, mutual trust is ensured by the courts of Member States whenever they comply with the rule of law principles. Mutual trust remains the security check of proper implementation of fundamental rights and values by the courts of the Member States³³.

The principle of mutual recognition is the cornerstone of the EU judicial cooperation. The application of the principle on judicial cooperation in civil and commercial matters has fostered the free circulation of judgments and reduced the costs for businesses and individuals. In her declaration delivered prior to the adoption of Brussels Ibis Regulation on jurisdiction recognition and enforcement of judgments in civil and commercial matters³⁴, EU Justice Commissioner Věra Jourová stated that:

²⁵ Article 26 of the TFEU, Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326 26.10.2012

²⁶ Area without frontiers is known as Area of freedom, security and justice regulated by title V of TFEU, *ibid.*

²⁷ Presidency Conclusion, Tampere European Council, 15/16 October 1999, https://www.europarl.europa.eu/summits/tam_en.htm

²⁸ European Union Agency for Criminal Justice Cooperation, <https://www.eurojust.europa.eu/>

²⁹ European Union Agency for Law Enforcement Cooperation, <https://www.europol.europa.eu/>

³⁰ European Judicial Network for Civil and Commercial Matters https://e-justice.europa.eu/content_european_judicial_network_in_civil_and_commercial_matters-21-en.do

³¹ See articles 81 and 82 of the TFEU, *supra* note 25

³² Wischmeyer, T. (2016). *Generating Trust through Law? Judicial Cooperation in the European Union and the "Principle of Mutual Trust"*. German Law Journal, 17(3), 339-382.

³³ *Ibid.* p.35

³⁴ Regulation (EU), 1215/12 of the European Parliament and the Council on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, OJ L 351/1 20.12.2012

*"This is very good news for Europe's citizens and SMEs. These rules could bring saving of €2,000 per individual case, up to €48 million each year within the EU. It is a successful delivery on the promise to cut red tape and strengthen the EU's Single Market. Such action will make a significant difference in particular for small and medium enterprises and will open up many more opportunities for business across Europe"*³⁵.

The Brussels Ibis Regulation provided for automatic recognition of foreign judgments and abolishment of *exequatur*. It means that judgments issued in one Member State shall be recognised and enforced in another Member State with simplified procedural steps³⁶.

On the other hand, the EU judicial cooperation rules in criminal matters have created a harmonisation of criminal procedural values based on trust and protection of human rights. They also enabled joint actions against common phenomena and problems, such as terrorism, organised crimes, money laundering, cybercrime and corruption³⁷.

3.2 JUDICIAL COOPERATION IN CIVIL AND CRIMINAL MATTERS IN WB6

Rules on judicial cooperation in civil and criminal matters govern the interaction between different legal systems in cross border/boundary situations. At present, judicial cooperation in civil and criminal matters in WB6 economies is based on international and bilateral agreements, as well as the relevant national legislation.

3.2.1 JUDICIAL COOPERATION IN CIVIL AND COMMERCIAL MATTERS IN WB6

The area of civil law is very broad. It includes substantive and procedural law, in civil, commercial and family matters. The notion of *civil and commercial matters*, whenever used by international³⁸ or EU law instruments³⁹, is very often limited to economic relations, excluding family matters, and other areas such as revenues, customs or administrative matters⁴⁰.

Judicial cooperation in civil and commercial matters covers areas of international jurisdictions of courts, recognition and enforcement of judgments, and other civil mutual assistance issues. The judicial cooperation in civil and commercial matters between the WB6 economies is regulated by means of regional instruments (bilateral treaties), international treaties and national rules.

a) International conventions

Different analyses show that the harmonisation of judicial cooperation rules through means of international instruments has a great impact on the mobility of business and individuals since they ensure legal certainty and predictability. The two most important Conventions

³⁵ Declaration of Věra Jourová, EU Commissioner for Justice Consumer and Gender Quality https://ec.europa.eu/commission/presscorner/detail/en/IP_15_3080

³⁶ Brussels Ibis Regulation, *supra* note 34

³⁷ <https://eur-lex.europa.eu/summary/chapter/2303.html>

³⁸ HCCH Convention of 2 July 2019 on the recognition and enforcement of foreign judgments, www.hcch.net

³⁹ Regulation Brussels Ibis, *supra* note 34

⁴⁰ For the purpose of this study family matters will be excluded from the analysis, as will be treated in a separate study. However, a list of existing multilateral conventions as well as EU law instruments on family matters relevant for WB6 will be attached to report (Annex 1- International and European Instruments on family matters-cross border/boundary issues)

on determination of international jurisdiction of courts and recognition and enforcement of foreign judgments are the Hague Choice of Court Agreements⁴¹ and the Hague Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters⁴². Both conventions came as a response to the needs to address cross border/boundary disputes in the increased area of trade and mobility in various parts of the world⁴³. At present, Montenegro and North Macedonia are part of the Hague Convention on Choice of Court Agreement.

The Hague Judgment Convention is rather new. If the WB6 economies join Hague Judgment Convention, they will not face obstacles in terms of its implementation, since most of the solutions provided by this Convention are familiar to the WB6 economies. This instrument might have long lasting coherences for the legal certainty, procedural predictability and in the end for the economic development of the region⁴⁴.

Almost all the economies of WB6 have adhered to the Hague Convention "On service overseas to judicial and extrajudicial documents in civil and commercial matters"⁴⁵. As a result, rules for the service of the judicial and extrajudicial documents with the members of the said Convention are made according to the terms defined in the Convention, including Ministries of Justice as central authorities for the implementation of the Convention. The Hague Services Convention provides for a secure and standardised transmission procedure for judicial and extrajudicial documents in civil or commercial matters between parties, including WB6 economies.

WB6 economies are also members of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (HCCH 1970 Evidence Convention). The Hague Evidence Convention establishes two methods of cooperation for the taking of evidence abroad in civil or commercial matters. The Convention provides effective means for taking evidence in cross border/boundary circumstances, via (i) Letters of Request, and (ii) diplomatic or consular agents and Commissioners. By enabling a variety of mechanisms, the Convention has provided effective solutions to overcome differences between legal systems⁴⁶.

Despite the standardised and harmonised rules that both Conventions provide with regard to service of documents and taking of evidence, it should be emphasised that the procedures are channelled through government institutions⁴⁷.

The Hague Conference on Private International Law (HCCH) represents the multilateral body in charge of the adoption of the multilateral conventions in the area of judicial cooperation in civil and family matters. It has adopted many conventions on internal procedures and applicable law. With the exception of Kosovo*, the rest of the WB6 economies are members of HCCH and they have adopted civil assistance conventions but not the one related to judicial cooperation (Table1).

41 HCCH Convention of 30 June 2005 on the choice of court agreement, www.hcch.net

42 HCCH Judgments Convention (2019) supra note 38

43 Explanatory Report Hague Judgment Conventions 2020, Explanatory report on Hague Choice of Court Convention 2005, www.hcch.net

44 Rumanov, I. (2019), *Implication of the new 2019 Hague Convention on recognition and enforcement of judgments on the national system of the countries in South Eastern Europe*, p.433

45 HCCH Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, www.hcch.net

46 HCCH Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters (HCCH 1970 Evidence Convention), Evidence Section, www.hcch.net

47 See, for example, information provided by Hague Conference, www.hcch.net
<https://www.hcch.net/en/instruments/conventions/authorities1/?cid=82>

Table 1 HCCH Conventions on Civil and Commercial Matters

Hague Conventions	Albania	Bosnia and Herzegovina	Montenegro	North Macedonia	Kosovo*	Serbia
Convention of 30 June 2005 on the choice of court agreements	x	x	R/2018	S/2019	n/a	x
Convention of 2 July 2019 on the recognition and enforcement of foreign judgments in civil or commercial matters	x	x	x	x	n/a	x
Convention of 25 October 1980 on the international access to justice	R/2007	R/1993	R/2007	R/1993	n/a	R/2001
Convention of 5 October 1961 on the abolishing the requirement of legalisation for foreign public documents	R/2003	R/1993	R/2007	R/1993	n/a	R/2001
Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matter	R/2010	R/2008	R/2012	R/2009	n/a	R/2010
Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters	R/2006	R/2008	R/2012	R/2008	n/a	R/2010

WB6 economies are also part of other international agreements adopted in the framework of United Nations (UN) (Table 2) and Council of Europe (CoE) (Table 3).

Table 2 UN Conventions on Civil and Commercial Matters

UN Conventions	Albania	Bosnia and Herzegovina	Kosovo*	Montenegro	North Macedonia	Serbia
Convention of 7 June 1959 on the recognition and the enforcement of foreign arbitral awards	2001/A	1993/D	n/a	2006/D	1994/D	2001/D
Convention of 1 January 1988 on the contracts for the international sale of goods	2009/A	1994/D	n/a	2006/D	2006/D	2001/D

UN Conventions	Albania	Bosnia and Herzegovina	Kosovo*	Montenegro	North Macedonia	Serbia
European convention of 21 April 1961 on international commercial arbitration	2001/A	1993/D	n/a	2006/D	1994/D	2001/D

Table 3 CoE Conventions on Civil and Commercial Matters

UN Conventions	Albania	Bosnia and Herzegovina	Kosovo*	Montenegro	North Macedonia	Serbia
European Convention of 17 December 1969 on the information on foreign law	2001/R	2013/R	n/a	2002/A	2003/R	2002/A
European Agreement of 28 February 1977 on the transmission of applications for legal aid	2001/R	2009/R	n/a	2005/R	2003/R	2005/R

b) Bilateral agreements

Most of the WB6 economies have signed bilateral agreements on mutual legal assistance in civil matters (Table 2). Judicial cooperation in civil and commercial matters provided under these agreements includes rules on recognition and enforcement of judgments, legal assistance in service of judicial and extrajudicial documents.

Although the bilateral agreements between economies of former Yugoslavia provide simplified mutual legal assistance between courts⁴⁸, still this is not enough to promote judicial cooperation between WB6 economies. The positions of Albania and Kosovo* are rather different compared to other economies when it comes to bilateral cooperation. Moreover, the existing bilateral agreements have their own limits. In most of the cases they have a broader scope including also criminal or family matters. They lack rules on determination of international jurisdiction of the courts and other important elements of judicial cooperation.

The difficult and complex system of recognition and enforcement of judgments in civil matters in the WB6⁴⁹ has been analysed at length in the framework of the adoption of the Regional Convention on the jurisdiction, mutual recognition and enforcement of judgments (known as the Sarajevo Convention)⁵⁰. In 2008, a Regional Convention on the jurisdiction, mutual recognition and enforcement in civil and commercial matters was initiated by the WB6 economies with the support of the EU. The Convention was designed to address issues of international procedures, in particular jurisdiction, recognition and enforcement of judgments based on the principle of automatic recognition, with a possible extension

48 Djordjevic S. (2017), *National report for Serbia*, in J Basedow, G Ruhl et al. Encyclopaedia of Private International Law, Volume 3, National Reports, EE 2017, p.2472

49 GiZ ORF for SEE - Legal Reform - presentation of the sub-project on cross border jurisdiction based on the national reports presented at Sarajevo Conference of 2011. Uitdehaag, J, Vincken E., (2011) *Civil Enforcement in the Western Balkans, An overview of the present situation and future developments in various legal systems in the Western Balkans*, BERP

50 Meskic, Z. (2016), *Regional Convention on Jurisdiction and Mutual Recognition and Enforcement of Judgments in Civil and Commercial Matters (Sarajevo Convention) - a perspective of Bosnia of Herzegovina*

to service of documents and taking of evidence. The intention was to replace the existing bilateral agreements among WB6 economies (without superseding the more favourable regime provided by the existing bilateral agreements, if that was the case) and follow the model rules of Brussels Ibis Regulation on the jurisdiction, recognition and enforcement of judgments⁵¹.

The scope of the Convention was limited to civil and commercial matters, while family and succession law matters were excluded. The idea was to use the regime provided by the Regional Convention until these economies became members of the EU⁵². Although the draft of the Convention was prepared by a group of experts under the auspices of Regional Cooperation Council (RCC) and endorsed by the Ministers of Justice, it has never entered into force⁵³.

Table 4 Bilateral Agreements on Civil and Commercial Matters

Economies	Bilateral agreements
Albania	Agreement with North Macedonia on mutual legal assistance in civil and criminal matters, Official Gazette no.7/1998
Bosnia and Herzegovina	Agreement with North Macedonia on mutual legal assistance in civil and criminal matters, Official Gazette no.16/06 and 1/14 Agreement with Montenegro, on mutual legal assistance in civil and criminal matters, Official gazette no.7/11 Agreement with Serbia on mutual legal assistance in civil and criminal matters, Official Gazette no. 11/2005 and 8/10 Agreement with Serbia and Montenegro on mutual legal assistance in civil and criminal matters, Official Gazette no. 11/2005
Kosovo*	NA
Montenegro	Agreement with Bosnia and Herzegovina on mutual legal assistance in civil and criminal matters, Official Gazette no. 15/2010 Agreement with North Macedonia on mutual legal assistance in civil and criminal matters, Official Gazette no. 22/2004 Agreement with Serbia on mutual legal assistance in civil and criminal matters, Official Gazette no. 4/2009
North Macedonia	Agreement with Albania on mutual legal assistance in civil and criminal matters, Official Gazette no.16/1998 Agreement with Bosnia and Herzegovina on mutual legal assistance in civil and criminal matters, Official Gazette no.10/2006 Agreement with Montenegro on mutual legal assistance in civil and criminal matters, Official Gazette no. 55/2016 Agreement with Serbia on mutual legal assistance in civil and criminal matters Official Gazette, no.15/2013 Agreement with Serbia and Montenegro on mutual legal assistance in civil and criminal matters, Official Gazette no.55/2016

51 Batman A., et al, *European civil procedure law: a role model for potential candidate states in the Western Balkan Region?*, supra note 8

52 Jeessl Holst, Ch. *Western Balkans Regional Convention*, in Basedow, J (ed), Rühl.G (ed), Ferrari.F (ed), De Miguel Asensio. P (ed), et al in Encyclopedia of Private International law, p1832

53 RCC press release (2012), <https://www.rcc.int/press/187/south-east-european-experts-prepare-regional-conventions-on-criminal-civil-and-commercial-matters-under-rcc-auspices>

Economies	Bilateral agreements
Serbia	Agreement with Bosnia and Herzegovina on mutual legal assistance in civil and criminal matters, Official Gazette no.13/2010
	Agreement with Montenegro on mutual legal assistance in civil and criminal matters, Official Gazette, no.1/2010
	Agreement with North Macedonia on mutual legal assistance in civil and criminal matters, Official Gazette no.5/2012
	Agreement with Bosnia and Herzegovina and Montenegro on mutual legal assistance in civil and criminal matters, Official Gazette no.6/2005
	Agreement with Montenegro and North Macedonia on mutual legal assistance in civil and criminal matters, Official Gazette no.22/2004

c) National legislation

Rules on jurisdiction recognition and enforcement of judgments are also regulated by procedural laws and private international laws acts (PILAs) of the WB6 economies (Table 3). The legal framework of the WB6 related to judicial cooperation and other civil mutual assistance issues is subject to constant change due to its harmonisation with the EU *acquis*⁵⁴. WB6 economies have concluded SAA with the EU and are part of the EU Enlargement process⁵⁵. Approximation of national legislation with the EU *acquis* is the cornerstone of the SAA⁵⁶ and EU membership obligations⁵⁷.

Reformed PILAs of the WB6 economies provide similar rules on the determination of international jurisdictions of the courts. Court competence to adjudicate cases with foreign elements is based on similar factors. The WB6 economies have approximated their legislation with the EU *acquis* in this field (Brussels Ibis Regulation on jurisdiction, recognition and enforcement of judgments in civil and commercial matters). However, full approximation is to be achieved once the WB6 economies become part of the EU. The PILA of North Macedonia (2020) and that of Montenegro (2014) are harmonised with Brussels Ibis Regulation⁵⁸. The Albanian PILA (2011) reflects some of the rules provided in Brussels Ibis Regulation, while PILAs of Serbia (since 2014) and Kosovo* (since 2018) are still under reform process.

The process for recognition and enforcement of foreign judgments in WB6 economies as provided by their reformed PILAs (with exception of Albania where the process is regulated under Civil Procedure Code) is based on similar principles and procedures. WB6 PILAs set the procedures and the competent courts for recognition and enforcement of judgments.

54 A list of EU *acquis* on judicial cooperation/mutual assistance in civil matters is attached to the report (Annex II – EU *acquis* on international civil procedure)

55 Current status of the WB6 economies vis-à-vis EU integration can be found at: https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status_en

56 See, for example, Articles 6 and 70 of SAA European Council and Commission, 'Council and Commission Decision of 26 February 2009 concerning the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part OJ L 107/165 and Articles 6 and 70 of SAA European Council and Commission, 'Council and Commission Decision of 16 June 2008 concerning the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina no. 5/08

57 EU *acquis* on judicial cooperation in civil and commercial matters is part of Chapter 24 of the accession negotiations. Short description of the contents of the chapters can be found at https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

58 See, for example, 'Private International Law Act of Republic of North Macedonia, Official Gazette of the Republic of North Macedonia no. 32, on 10 February 2020

A certificate of validity and enforceability of the judgment is attached to the court decision. The right of appeal is ensured and there is no discrimination when it comes to court fees⁵⁹.

The legal acts of WB6 economies also provide similar grounds for non-recognition of judgments. They are also in line with international and EU legal grounds for refusal of foreign judgments⁶⁰. Recognition and enforcement of foreign judgments can be refused:

- if the matter falls under the exclusive jurisdiction of the other court;
- if there is another final judgment in the same court matter;
- if there is a parallel proceeding in the requiring court;
- if it is contrary to the public policy of the requesting court;
- if there are procedural violations (i.e. deficiencies in the notification procedures);
- if the judgments do not have a confirmation finality in terms of the law of the "country of origin"⁶¹.

The WB6 economies have adopted law on insolvency, which includes also rules on recognition and enforcement on cross border/boundary insolvency. In most cases, legislation was inspired by UNCITRAL model law on cross border insolvency⁶².

The service of the judicial documents or taking of evidence is usually regulated by procedural laws. The process is fundamental for the due process of law⁶³. The proper service of documents is also an important element of the enforcement system⁶⁴. In WB6 service of documents has been often an issue of concern. In practice it appears that documents are either not delivered at all, or not delivered in time, or it is impossible to find the right address⁶⁵. In most of the WB6 economies, notifications are made by court officers (Albania, Bosnia and Herzegovina, Kosovo*, Serbia) or registered post (Albania, Bosnia and Herzegovina, Montenegro) or a dedicated body (Bosnia and Herzegovina, Montenegro). Limited application of electronic communication is noticed (Albania, North Macedonia, Kosovo*).

The two main instruments at EU level to deal with conflict of laws on civil and commercial matters are Rome I Regulation⁶⁶ on the law applicable to contractual obligations and Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II Regulation)⁶⁷. These instruments have enabled the creation of a uniform set of conflict-of-law rules for non-contractual obligations in civil and commercial matters. They seek to improve legal certainty and the predictability of the outcome of litigation.

The recently adopted PILAs of WB6 economies have been almost fully harmonised with Rome I (law applicable on contractual obligations) and Rome II (law applicable on non-contractual obligations)⁶⁸.

59 See, for example, Private International Law Act of Montenegro, Official Gazette no. 1/2014

60 See Hague Judgments Convention, supra note 38 and Regulation Brussels Ibis, supra note 34

61 See, for example, Private International Law Act, Montenegro, supra note 59

62 https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency

63 Service of documents a guide for self-represented litigants, available at: https://www.lec.justice.nsw.gov.au/Documents/service_of_documents_lip.pdf

64 Civil Enforcement in the Western Balkans <https://www.cilc.nl/cms/wp-content/uploads/2014/11/Civil-Enforcement-in-the-Western-Balkans.pdf>

65 Ibid

66 Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations, OJ L 177, 4.7.2008

67 Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable on non-contractual obligations, OJ L 199, 31.07.2007

68 See, for example, art 45 and seq of the Albanian Private International Law, Official Gazette, Albania no.82/2011 or article 38 and seq of Private International law of Montenegro, Official Gazette, no 1/2014

Harmonised internal rules on the judicial cooperation in civil matters promote legal predictability and legal certainty for foreign citizens and businesses. However, they cannot replace the effect of a regional agreement.

Table 5 National Legislation on Civil and Commercial Matters

Albania	Civil Procedure Code, no. 8116/1996 as amended, Official Gazette of Albania no.9, 10 and 11/1996 Private International Law, no.10428/2011, Official Gazette of Albania no.82 2011 Bankruptcy Law no.110/2016, Official Gazette of Albania no. 226/2016
Bosnia and Herzegovina	Law on resolution of conflict of laws with regulations of other countries, Official Gazette of SFRY nos. 43/82, 72/82 Law on Enforcement Procedure of the Federation of Bosnia and Herzegovina, FBiH Official Gazette nos. 32/03, 52/03, 33/06, 39/06 and 39/09 Law on Enforcement Procedure of the Brcko District of Bosnia and Herzegovina, Official Gazette of the Brcko District BiH nos. 8/00, 1/01, 5/02 and 8/03 Law on Enforcement Procedure of the Republika Srpska, Official Gazette of RS nos. 59/03 85/03, 64/05 and 118/07 Bankruptcy Procedure Act, Official Gazette no. 16/16
Kosovo*	Law on resolution of conflict of laws with regulations of other countries, Official Gazette of SFRY no.43/82 and 72/82 Law on Executive Procedure No. 04 / L-139, Official Gazette of Kosovo* / no. 3/31,2013 Law on Controversial Procedure 03/L006 as amended, Official Gazette of Kosovo* no. 38/20, 2008 Law no 05/L-68 on bankruptcy, Official Gazette of Kosovo* no. 23/7, 2016
Montenegro	Private International Law Act, Official Gazette of Montenegro no. 1/2014 Civil Procedure Law, Official Gazette of Montenegro no. 22/04 and 76/06 Law on Enforcement and Securing of Claims, Official Gazette of Montenegro no. 36/2011 Law on Civil Procedure and Law on Executive Procedure, Official Gazette of Montenegro no. 23/04. Law on Insolvency of Business Organisations, Official Gazette of Montenegro nos. 06/2002, 01/2006, 02/2007 and 62/2008
North Macedonia	Private International Law Act, Official Gazette of North Macedonia no. 32/2020 Law on Civil Procedure and the Law on Enforcement, Official Gazette of North Macedonia nos. 35/2005,50/2006, 129/2006, 8/2008 and 83/09 Law on Enforcements, Official Gazette of North Macedonia no. 72/16, 142/16, 233/18 and 14/20 Bankruptcy Act, Official Gazette of North Macedonia no. 34/2006
Serbia	Civil Procedural Law, Official Gazette of Serbia no. 125/04 and 111/2009 Law on Enforcement and Security Interest, Official Gazette of Serbia no. 54.2019 and 9/2020 Law on resolution of conflict of laws with regulations of other countries, Official Gazette of SFRY no.43/82 and 72/82 Law on Enforcement Procedure, Official Gazette of Serbia no.125/04 Insolvency Act, Official Gazette of Serbia nos. 104/2009, 99/2011, 71/2012, 83/2014, 113/2017, 44/2018 and 95/2018

d) Agencies for judicial cooperation

Inspired by the EU example and in order to promote cooperation among justice institutions of the region, the RCC has established the Western Balkans Working Group on Justice (WB WGJ), and the SEE Judicial Training Institutions Network (SEE JTI)⁶⁹ in 2014 and 2016 respectively. The idea behind this was to use the Networks as regional platforms for discussing and analysing topics of common interest, exchanging experiences, learning from the challenges and good practices of the participants as well as reinforcing their mutual trust and confidence. The launch of the initiative was followed by several activities of the WB WGJ and SEE JTI discussing issues of future cooperation in the region⁷⁰.

These are welcome initiatives to also support judicial bodies in the WB6 region and to reinforce mutual trust. However, in order to make more visible and provide better access to the information on legal and institutional setup of the region, these platforms or other platforms may be further developed. One good example is the European Judicial Network in Civil and Commercial Matters. Information provided therein is relevant not only for judicial representatives, but also for citizens and businesses⁷¹.

3.2.2 JUDICIAL COOPERATION IN CRIMINAL MATTERS IN WESTERN BALKANS

Judicial cooperation in criminal matters is very important nowadays. It consists of the mutual recognition of judgments and mutual assistance in criminal matters. The globalisation of criminal activities has created a need for strengthened forms of international cooperation. The investigation, prosecution and control of crimes cannot be confined within national boundaries. International legal assistance in criminal matters includes all actions and procedures for extradition, transfer of the convicted persons, transfer of the criminal process from one economy to another, letters rogatory, service of procedural documents abroad and other procedures established by international conventions and agreements⁷².

Judicial cooperation in criminal matters in WB region is very important also from the EU integration perspective of the WB6 economies. The judicial cooperation in criminal matters between the Western Balkan economies is provided for in different ways. It is based on regional instruments (bilateral treaties), accession to international treaties and national legislation.

a) International conventions

International treaties in criminal cooperation matters are important instruments in the fight against organised crime, cyber-crime, corruption and so forth. They are essential not only in creating mechanisms, agencies and providing minimum standards, but also in creating a unified criminal justice system. They provide the necessary legal grounds for the recognition of judgments, mutual legal assistance, extradition, exchange of information, protection of victims, etc. WB6 economies have signed many international instruments within the framework of their membership in international organisations, such as CoE (Table 6) and UN (Table 7), with the exception of Kosovo*. Council of Europe conventions are important for criminal cooperation. They have served as the basis on which the EU has reformed its criminal cooperation legislation. The level of ratification of the relevant Council of Europe conventions by the WB6 economies is rather high.

⁶⁹ <https://www.rcc.int>

⁷⁰ <https://www.rcc.int>

⁷¹ <https://e-justice.europa.eu/ejncivil>

⁷² Markovic O.(ed), (2019) *Regional judicial cooperation in criminal matters: Overview of comparative practices of Western Balkan Countries*, CEDEM, p. 89

Table 6 CoE Conventions on Criminal Matters

CoE Conventions and Agreements	Albania	Bosnia and Herzegovina	Kosovo*	Montenegro	North Macedonia	Serbia
European Convention of 12 June 1962 on the mutual assistance in criminal matters	2000/R	2005/R	n/a	2006/R	1999/R	2002/A
European Convention of 30 March 1978 on the transfer of proceedings in criminal matters	2000/R	2005/R	n/a	2002/A	2004/R	2002/A
European Convention of 1 July 1985 on the transfer of sentenced persons	2000/R	2005/R	n/a	2002/A	1999/R	2002/A
European Convention of 13 December 1957 on Extradition	1998/R	2005/R	n/a	2002/A	1999/R	2002/A

Table 7 UN Conventions on Criminal Matters

UN Conventions	Albania	Bosnia and Herzegovina	Kosovo*	Montenegro	North Macedonia	Serbia
Convention of 11 November 1990 against illicit traffic in narcotic drugs and psychotropic substances	2001/A	1993/D	n/a	2006/D	1993/A	2001/D
Convention of 14 December 2005 against corruption	2006/R	2006/R	n/a	2006/D	2007/R	2005/R
Convention of 10 April 2002 for the suppression of the financing of terrorism	2002/R	2003/R	n/a	2006/D	2004/R	2002/R
Convention of 29 September 2003 against transnational organised crime	2002/R	2002/R	n/a	2006/D	2005/R	2001/R

b) Bilateral agreements

Bilateral agreements are important instruments of judicial cooperation in criminal matters. WB6 economies have increased their willingness to conclude bilateral agreements between them, however the principle of reciprocity applies in few cases. As it was mentioned above, these agreements cover both civil and criminal matters. Nevertheless, some of the economies report that the agreements have proved to be efficient to expedite criminal proceedings in practice⁷³.

73 Marković O., (2019) Regional Judicial Cooperation in Criminal Matters, supra note 73, p.94

Table 8 Bilateral Agreements on Criminal Matters

Economy	Signed agreements	Bilateral Agreements
Albania ⁷⁴	North Macedonia	Agreement between Albania and North Macedonia on legal assistance in judicial decisions in civil and criminal matters (1998)
	Kosovo*	Agreement between Albania and Kosovo* on legal assistance in civil and criminal matters (2013)
	Bosnia and Herzegovina	Protocol on cooperation between Bosnia and Herzegovina and Albania (2013)
Bosnia and Herzegovina ⁷⁵	Montenegro	Treaty between Bosnia and Herzegovina and Montenegro on legal assistance in civil and criminal matters (2010).
	Serbia	Treaty between Bosnia and Herzegovina, Serbia and Montenegro on legal assistance in civil and criminal matters (2005). Treaty between Bosnia and Herzegovina and Serbia on legal assistance in civil and criminal matters (2010).
	Albania	Protocol on cooperation between Bosnia and Herzegovina and Albania (2013)
	North Macedonia	Agreement between Bosnia and Herzegovina and North Macedonia on legal criminal matters 2005, (amended 2013)
Kosovo ⁷⁶	Albania	Agreement between Albania and Kosovo* on mutual legal assistance in criminal matters (2013)
	North Macedonia	Agreement between North Macedonia and Kosovo* on legal assistance in criminal matters (2012)
	Serbia	Procedures on mutual legal cooperation agreed between Belgrade and Pristina (2015)
Montenegro ⁷⁷	Serbia	Agreement between North Macedonia and Serbia-Montenegro on legal assistance in civil and criminal cases (2016)
	Bosnia and Herzegovina	Treaty between Bosnia and Herzegovina and Montenegro on legal assistance in civil and criminal matters (2010)
	North Macedonia	Agreement between North Macedonia and Serbia-Montenegro on legal assistance in civil and criminal cases (2016)

74 http://www.pp.gov.al/web/Instrumentet_Dypaleshe_620_1.php#.X5qg8ohKjIU

75 http://www.mpr.gov.ba/organizacija_nadleznosti/medj_pravna_pomoc/bilateralni_ugovori/ugovori/default.aspx?id=3813&langTag=bs-BA

76 <https://gzk.rks-gov.net/BrowseInstByCat.aspx?Index=1&CatID=2>

77 <https://mpa.gov.me/en/ministry>

Economy	Signed agreements	Bilateral Agreements
North Macedonia ⁷⁸	Albania	Agreement between North Macedonia and Albania on legal assistance in civil and criminal matters (1998)
	Bosnia and Herzegovina	Agreement between Bosnia and Herzegovina and North Macedonia on legal assistance in civil and criminal matters (2005) (amended 2013)
	Serbia	Agreement between North Macedonia and Serbia-Montenegro on legal assistance in civil and criminal matters (2016)
	Montenegro	Agreement between North Macedonia and Serbia-Montenegro on legal assistance in civil and criminal matters (2016)
	Kosovo*	Agreement between North Macedonia and Kosovo* on legal assistance in civil and criminal matters (2012)
Serbia ⁷⁹	Bosnia and Herzegovina	Agreement between Bosnia and Herzegovina, Serbia and Montenegro on legal assistance in civil and criminal matters (2005). Agreement between Bosnia and Herzegovina and Serbia on legal assistance in civil and criminal matters (2010)
	Montenegro	Agreement between North Macedonia and Serbia-Montenegro on legal assistance in civil and criminal matters (2016)
	North Macedonia	Agreement between North Macedonia and Serbia-Montenegro on legal assistance in civil and criminal matters (2016)
	Kosovo*	Procedures on mutual legal cooperation agreed between Belgrade and Pristina (2015)

b) National legislation

WB6 economies have modernised their legislation on international cooperation in criminal matters in a relatively short period of time, with the adoption of laws on Mutual Assistance in Criminal Matters (MILAs)⁸⁰. The changes introduced by MILAs have been significant but there are still many challenges with their effective implementation⁸¹. The current legal framework of the WB6 economies for judicial cooperation in criminal matters is in general in line with the best European and international standards, and the progress made is already noticed⁸². However, problems remain with the efficiency and reliability of cooperation. In this regard, suggestions have been made to increase human capacities involved in criminal cooperation matters and facilitate direct communication and exchange of experiences between professionals and structures, whenever this is possible⁸³.

The criminal laws of the WB6 economies provide access to justice based on common standards and principles. Common minimum standards include several principles, which are guaranteed in the procedural criminal codes or specific laws of the WB6 economies. These principles include free legal aid, victim rights, victim of crimes compensation, witness

78 <http://www.pravda.gov.mk/mpd-bilateral>

79 <http://www.mfa.gov.rs/en/foreign-policy/bilateral-issues>

80 Klip, A. (2016) *Mutual legal assistance in criminal matters in the Western Balkan*, European Journal of Crime, Criminal law and criminal justice, p.339

81 Bosnia and Herzegovina 2020 Report, p 45, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

82 Marković O. *Regional Judicial Cooperation in Criminal matters*, supra note 73, p. 95

83 Ibid, p.134-141

protection, etc. Efforts have been made by the WB6 economies to ensure access to justice in line with the EU standards⁸⁴.

Table 9 National Legislation on Criminal Matters

WB6 Economies	Law
Albania	Criminal Procedure code (1996) as amended, Official Gazette no.5/95 Law on jurisdictional relations with foreign authorities in criminal matters (2009) as amended, Official Gazette no.181/2009
Bosnia and Herzegovina	Criminal Procedure Code (2003) as amended Official Gazette no. 3/03 Law on international legal assistance in criminal matters (2009), Official Gazette no.53/09
Kosovo*	Criminal Procedure Code (2012), Official Gazette no.37/2012 Law on international legal cooperation in criminal matters (2013) Official Gazette no. 33/2013
Montenegro	Criminal Procedure Code (2009), Official Gazette no. 57/09 Law on international legal assistance in criminal matters (2008), as amended, Official Gazette, no. 04/2008
North Macedonia	Criminal Procedure Law (2010), Official Gazette no. 150/2010 Law on international cooperation in criminal matters (2010), Official Gazette no. 124/2010
Serbia	Criminal Procedure Code, Official (2011), as amended, Official Gazette no.72/2011 Law on international legal assistance in criminal matters (2009), Official Gazette no.20/2009

d) Agencies for judicial cooperation

The European Union Agency for Criminal Justice (EUROJUST) is the unique hub where national judicial authorities work closely to fight serious organised cross border/boundary crimes⁸⁵. The cooperation between EUROJUST and Western Balkans has been increasing rapidly in the last years. Four WB economies (Albania⁸⁶, Montenegro⁸⁷, North Macedonia⁸⁸, and Serbia⁸⁹) have already signed an agreement with EUROJUST⁹⁰. These agreements provide the grounds for safe exchange of information and evidences. Bosnia and Herzegovina is not part of any agreement with EUROJUST. Nevertheless, this has not prevented Bosnia and Herzegovina to establish cooperation and it has been recommended to relaunch the negotiations to sign an agreement with EUROJUST⁹¹.

84 See, for example, Serbia (2020) Report, p. 38 or Montenegro (2020) Report, p 40, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

85 EUROJUST <https://www.eurojust.europa.eu/>

86 Agreement on cooperation between EUROJUST and Albania, 5.10.2018 English version <https://www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Eurojust-Albania-2018-10-05-EN.pdf>

87 Agreement on cooperation between EUROJUST and Montenegro, 3.05.2016, English version <https://www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Eurojust-Montenegro-2016-03-05-EN.pdf>

88 Agreement on cooperation between EUROJUST and the former Yugoslav Republic of Macedonia, 28.11.2008 English version <https://www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Eurojust-fYROM-2008-11-28-EN.pdf>

89 Agreement on cooperation between EUROJUST and the Republic of Serbia, 12.11.2019 English version <https://www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Eurojust-Serbia-2019-11-12-EN.pdf>

90 <https://www.eurojust.europa.eu/rising-trend-judicial-cooperation-western-balkans>

91 <https://www.eurojust.europa.eu/sites/default/files/2020-12/2020-10-20-Western-balkans-factsheet.pdf>

European Judicial Network (EJN) is a network of national contact points for the facilitation of judicial cooperation in criminal matters. EJN has developed cooperation with WB6 economies and contact points from WB6 economies have been nominated. The contact points participate in the activities of EJN and information about WB6 economies is provided on the web page of EJN⁹².

4. RULE OF LAW PERFORMANCE OF WB6



Rule of law principles (such as respect for fundamental rights, access to justice, fair and efficient trial and so forth) are important for establishing mutual trust between justice institutions as well as for the triangle including justice institutions, political institutions and citizens. The importance of the rule of law is widely accepted across the economies of the region, and the link between the rule of law, growth and development is often echoed in international policy documents. The importance of the rule of law is also highlighted by the European Commission annual reports for the WB6 economies.

The Balkan Barometer Business Opinion 2020 finds that "macroeconomic instability, the rule of law in its broadest sense, including ethics, transparency and efficiency trouble businesses with an equal or somewhat higher intensity as in the past"⁹³. Moreover, the Balkan Barometer Public Opinion 2020 shows that judiciary is considered among the least trusted institutions in WB6. Only 24% think that the judiciary is operating free from undue interference⁹⁴. According to these surveys, citizens of the region lack confidence in the rule of law system because they consider that laws are either applied selectively or not effectively by the courts. Therefore, strengthening the rule of law needs to be a priority as it increases confidence among citizens and businesses, improves the business climate and increases the ability of economies to attract foreign investments⁹⁵.

The importance of the rule of law through efficient and corruption-free courts is also embedded in the World Bank's Doing Business Index⁹⁶. Hence, those economies that score well in this Index have a tendency to show lower levels of corruption and higher levels of entrepreneurial activity due to a friendly business environment, resulting from enforcing contracts, resolving insolvency, trading across borders/boundaries⁹⁷.

Cross-economy studies analysing the effects of the rule of law on economic growth have shown that, on average, economies adhering more to the rule of law, grow faster⁹⁸.

4.1 JUDICIAL INDEPENDENCE

The well-functioning of the judicial system is not only at the heart of the EU accession process, but also the main engine for economic integration of the WB6. The public perception of the functioning of judiciary of the WB6 is not positive. The latest surveys conducted in the WB6 show that the length and cost of judicial proceedings are viewed negatively by 61% of citizens, with 56% viewing the judiciary as non-transparent⁹⁹.

In contrast to the citizens' perception, business representatives consider judicial performance and corruption as moderate obstacles for conducting their business¹⁰⁰.

EU has put the rule of law and in particular judicial independence and judicial efficiency on the pedestal of the EU accession process for WB6 economies. General EU standards on judicial independence have been introduced through negotiations of Chapters 23 and 24, dealing with issues related to the judiciary and fundamental rights¹⁰¹.

93 Balkan Barometer (2020), Business Opinion, p. 13, supra note 7

94 Balkan Barometer (2020), Public Opinion Analytical Report <https://www.rcc.int/balkanbarometer/home>, p.99

95 Ibid. p.11

96 Doing Business (2020) Comparing business regulation in 190 Economies, World Bank Group

97 Ibid

98 EESC (2020). ECO/511, *The rule of law and its impact on economic growth* <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/rule-law-and-its-impact-economic-growth>

99 Balkan Barometer (2020) Public opinion, supra note 95, p. 104

100 Balkan Barometer Business Opinion (2020), supra note 7, p. 34

101 https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

Despite the efforts made, judicial systems of the WB6 economies are often criticised as being affected by politicisation, undue influences and corruption. The EU Reports of 2020 for individual WB6 economies show that during the last year a stalemate situation prevailed in WB6 with regard to the justice reform. In Serbia and Bosnia and Herzegovina, no measures were taken in 2019 to improve the independence and impartiality of the judiciary¹⁰². In North Macedonia, further legislative changes were recommended to increase the safeguards for judicial independence¹⁰³. Albania went through a radical justice reform, providing enough legal grounds for judicial independence, but concrete results need to be achieved¹⁰⁴.

The EU Reports also emphasise the fact that undue influence remains a problem for all WB6 economies. In Serbia, the current constitutional and legislative framework continues to leave room for undue political influence over the judiciary¹⁰⁵. In Montenegro, the legal framework guaranteeing judicial independence is in place, but the judiciary and the prosecution continue to be perceived as vulnerable to political interference¹⁰⁶. In Bosnia and Herzegovina, lack of impartiality and conflicts of interest continued to be displayed by courts, in particular at the state level¹⁰⁷. In Kosovo*, effective and active reactions were needed in cases of alleged political interference in the prosecution and the judiciary¹⁰⁸. Albania has introduced a new system for promotion and dismissal of magistrates, but political influence remains an issue which needs to be fully addressed¹⁰⁹.

4.2 JUDICIAL EFFICIENCY

Deficiencies in the judicial efficiency are linked with delays in court proceedings and high case backlog. Efficiency and quality of justice in Europe, including most of WB6 economies is measured by CEPEJ judicial evaluation cycle¹¹⁰.

The recent CEPEJ evaluation report 2020, with data of 2018, shows that with the exception of Bosnia and Herzegovina, the rest of the WB6 have been qualified as "standard countries (sic.)" with regard to the efficiency indicators such as DT (disposition time), and CR (clearance rate)¹¹¹ for civil¹¹² and criminal cases¹¹³. These indicators (DT and CR) are very important for assessing the length of proceedings and backlog in the courts.

102 Serbia (2020) Report, p 20, Bosnia and Herzegovina 2020 Report, p.17, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

103 North Macedonia (2020) Report, p.18, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

104 Albania (2020) Report, p.20, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

105 Serbia (2020) Report, p 20, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

106 Montenegro (2020) report, p 21, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

107 Bosnia and Herzegovina (2020) Report, p 17, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

108 Kosovo* (2020) Report, p 19, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/Kosovo*_report_2020.pdf

109 Albania (2020) Report, p 20, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

110 CEPEJ evaluation Report is published every two-year <https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems> Strasbourg, 29 October 2020 CEPEJ-GT-EVAL (2020)14REV1, <https://rm.coe.int/wb-explanatory-note-rev1-21102019/16809cfddf>

111 CR indicators for both civil and criminal cases were equal or above 95%

112 <https://rm.coe.int/evaluation-report-part-1-english/16809fc058>, p. 113

113 <https://rm.coe.int/evaluation-report-part-1-english/16809fc058> p.127

Table 10 DT for EU and WB6

Court level	EU	Albania	Serbia	Bosnia and Herzegovina	Montenegro	North Macedonia	Kosovo*
1st Instance	201	172	225	483	229	179	n/a
2nd instance	141	No data	223	468	61	125	n/a
3rd instance	201	No data	211	215	No data	257	n/a

Despite positive trends on the efficiency indicators, the length of court proceedings remains a problem also from the human rights perspective. With the exception of Kosovo*, the rest of WB6 economies are part of ECHR. The European Court on Human Rights (ECHR) has found constant violations of Article 6 (reasonable time) by WB6 economies. In 2019, ECHR found violations by North Macedonia mainly relating to the right of having a fair trial and property rights¹¹⁴. In 2019, the ECHR delivered several judgments against Serbia in which violations related to the length of proceedings were found¹¹⁵. In Albania almost half of ECHR violations relate to Article 6¹¹⁶.

4.3 CORRUPTION

Corruption remains a problem in all WB6, despite successes in strengthening relevant legal frameworks and setting up anti-corruption institutions. High-level corruption in WB6 is manifested in different forms¹¹⁷. While corruption undermines the functioning of the judiciary, the lack of independence of the judiciary also undermines adequate processing of corruption cases. Corruption is considered one of the main challenges of the rule of law in WB6. According to the latest Transparency International report, there are several causes which explain the judiciary's lack of independence and its inefficiency in the region, resulting in deficient prosecution of grand corruption and ultimately enabling state capture. Political influence and procedural shortcomings have been listed among those causes that have affected the role of the judiciary¹¹⁸.

The corruption was introduced as an issue under the Berlin Process too. The first formal commitment was signing of the Anti-Corruption Pledge at the London Summit in 2018¹¹⁹. The pledges were signed by 5 of the economies of the WB6, whereas Serbia joined in 2019. The project's main goal was to facilitate regional cooperation and development of a regional anti-corruption agenda.

WB6 pledge to expose and punish corruption in all sectors: public or private partnerships, public procurement and open contracting, tax, beneficial ownership, whistleblowing,

114 North Macedonia (2020) Report, p 25
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

115 Serbia (2020) EU Report p. 30,
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

116 In Albania almost half the findings of violation concerned Article 6 (reasonable time), relating mainly to the unfairness of the proceedings and failure to enforce final judicial decisions,
https://www.echr.coe.int/Documents/Facts_Figures_Albania_ENG.pdf

117 Zvekić U., et al., *Corruption and anti-corruption pledges in the Western Balkans*, October 2020, p.1 <https://globalinitiative.net/wp-content/uploads/2020/10/Infrastructure-of-Integrity-GI-TOC.pdf>

118 Zúñiga, N. (2020) *Examine the state capture, Undue influence on law making and judiciary in the Western Balkans and Turkey*, Transparency International, p 21-24 <https://www.transparency.org/en/publications/examining-state-capture>

119 <https://www.gov.uk/government/publications/western-balkans-anti-corruption-pledges>

extractive industries transparency initiative, enforcement capabilities, asset recovery legislation, the role of the media, institutional integrity, anti-corruption education, and the international system. By signing the pledge, WB6 governments have bound themselves to enhance institutional integrity, media credibility and anti-corruption education¹²⁰.

Anti-corruption legislation in the WB6 is in line with the UN Convention against Corruption and the relevant EU acquis, but there are still loopholes in the legal framework. The legislative framework in the WB6 has been frequently considered as good on paper but with further efforts required for implementation. There have been several strategies against corruption, but with a significant lack of will and commitment. All of these strategies must take into consideration that the corruption laws are applied selectively. Furthermore, the fact that corruption and organised crime cross both the illicit and licit worlds should also be taken in consideration.

WB6 must deliver more credibly on the commitment to implement the fundamental reforms required (the rule of law, fighting corruption, strengthening the economy) in order to build trust. They have to establish mechanisms to prevent political appointments in the judicial system and establish incentives for a more efficient performance of the judiciary¹²¹.

Regional cooperation is a key element for comprehensive and impact-oriented strategies and approaches against corruption. The WB6 need to place much more emphasis on exchange of experience, good practices and operational knowledge. Networking and regular contacts between all the stakeholders in the region are of utmost importance. Efforts on this front, supported by the donor community, need to be further promoted¹²².

120 *Berlin Process, Overview of the progress by the six Western Balkans countries since London and Poznań Summits*, August 2020, https://www.thebalkanforum.org/file/repository/berlin_process_report_2020_WEB_2_.pdf

121 Zúñiga, N. (2020), Report, supra note 119 p. 32

122 Zvekić, U., et al, (2020) Report, supra note 118, p.5

5 CONCLUSIONS AND RECOMMENDATIONS



Regional integration of WB6 economies got another impetus in the last decade. At present, regional integration is based on several initiatives with concrete achievements. Regional integration is an important factor of economic growth. Both Regional Economic Area and Common Regional Market have been inspired by the EU model of internal market and four freedoms.

In this realm, judicial cooperation in civil and criminal matters is envisaged as an important tool to foster economic cooperation. The EU example shows that enhanced judicial cooperation is ensured through harmonised legislation based on mutual recognition and mutual trust. Mutual trust is developed based on the rule of law principles. Trust grows on the basis of common values and shared legal practice.

Judicial cooperation in criminal and civil matters in the WB6 is regulated by international conventions, bilateral agreements and national legislation. A moderate degree of judicial cooperation is ensured by the existing international and bilateral agreements. Moreover, further harmonisation of national legislation is ensured through the alignment of national legislation with the EU acquis.

The current legal framework on judicial cooperation in civil matters is not sufficient. Bilateral agreements are fragmented, not applicable to all WB6 economies, and limited in scope. Thus, one possible solution would be to conclude the Regional Convention on the jurisdiction, recognition and enforcement of foreign judgments (the so-called Sarajevo Convention).

Judicial cooperation in criminal matters is "work in progress" in WB6. The WB6 economies have shown willingness to foster cooperation in this area. Efforts have been made to improve legislation but its implementation is not always effective in practice.

Apart from improving the legislation, enhanced judicial cooperation requires a level of trust that should be built among justice institutions of the WB6. Trust is based on the rule of law performance. In this sense, the issue of judicial independence and efficiency as well as anticorruption is crucial. WB6 must deliver on the commitments related to the rule of law. Trust is also built through communication and exchange of good practices between courts of WB6.

Three directions guiding future WB6 actions are particularly important for enhancing judicial cooperation in civil and criminal matters:

First, WB6 should further improve the legal framework on judicial cooperation in civil and commercial matters by:

- Endorsing a regional convention on jurisdiction, recognition and enforcement of judgments in civil and commercial matters;
- Adhering to the Hague Convention on the recognition and enforcement of judgments in civil and commercial matters;
- Continuing the process of alignment of national legislation with the EU acquis;
- Ensuring the effective implementation of rules on judicial cooperation in criminal matters.

Second, WB6 should built trust by:

- Improving judicial performance, in particular judicial independence and judicial efficiency;
- Improving anticorruption index;
- Increasing cooperation and exchange of good practices between courts.

Third, WB6 should work on developing common networks by:

- Further developing activities under the RCC-established WB WGJ and SEE JTI networks;
- Creating a platform providing necessary information on judicial cooperation in civil and commercial matters, laws, institutions and good practice.

In order to help WB6 in addressing the above stated recommendations, RCC Secretariat could provide support by:

- Conducting surveys (with quantitative data) on the impact of judicial cooperation rules on cross border/boundaries business development;
- Facilitating the discussion in close cooperation with WB6 CIF (Western Balkans 6 Chamber Investment Forum) to understand business's concerns on court procedures;
- Facilitating the discussion at expert/political level in order to improve judicial cooperation legislation in the WB6;
- Assessing the level of understanding of the EU acquis and international standards on judicial cooperation by WB6 judges and legal practitioners;
- Facilitating trainings on judicial cooperation matters for judges and other representatives of the justice system through the SEE JTI network;
- Conducting comparative studies on cross border/boundary criminal issues with a focus on the effectiveness of legal implementation;
- Urging discussions between WB6 on the rule of law indicators, based on the results provided by European and international monitoring mechanisms (EU annual reports, CEPEJ evaluation report, WB Doing Business Indicators, etc.).

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ANNEX I - INTERNATIONAL AND EUROPEAN INSTRUMENTS ON FAMILY MATTERS

United Nations

- Convention of 25 May 1957 on the recovery abroad of maintenance

Council of Europe

- European Convention of 1 September 1983 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children

Hague Conference on Private International Law

- Convention of 1 June 1970 on the recognition of divorces and legal separations
- Convention of 25 October 1980 on the civil aspects of international child abduction
- Convention of 29 May 1993 on protection of children and co-operation in respect of intercountry adoption
- Convention of 19 October 1996 on private international law on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children
- Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance

European Union

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