

REGIONAL ASSESSMENT
OF THE STATE OF PLAY
OF JUDICIAL COOPERATION
IN CIVIL AND COMMERCIAL MATTERS
IN THE WESTERN BALKANS



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Title:

Regional Assessment of the State of Play of Judicial Cooperation in Civil and Commercial Matters in Western Balkans

Publisher:

Regional Cooperation Council

Trg Bosne i Hercegovine 1/V, 71000 Sarajevo

Bosnia and Herzegovina

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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.

A. Introduction



Tandem with the increase in legal relations between law subjects from different Western Balkans jurisdictions¹ and the conflict between them, close collaboration from the legal perspective is indispensable in regard to civil and commercial matters, which has been made necessary by the considerable emergence of community, social, and economic relations.² As a result of the shifting nature of these alliances, the concept of *esperanto in the realm of law* was thrown about in the doctrine as a metaphor for a new way of thinking about the need of working together.³ Its primary and one-of-a-kind objective is to enhance the efficiency of collaboration system within the community justice system.⁴ Significant number of studies in this particular topic have made it feasible to identify the domain or domains in which creation of a judicial area and, presumably, judicial collaboration would be recommended.⁵ Therefore, the ideas of common judicial area and judicial collaboration encompass many similar and separate features, with the sole relationship perhaps being the willingness of Western Balkans jurisdictions to tackle new difficulties given by the judicial cooperation.⁶ Cooperation in civil and commercial matters includes, but is not limited to, issues such as the following: notification and communication of judicial and extrajudicial documents abroad; obtaining evidence abroad in civil and commercial matters; information on foreign law; international access to justice; recognition and enforcement of foreign judgments; international protection of minors; authentication of official documents to be effective abroad; etc.

Western Balkans jurisdictions have steadily gone from the communist period to confront social and political problems of undergoing an economic transition, constructing market institutions, and implementing comprehensive policy changes to encourage private sector growth and investment.⁷ The six economies of Western Balkans lag behind their Western European neighbours in terms of income and other development indicators, but the variations across the Western Balkans are as apparent as their commonalities.⁸ The European Union and the Western Balkans have made it a sharp end commitment to turn the Western Balkans into a thriving economic zone and investment destination.⁹ This objective is aided by the increased judicial cooperation in both civil and commercial proceedings across the Western Balkans jurisdictions.¹⁰

In most respects, the legislative framework of the Western Balkans regarding judicial cooperation in civil and commercial proceedings complies with international standards.¹¹ The Western Balkans (except for Kosovo*) are active participants in international organisations and are endeavouring to

1 Western Balkans jurisdictions, namely Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia and Serbia.

2 Costache M, Aspects Regarding the Judicial Cooperation in Civil and Commercial Matters (2010) 5 International Conference on European Integration - Realities and Perspectives 473.

3 Nourissat C, Droit Communautaire Des Affaires (2nd edn, Dalloz 2005) 17.

4 Wischmeyer T, Generating Trust through Law? Judicial Cooperation in the European Union and the Principle of Mutual Trust (2016) 17 (3) German law journal 339.

5 Costache M, Aspects Regarding the Judicial Cooperation in Civil and Commercial Matters (2010) 5 International Conference on European Integration - Realities and Perspectives 473.

6 Bushati A, Promoting Judicial Cooperation in Support of Economic Development in the Western Balkans (Regional Cooperation Council 2020) et al.

7 Claessens S and others, Building Market Institutions in South Eastern Europe (2004) et al.

8 Bank W, The Road to Stability and Prosperity in South Eastern Europe (2000) et al.

9 Bushati A, Promoting Judicial Cooperation in Support of Economic Development in the Western Balkans (Regional Cooperation Council 2020) et al.

10 Ibid

11 Ibid

bring their legislation in line with the European Union's (EU) *acquis*.¹² As a result of the established bilateral treaties between the judicial systems on reciprocal legal aid in civil and commercial proceedings, the Western Balkans region has been able to acquire the advantages of judicial cooperation that is presently taking place in the region.

The theoretical premise upon which EU strategies on WB regional economic integration have been developed is that a larger economic market is beneficial not only for the economic growth but also for the process of integrating into the EU. These strategies have been developed in light of this theoretical premise.¹³ The EU Economic and Investment Plan¹⁴ admits that the EU-Western Balkans economic integration and the regional economic integration of the Western Balkans are complementary to one another. The emerging markets of the Western Balkans are already part of a free trade area, however, initiatives such as the establishment of a Regional Economic Area¹⁵ and a Common Regional Market¹⁶ have placed an emphasis on the founding of a regional market that is in alignment with the internal market of the EU and the four freedoms that it entails.¹⁷

In the meanwhile, judicial cooperation in criminal and civil proceedings is given particular attention, with specific reference to the European Commission's 2022 Annual Reports for each of the Western Balkan economies. In this regard, based on the annual Report of European Commission, Albania is urged to complete its internal processes for acceding to the Hague Convention on Choice of Court Agreements (2005) and The Hague Protocol on the Law Applicable to Maintenance Obligations (2007). It should strengthen international collaboration, efficiency with which multilateral tools are implemented, and authority of international institutions.¹⁸ According to the European Commission Annual Report, Bosnia and Herzegovina has a legal framework for mutual legal aid in civil and criminal proceedings, although it is not always successfully implemented.¹⁹ The necessity for Bosnia and Herzegovina to accede to specific instruments produced within the context of the Hague conference on private international law is highlighted.²⁰ Amongst these are the Convention of 19 October 1996

12 Ibid

13 Western Balkans: Regional Economic Area (European Commission, July 12, 2017) <www.ec.europa.eu> accessed 12 December 2022.

14 Commission Communication on an Economic and Investment Plan for the Western Balkans (EUR-Lex - 52020DC0641 - EN - EUR-Lex, October 6, 2020) <www.eur-lex.europa.eu> accessed 12 December 2022.

15 REA was endorsed by the WB leaders in Trieste Summit on 12 July 2017. At their meeting in Trieste, the Western Balkans leaders agreed to the Multi-annual Action Plan on a Regional Economic Area in the Western Balkans (MAP). MAP was established to remove barriers to free movement of commodities, services, capital, and highly trained labour; this would boost the region's appeal to investors and businesses, speed up its convergence with the EU, and ultimately improve living conditions for people in the Western Balkans.

16 CRM was endorsed in Sofia Summit. The Leaders' Declaration on the Green Agenda, which is in line with the EU Green Deal, was approved during the Western Balkans Sofia Summit on 10 November 2020, marking a significant milestone for the area. The primary purpose of this Declaration is to combat climate change, and it aims to do so through supporting and accelerating relevant actions and procedures in the area.

17 Bushati A, Promoting Judicial Cooperation in Support of Economic Development in the Western Balkans (Regional Cooperation Council 2020) et al.

18 Commission Staff Working Document Albania 2022. Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022. Communication on EU Enlargement policy.

19 Commission Staff Working Document Bosnia and Herzegovina 2022 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022. Communication on EU Enlargement policy.

20 Ibid.

on jurisdiction, applicable law, recognition, enforcement, and cooperation with respect to parental responsibility and measures for the protection of children, as well as the Protocol of 23 November 2007 on the law applicable to maintenance obligations.²¹ Regarding the state of play in Kosovo*, in its Annual Report the European Commission noted that the legislative framework for judicial cooperation in civil proceedings has been unified into a single statute that is fully compliant with EU *acquis*.²² Kosovo* operates on the principle of reciprocity when collaborating with jurisdictions with which it does not have bilateral agreements.²³ According to the observations of the European Commission's 2022 Annual Report for Montenegro, the economy has yet to ratify the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.²⁴ A web tool that enables the prosecution service and Ministry of Justice to exchange cases requiring international legal aid has been developed.²⁵ Comparing 2021 to 2020, there was a modest rise in judicial collaboration, while it remained lower than pre-COVID-19 levels.²⁶ Regarding the state of play in North Macedonia, the 2022 Annual Report of the European Commission emphasises in particular that limited progress has been made regarding the legal framework for cooperation in civil and commercial matters within the framework of judicial cooperation in civil and criminal matters.²⁷ An Agreement for mutual legal aid in civil matters was concluded with Kosovo*. North Macedonia should ratify the four Hague Conventions that it has already signed.²⁸ In conclusion about the situation in Serbia, the European Commission's 2022 Annual Report states that an analysis is now underway to determine how the legislative framework must be modified to allow cooperation in civil proceedings.²⁹

Scholars argued that the need for harmonisation in the fields of criminal law and illegal migration drove the introduction of the so-called third pillar of the Maastricht Treaty³⁰, a set of provisions on cooperation in Justice and Home Affairs matters, while judicial cooperation in civil matters was a secondary concern.³¹ The Treaty of Amsterdam, which established free movement of individuals and related cooperation in civil concerns, sparked the EU's increased activity in this area. The question is, what supports it? The concept of a unified market led to this.³² Judicial cooperation plays a crucial role in the implementation of single market, which is why it is essential to strengthen it as part of the

21 Ibid.

22 Commission Staff Working Document Kosovo* 2022 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022. Communication on EU Enlargement policy.

23 Ibid.

24 Commission Staff Working Document Montenegro 2022 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022. Communication on EU Enlargement policy.

25 Ibid.

26 Ibid.

27 Commission Staff Working Document North Macedonia 2022 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022. Communication on EU Enlargement policy.

28 Ibid.

29 Commission Staff Working Document North Macedonia 2022 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022. Communication on EU Enlargement policy.

30 Piris, *The Lisbon Treaty - A Legal and Political Analysis*, Cambridge University Press, 2010, 169-170.

31 See: The report for Bosnia and Herzegovina written by GIZ-contracted expert Prof. Dr. Meliha Powlakić in the context of this project.

32 Kunda, *The Question of an Appropriate Method: Incorporation of the Community Instrument, Invitation to Join the Lugano Convention or a New Convention*, p. 48

process of establishing the single EU market. Cooperative judicial efforts are a crucial component of the regional market development process and a necessary prerequisite for societal and economic advancement. There are still many unharmonised areas of cooperation that prevent the Western Balkans from having a fully functional single market.³³ This process is not yet finished despite the fact that the jurisdictions of the Western Balkans have, with a few notable exceptions, maintained bilateral relationships in the area of cooperation in civil issues with the economies in the region. In terms of the degree of harmonisation with EU law, the newly issued laws on international private law in several Western Balkans economies indicate a substantial degree of harmonisation with EU international private law, although bilateral agreements do not.³⁴

The primary objective of the implementation of a comprehensive legislative framework on cross-border/boundary judicial cooperation in civil and commercial disputes is to enhance trade and commerce and direct foreign investments by fostering an environment of judicial independence, reliability, and mutual support; to strengthen international accessibility to justice; and to reduce the likelihood of frivolous lawsuits.³⁵ Since Western Balkans economies are so intertwined, it becomes essential to develop cross-border/boundary judicial cooperation via bilateral treaties and, failing that, through the HCCH Conventions.³⁶ Furthermore, the economies of Western Balkans jurisdictions are significantly driven towards the EU, thus necessitates that the EU's legal viewpoint be considered as well. When Western Balkans jurisdictions become EU Member States, cross-border/boundary judicial cooperation will be immensely effective.³⁷

In the interim, therefore, the Western Balkans jurisdictions plan to construct a Common Regional Market (CRM) based on EU principles and regulations in order to integrate the territory and its residents and businesses sufficiently close to the EU Internal Market and to enable the region to be more appealing for investors. In order to achieve this goal, they proposed an Action Plan with the following intended outcomes by the end of 2024: (1) regional trade area: free movement of goods, services, capital, and people, including crosscutting measures like the Green Lanes to align with EU-compliant rules and standards and provide opportunities for businesses and citizens; (2) regional investment area: to align investment policies with the EU standards and best international procedures and encourage the region to foreign investors; and (3) regional digital area: to integrate the Western Balkans into the pan-European digital economy. Although the advancement and establishment of judicial collaboration in the Western Balkans region is not stated explicitly in this action plan, it is associated with the first key area, namely actions empowering the four freedoms in the regional trade area. The above implies that any legal act, international (bilateral or multilateral) instrument, or political agreement relating to the development and/or improvement of legal/judicial cooperation in the WB region could be understood as a support for the implementation of CRM.

33 See: The report for Bosnia and Herzegovina written by GIZ-contracted expert Prof. Dr. Meliha Powlakić in the context of this project.

34 Ibid.

35 See: The report for Serbia is written by GIZ-contracted expert Prof. Dr. Slavko Đorđević in the context of this project.

36 Ibid.

37 Ibid.

The European Union's internal market is a prominent demonstration of how the insufficiency of judicial cooperation hinders the growth of economic freedom and free mobility.³⁸ Judicial cooperation that is efficient in its goals of streamlining processes and encouraging the mobility of enterprises and persons is essential if the region is to become a major economic area and investment hub.³⁹ In the years after the signing of the Treaty of Rome in 1957, judicial cooperation in civil proceedings between European governments has grown and developed.⁴⁰ Consequentially, several instruments have been finalised or legislated that provide uniform standards on jurisdiction and on the recognition and execution of judicial and extra-judicial decisions (judgments) in civil and commercial cases.⁴¹ These tools belong to the Brussels and Lugano Regimes, which are two related sets of rules. These regimes' binding character has fundamentally altered the foundation upon which members conduct their international legal interactions.⁴² There have been additional notable breakthroughs between jurisdictions on a regional or international level to encourage and improve integration and judicial cooperation in civil and commercial issues, especially in the field of cross border/boundary litigation, in addition to the Brussels-Lugano Regime.⁴³

In an effort to improve judicial cooperation in civil and commercial matters, the jurisdictions of Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia have been working together since 2011 to draft a Regional Convention on Jurisdiction and the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.⁴⁴ There were a number of meetings and conferences held to examine the proposed provisions and conduct a thorough analysis of the legal systems of the participating parties.⁴⁵ Their representatives met on 11-12 April 2013, in Belgrade (Serbia), and signed a statement of intent to sign and ratify the proposed treaty.⁴⁶ The proposal includes an explanatory report and takes the wording of Brussels I and the 2007 LC into deliberation.⁴⁷ Thus, the unofficial name for the project on a potential regional convention is the Sarajevo Convention, while the official name is derived from the convention that serves as its model, the Convention on Jurisdic-

38 Barrett G, *Creating a European Judicial Space: Prospects for Improving Judicial Cooperation in Civil Matters in the European Union* - [Beiträge Zum Jahreskongress 1998 Der Europäischen Rechtsakademie Trier Vom 20. Und 21. November 1998] - *Die Schaffung Eines Europäischen Justizraumes: Perspektiven Für Eine Verbesserung Der Justitiellen Zusammenarbeit in Zivilsachen in Der Europäischen Union*, vol Schriftenreihe der Europäischen Rechtsakademie Trier, 30 (Bundesanzeiger 2001) 17-43.

39 Ibid 17-43.

40 Marton E, *Mapping the Legal Landscape: The Brussels-Lugano Regime* (1st edn, Nomos Verlagsgesellschaft mbH & Co KG 2016) [in *Violations of Personality Rights through the Internet: Jurisdictional Issues under European Law*, 2016, p.71-129.] 71

41 Numerous scholarly works have been written in response to these regimes, including Layton/Mercer, *European Civil Practice*; Kropholler/von Hein, *EuZPR*; Magnus/Mankowski, *Brussels I Regulation*. Read Erik Jayme and Christian Kohler's 1985 and 1988–2007 annual publications in *IPRax*, Heft 1 and Heft 6, respectively, for in-depth information on the development of the Brussels–Lugano Regime, and read Heinz–Peter Mansel, Karsten Thorn, and Rolf Wagner's 2008–present annual publication in *IPRax*, Heft 1, for the same information.

42 Marton E, *Mapping the Legal Landscape: The Brussels-Lugano Regime* (1st edn, Nomos Verlagsgesellschaft mbH & Co KG 2016) [in *Violations of Personality Rights through the Internet: Jurisdictional Issues under European Law*, 2016, p.71-129.] 71

43 News from 24.4.2013 – Christa Jessel-Holst coordinates preparation of parallel agreement to the Lugano Convention, available at < www.mpipriv.de > accessed 12 December 2022.

44 Ibid.

45 Ibid.

46 Ibid.

47 Ibid.

tion and the Mutual Recognition and Enforcement of Judgments in Civil and Commercial Matters.⁴⁸ The preliminary work was based on the fact that the majority of participating jurisdictions had previously signed bilateral treaties governing the recognition and execution of decisions without regard to specific areas of civil law.⁴⁹ There were recommendations to enhance the wording based on the Brussels I Recast, but ultimately it was decided to just append the Brussels I into the Sarajevo Convention.⁵⁰ Although there was initial interest in using the revised Brussels I regime before it goes into effect in the European Union, this was precisely the argument made against this shift in focus.⁵¹ A further point was that the majority of work in preparation for the Sarajevo Convention had already been completed when the Brussels I Recast was accepted.⁵² As a result of these deliberations, Protocol No. 3 to the Sarajevo Convention was drafted, which states: “*The Contracting Parties undertake to observe the changes in the Council Regulation (EC) N.44/2001 of 22 December on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters and to harmonise the provisions of the Sarajevo Convention with these changes, to the extent possible*”. With some linguistic changes to reflect the fact that it is a multilateral agreement and the Lugano Convention serving as inspiration for the Protocols and Annexes, the final text is identical to Brussels I of 2001.⁵³ The initial Contracting Parties must be members of the Central European Free Trade Agreement, an idea that was heavily influenced by the 2009 Novi Sad meeting.⁵⁴ In addition, Protocol No. 2 to the Lugano Convention on the Uniform Interpretation of the Convention and on the Standing Committee, served as an inspiration.⁵⁵ Article I of Protocol No. 2 imposes a stringent duty on the courts of the jurisdictions party to the Sarajevo Convention to give appropriate weight to the principles enunciated in any relevant decision concerning the instruments referred to in the Preamble (Brussels I Convention, Lugano Convention, Brussels I Regulation).⁵⁶ As it is difficult for the courts of the South East European (SEE) jurisdictions to obtain information on these judgements, especially in the local languages, it was anticipated that Article 1 of Protocol No. 2 to the Sarajevo Convention would initially be interpreted as a guideline permitting rather than mandating consideration of these decisions.⁵⁷ Sarajevo Convention was anticipated to be ratified by the end of 2013 and would be available for ratification by members of CEFTA and parties to the Lugano Convention under a simplified regime, as well as by any other jurisdiction meeting the additional requirements outlined in Article 72 of the Lugano Convention.⁵⁸ In particular, Article 71 of the Sarajevo Convention mandates that all participants provide details about their judicial systems, including how judges are selected and whether or not they may be removed from office, as well as details about civil process, judgement enforcement, and private international law.⁵⁹ Even though the majority of researchers enthusiastically support the Sarajevo Convention, it was never ratified by any jurisdictions and hence never went into effect.

48 See: The report for Montenegro written by GIZ-contracted expert Prof. Dr. Zlatan Mekic in the context of this project.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 Ibid.

54 Ibid.

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid.

59 Ibid.

An internal market is “an area without internal boundaries in which free movements of commodities, people, services, and capital are guaranteed,” as stated in the EU’s Treaty on the Functioning of the EU.⁶⁰ Efforts at judicial cooperation in civil and commercial proceedings arose within the context of European integration as a means to ensure smooth operation of the internal market and lay the groundwork for a zone without apprehension and free from subjugation. The European Union’s law governing judicial cooperation in civil and commercial disputes is founded on the principles of mutual recognition and mutual trust.⁶¹ In accordance with the concept of mutual recognition, notwithstanding differences in their legal systems, Member jurisdictions acknowledge and provide the same significance to the judicial or administrative act of another Member jurisdictions as if it were an act of the issuing jurisdiction.⁶² Furthermore, the EU has acknowledged that building the concept of mutual trust between the Member jurisdictions is necessary for the application of the principle of mutual recognition of court judgments (the principle which serves as the basic foundation of judicial cooperation between the Member jurisdictions). Mutual trust is not formally defined by the EU. On the other hand, according to the explanation provided, the courts of Member jurisdictions guarantee mutual confidence whenever they adhere to the norms of rule of law. Until there is more evidence to the contrary, member jurisdictions’ judicial systems cannot be relied upon to ensure the correct application of basic rights and principles.⁶³ The foundation of judicial cooperation inside the EU is the concept of mutual recognition. The free flow of judgements and lower costs for companies and individuals have resulted from the implementation of the concept of judicial cooperation in civil and commercial proceedings. Due to the Brussels Ibis Regulation, foreign judgements are now automatically recognised, and the *exequatur* is no longer required. As a result, judgements rendered in one Member jurisdiction will be recognised and enforceable in another Member jurisdiction with fewer formalities.

In cross-border/boundary or international contexts, the interaction between several legal systems is governed by rules on judicial cooperation in civil and commercial cases. Currently, Western Balkans jurisdictions rely on international and bilateral agreements, as well as domestic law, to facilitate judicial collaboration in civil and commercial disputes. There is a lot of ground to cover in the realm of civil law. Civil, commercial, and familial concerns are all covered, along with their respective substantive and procedural laws. The term ‘civil and commercial affairs’, as used in international⁶⁴ or EU law⁶⁵ documents, often refers only to economic connections, not including matters of family or other sectors like revenues, customs, or administration. International judicial cooperation in civil and commercial concerns includes such topics as the jurisdictions of courts, recognition and execution

60 Article 26 of the TFEU.

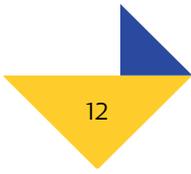
61 Article 81 of the TFEU.

62 Wischmeyer T, “Generating Trust Through Law? Judicial Cooperation in the European Union and the ‘Principle of Mutual Trust’” (2016) 17 (3) German law journal 339.

63 Ibid.

64 Effective worldwide circulation of judgements in civil or commercial cases is facilitated by the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention). The Convention provides legal certainty and predictability to parties involved in cross-border/boundary transactions by setting forth commonly accepted conditions for recognition and enforcement and agreed grounds for refusal. This includes clarity as to whether and to what extent a judgement will be recognised and enforced in another jurisdiction. The Convention improves access to justice by decreasing legal waiting periods, expenses, and hazards in international cases by assuring the recognition and enforcement of foreign decisions. In general, the Convention improves the domestic and international climate for multilateral commerce, investment, and mobility.

65 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).



of decisions, and various forms of civil mutual aid. WB economies' judicial cooperation in civil and commercial proceedings is governed by regional agreements (bilateral treaties), international treaties, and domestic norms.

This study aims to analyse the current state of play and recommend sequenced steps to promote enhanced judicial cooperation in Western Balkans as a prerequisite for economic integration. Western Balkans jurisdictions should indeed enhance the legislative framework for judicial cooperation in civil and commercial matters by (a) adopting a regional agreement on jurisdiction, recognition, and enforcement of verdicts in civil and commercial matters, (b) complying to the Hague Convention on the recognition and enforcement of judgments in civil and commercial matters, and (c) persisting the process of aligning domestic legislation with the EU *acquis*. In addition, Western Balkans jurisdictions should build confidence by: (a) enhancing judicial effectiveness, particularly judiciary impartiality and judiciary effectiveness, (b) enhancing the anticorruption score, and (c) expanding cooperation and sharing of best court practices.

This study lays out the present legislative framework of judicial cooperation in civil and commercial proceedings throughout the six Western Balkans jurisdictions. The study is mostly relied on desk research. Different studies and analyses assessing the regulations on judicial cooperation in civil and commercial proceedings in the Western Balkans provided the pertinent data. For each and every jurisdiction, a standard framework and methodology has been implemented. The local findings of each jurisdiction are organised and centred on the bilateral treaties that have been implemented and the present status of multilateral Conventions. The compatibility and connection with the HCCH 2019 Judgements Convention as well as the relationship with the ratified HCCH agreements are crucial components of the analysis at the level of jurisdiction.

B. Mapping Out Paradigms



The interplay between domestic and foreign law in transnational and international contexts is governed by rules on judicial cooperation in civil and commercial issues. As it is, the Western Balkans jurisdictions rely on international and bilateral agreements, as well as domestic law, to facilitate judicial collaboration in civil and commercial proceedings. It has been shown via several studies that legal clarity and predictability are greatly increased when judicial cooperation norms are harmonised through international agreements.⁶⁶

The Hague Choice of Court Agreements and Hague Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters are the two most significant Conventions for determining international jurisdiction of courts and for recognising and enforcing foreign judgements. Cross-border/boundary conflicts have arisen as a result of globalisation and the expansion of commerce and travel, prompting the drafting of both conventions.⁶⁷ The Hague Judgments Convention is a relatively recent development. This instrument has the potential to have enduring effects on the region's legal clarity, procedural predictability, and, ultimately, economic growth.⁶⁸ The Hague Judgments Convention ensures that decisions in civil or commercial proceedings may be efficiently transmitted across borders or boundaries. The Convention provides legal certainty and predictability to parties involved in cross-border/boundaries transactions by establishing generally accepted conditions for recognition and enforcement and agreed grounds for refusal. This makes it clear whether and to what extent a judgement will be recognised and enforced in another jurisdiction. The Convention improves access to justice by minimising legal timeline, expenses, and hazards in cross-border/boundary aspects by assuring recognition and enforcement of foreign judgements. Since most of the answers offered by The Hague Judgments Convention are already well-known to the Western Balkan economies, they will experience little trouble implementing it if they decide to become a member. Ultimately, this mechanism might contribute to the region's economic growth by increasing legal clarity and procedural consistency.

Agreements on mutual legal aid in civil disputes have been established with most of the Western Balkans jurisdictions. In accordance with these agreements, judicial cooperation in civil and commercial issues includes provisions on recognition and enforcement of judgements, as well as legal assistance in serving of judicial and extrajudicial documents. Even while bilateral agreements between economies of the former Yugoslavia simplify mutual legal aid between courts, this is still insufficient to foster judicial collaboration across Western Balkan economies. Additionally, the current treaties impose their own restrictions. In majority of situations, they have a larger scope that includes criminal and family concerns. They lack standards for determining the foreign jurisdiction of courts and other crucial aspects of judicial cooperation. Procedure laws and private international laws acts (PILAs) of the Western Balkan economies govern rules on jurisdiction recognition and execution of decisions. As a result of ongoing harmonisation with the EU *acquis*, the Western Balkans legislative framework governing judicial cooperation and other civil mutual assistance matters is in a continual constant state of change.

The economies of the Western Balkans have signed SAAs with the EU and are participating in the EU's enlargement process. The SAA and the commitments of EU membership rest on the foundation

66 Bushati A, Promoting Judicial Cooperation in Support of Economic Development in the Western Balkans (Regional Cooperation Council 2020) et al.

67 Ibid

68 Rumenov, 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



of harmonising domestic law with the EU *acquis*. International court jurisdiction has been similarly governed by the Western Balkans jurisdictions revised private international law conventions. The ability of a court to rule in a case including international aspects depends on the same variables. The Western Balkan economies have enacted laws that are similar to the EU *acquis* in this area (the Brussels Ibis Regulation on jurisdiction, recognition, and execution of decisions in civil and commercial issues). Therefore, once the Western Balkan economies become members of the EU, complete approximation is expected to be attained. Reforms to PILAs in the Western Balkan economies have established a framework for recognition and enforcement of foreign judgements that is consistent with international best practises.

Recognition and execution of decisions are governed by the processes and competent courts established under Western Balkans jurisdictions PILAs. The verdict is accompanied by a document attesting to its legality and capacity to be enforced. A fair and uniform system of legal expenses guarantees everyone the opportunity to appeal a negative ruling. Comparable justifications for refusing to recognise verdicts may be found in the legal systems of the Western Balkans jurisdictions. They also conform to international and EU law on the dismissal of foreign decisions.

B.1 ALBANIA⁶⁹

1. General overview

Albanian legal framework on judicial cooperation in civil and commercial matters is generally in line with international standards. Albania participates in international organisations, and is engaged in the process of aligning its legislation with the EU *acquis*. The existing legal framework has certain limits. It only offers the opportunity to recognise and enforce foreign decisions and no other enforcement titles issued outside Albania, such as authentic instruments. Furthermore, it neither enables the enforcement of provisional measures issued outside the territory of Albania nor does it allow for the enforcement of settlement agreements, which constitute an enforcement title under a foreign judgement. Moreover, while international jurisdiction is regulated in the context of the Private International Law of Albania (PILA)⁷⁰, the Civil Procedure Code (ACCP)⁷¹ provisions apply for recognition and enforcement of foreign decisions.

2. Outlines on Enforced Bilateral Treaties

Although regional integration is an objective, Albania's relationships with the other Western Balkan economies are not particularly bilateral. The position of Albania is rather different compared to other economies when it comes to bilateral cooperation. Albania has signed bilateral agreements in the subject matter of judicial cooperation with North Macedonia⁷² and recently with Kosovo* in the Western Balkans region.

3. Current State of Affairs with Regard to Multilateral Conventions

Albania's membership to the Hague Conference on Private International Law dates from 4 June 2002. Since then, Albania has become a Contracting Party to the following 14 Instruments:

69 The report for Albania is a condensed version of the report written by GIZ-contracted expert Dr. Aida Gugu (Bushati) in the context of this project, containing the main summarised findings; GIZ is in the process of publishing the complete report.

70 Law no.10428 dated 02.06.2011 on private international law of Albania, OJ no.82 dated 17.06.2011.

71 Law no.8116 dated 29.03.1996 on Civil Procedure Code of Albania, OJ no.9 dated 12.05.1996, as amended.

72 Law no.8304, dated 12.3.1998 On the Ratification of the Agreement between Albania and North Macedonia on mutual legal assistance in civil and criminal matters. Official Gazette no.7/1998

Table 1

▪ Convention of 1 March 1954 on civil procedure
▪ Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions
▪ Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents
▪ Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
▪ Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
▪ Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations
▪ Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
▪ Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations
▪ Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations
▪ Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
▪ Convention of 25 October 1980 on International Access to Justice
▪ Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
▪ Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation 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

On the other hand, of conventions concluded within the framework of the United Nations Albania has *inter alia* ratified the New York Convention 1958⁷³ and the United Nations Convention on Contracts for the International Sale of Goods⁷⁴. Furthermore, Albania is a member of the Council of Europe and has ratified the European Convention on Information on Foreign Law⁷⁵. Albania has also ratified the European Agreement on the Transmission of Applications for Legal Aid 1977⁷⁶. Also, Albania is a contracting party to the 1961 European Convention on International Commercial Arbitration⁷⁷ and has ratified the 1965 Convention on the Settlement of Investment Disputes between Jurisdictions and Nationals of Other Jurisdictions (ICSID).

⁷³ Law no.8688, dated 09.11.2000, on the accession of the Republic of Albania to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, OJ no.38, dated 12.01.2000.

⁷⁴ Law no. 10092, dated 09.03.2009, on the accession of the Republic of Albania to United Nations Convention on Contracts for the International Sale of Goods, OJ no.37, dated 02.04.2009.

⁷⁵ Law no.8703, dated 01.12.2000, for ratification of the European Convention on Information on Foreign Law, OJ no.43, dated 13.12.2000.

⁷⁶ Law no.8705, dated 01.12.2000, for ratification of the European Agreement on the Transmission of Applications for Legal Aid, OJ no.43, dated 13.11.2000.

⁷⁷ Law no.8687, dated 09.11.2000, for the accession of the Republic of Albania to the European Convention on International Commercial Arbitration, OJ no.38, dated 12.01.2000.

4. Compatibility and Relationship with Ratified HCCH Conventions

Albania has been a member of HCCH since 2002⁷⁸ and has ratified few Conventions, as reflected in Table 2.

Table 2

Hague Conventions	Albania
<ul style="list-style-type: none"> ▪ Convention of 25 October 1980 on the international access to justice 	R/2007
<ul style="list-style-type: none"> ▪ Convention of 5 October 1961 on the abolishing the requirement of legalisation for foreign public documents 	R/2003
<ul style="list-style-type: none"> ▪ Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matter 	R/2010
<ul style="list-style-type: none"> ▪ Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters 	R/2006

5. Relationship with HCCH 2019 Judgments Convention

Recognition of foreign judgments in Albania does not depend on any reciprocity requirement. There are no specific circumstances that would require Albania to express notification in accordance with Article 29 of the HCCH 2019 Judgments Convention. ACCP provisions on recognition and enforcement of foreign judicial decisions do not provide any explicit limitation of this kind, but Article 72 (para. dh) of PILA stipulates that Albanian courts have exclusive jurisdiction over proceedings concerned with the enforcement of judgments in Albania. There are no specific indications in the existing legal provisions that Albania may make a declaration to exclude certain matters from the scope of application of the convention. Albanian legislation is in line with the HCCH 2019 Judgment Convention since it uses habitual residence as one of the main connecting factors for the determination of jurisdiction. The definition of habitual residence for both natural and legal persons is in line with the EU regulations.

⁷⁸ Law no.8867, dated 14.03.2002, for the accession of the Republic of Albania to the Statute of the Hague Conference on Private International Law, OJ no.8/02.

B.2 BOSNIA AND HERZEGOVINA⁷⁹

1. General Overview

The basic source of international private law is still the *Law on the resolution of conflicts of laws with regulations of other countries in certain relations*⁸⁰ (hereafter: PIL). PIL Bosnia and Herzegovina contains general rules for enforcement of foreign enforceable titles regardless of whether it concerns status, family, or property-related matters, with some derogations when it comes to family relations or status matters. Since it regulates conflict of law and international jurisdiction in status, family, and proprietary matters, it should be concluded, although, without explicit wording, that recognition and enforcement of foreign judicial decisions in status, family, and proprietary matters falls under the scope of this law. In addition, the bilateral agreements on cross-border/boundary legal assistance which Bosnia and Herzegovina concluded with successor jurisdictions of the former SFRY regulate, *inter alia*, recognition, and enforcement of judgments in civil matters passed on in another jurisdiction signatory to the agreement, whereas civil matters explicitly imply decisions made in commercial matters as well.⁸¹ PIL Bosnia and Herzegovina regulates in detail the preconditions for recognition and enforcement of foreign judicial decisions (Art. 87-96 of PIL) and foreign arbitration awards (Art. 91 and 100 PIL), but not preconditions for enforcement of other foreign enforcement titles (for example notarised deeds).

2. Outline to Enforced Bilateral Treaties

Bilateral treaties with certain economies in the region were signed in the first years of statehood (for example, with Croatia in 1996) and other bilateral treaties followed as provided in Table 3.

Table 3

<ul style="list-style-type: none"> ▪ Agreement with North Macedonia on mutual legal assistance in civil and criminal matters, Official Gazette no.16/06 and 1/14
<ul style="list-style-type: none"> ▪ Agreement with Montenegro, on mutual legal assistance in civil and criminal matters, Official gazette no.7/11
<ul style="list-style-type: none"> ▪ Agreement with Serbia on mutual legal assistance in civil and criminal matters, Official Gazette no. 11/2005 and 8/10
<ul style="list-style-type: none"> ▪ Agreement with Serbia and Montenegro on mutual legal assistance in civil and criminal matters, Official Gazette no. 11/2005

There is no concluded bilateral treaty with Albania on cooperation in civil and commercial matters. In 2013 the Protocol on cooperation between the Ministry of Justice of Bosnia and Herzegovina and

⁷⁹ The report for Bosnia and Herzegovina is a condensed version of the report written by GIZ-contracted expert Prof. Dr. Meliha Povlakić in the context of this project; based on the report of the Expert, the author of this report has reflected in this part the main summarised findings for Bosnia and Herzegovina.

⁸⁰ Official Gazette of Socialist Republic of Yugoslavia [*Službeni list SFRJ*], no. 43/82,72/82.

⁸¹ See Art. 24 BT NM, Art. 1 para. 2 BT SRB, Art.1 para. 2 BT MNE.

the Ministry of Justice of Albania was signed, which entered into force on 19.03.2013.⁸² Bosnia and Herzegovina does not have any bilateral treaty with Kosovo* signet yet.

3. Current State of Affairs with Regard to Multilateral Conventions

Bosnia and Herzegovina is a signatory of several multilateral conventions which regulate different aspects of international legal cooperation/assistance. The European Convention on Information on Foreign Law from 1968 (ETS 62) with the Additional Protocol (ETS 97), entered into force in Bosnia and Herzegovina on 18.08.2013. This convention regulates all aspects and the procedure for providing effective assistance when a jurisdiction, i.e. its competent authority receives a request for information about its legal situation. All these issues are not regulated in bilateral treaties. Instead of fifteen substantive articles, there is only one article in bilateral treaties, which actually only jurisdictions that the relevant ministries of the contracting parties will provide legal texts that are or were in force and, if necessary, also information on certain legal issues. How this should be implemented, under which conditions, who can apply, should the ministry itself provide the information on legal issues or hire someone, etc. is open. Therefore, the reasonable doubt is that no effective assistance regarding the information on the legal situation can be provided on the basis of bilateral treaties. There is no information on the website of the Ministry of Justice of Bosnia and Herzegovina that there were such agreements between Bosnia and Herzegovina and other jurisdictions. On the other hand, the European Agreement on the Transmission of Applications for Legal Aid, 1 January 1977, entered into force in Bosnia and Herzegovina on 31.05.2009.⁸³ As is the case with some other multilateral treaties, again it is not possible, whether in the Official Gazette or on the website of the Ministry of Justice, to determine which competent body is the central authority under this Convention. The subject of the Convention is the procedure of providing legal assistance to persons permanently residing in one contracting jurisdiction in civil and commercial matters. Bilateral treaties guarantee this assistance only to citizens of contracting parties. This represents a narrowing of the scope of the application because, for example, a citizen of Kosovo*, permanently residing in Bosnia and Herzegovina, would be excluded from this type of assistance. At the same time, Kosovo* did not sign and ratify the Convention.

4. Compatibility and Relationship with Ratified HCCH Conventions

Bosnia and Herzegovina has been is a member of HCCH since 2001 and has ratified some Conventions, as they are reflected in Table 4.

82 This document is not available whether in the Official Gazette nor on the official's websites.

83 Official Gazette of Bosnia and Herzegovina - International agreements [*Službeni glasnik Bosne i Hercegovine – međunarodni ugovori*], No 1/09.

Table 4

Hague Conventions	Bosnia and Herzegovina
<ul style="list-style-type: none"> ▪ Convention of 25 October 1980 on the international access to justice 	R/1993
<ul style="list-style-type: none"> ▪ Convention of 5 October 1961 on the abolishing the requirement of legalisation for foreign public documents 	R/1993
<ul style="list-style-type: none"> ▪ Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matter 	R/2008
<ul style="list-style-type: none"> ▪ Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters 	R/2008

5. Relationship with HCCH 2019 Judgments Convention

The Judgment Convention 2019 does not represent the so-called ‘double convention/traité double’ but a ‘traité simple’ since it does not regulate international jurisdiction, i.e. does not contain the applicable rules for determining the jurisdiction of the court of the origin or of the court called to decide on recognition but jurisdictional filters.⁸⁴ Three bilateral treaties, concluded between Bosnia and Herzegovina, Serbia, North Macedonia and Montenegro, do not regulate international jurisdiction either; this topic is a subject of regulation of the respective PILs.

The first difference between Judgment Convention 2019 and bilateral treaties consists in the fact that bilateral treaties, which Bosnia and Herzegovina has concluded with three Western Balkans jurisdictions, as well as PIL of Bosnia and Herzegovina, do not use the criteria of habitual residence. The Convention relies on the notion of ‘defendant’ and its ‘habitual residence’ as defined in art. 3. para. 2 as one of three jurisdictional criteria in the Convention. The dominant approach of the PIL Bosnia and Herzegovina regarding general international jurisdiction is, as previously stated, the domicile of the defendant (art. 46).⁸⁵

The international jurisdiction of a Bosnian and Herzegovinian court exists if the defendant has a domicile in Bosnia and Herzegovina, or the absence of domicile, its residence in Bosnia and Herzegovina. Habitual residence, which has become one of the most important connecting factors for determination of applicable law, as well as jurisdiction in modern private international law,⁸⁶ is not even mentioned in the PIL of Bosnia and Herzegovina. Therefore, PIL of Bosnia and Herzegovina does not use the criteria of habitual residence. This can be seen as a consequence of a lack of modernisation of the private international law of Bosnia and Herzegovina.

⁸⁴ The reasons for adoption of such convention are available at: van Loon, Towards a global Hague Convention on the Recognition and Enforcement of Judgments in Civil or Commercial Matters, *Collection of Papers of the Faculty of Law, Niš*, No 82, Year LVIII, 2019, p. 16.

⁸⁵ For more about this criterion on jurisdiction in different conventions and in comparative law see van Loon, Towards a global Hague Convention on the Recognition and Enforcement of Judgments in Civil or Commercial Matters, p. 23.

⁸⁶ Kostić-Mandić, *Međunarodno privatno pravo*, p. 254; Alihodžić/Meškić/Duraković, Accepting EU Private International Law Standards into the Legal System of Bosnia and Herzegovina: What Can Be Done While Waiting for Godot?, p.154; Rumenov, The indirect jurisdiction of the 2019 Hague Convention on recognition and enforcement of foreign judgments in civil or commercial matters – Is the “heart” of the Convention in the right place?, p. 18-19.

The PIL of Bosnia and Herzegovina determines different situations where the courts in Bosnia and Herzegovina have exclusive jurisdiction. The court in Bosnia and Herzegovina has exclusive jurisdiction in cases concerning real estate located in Bosnia and Herzegovina (Art. 56 PIL). PIL of Bosnia and Herzegovina prescribes exclusive jurisdiction under certain circumstances for marriage disputes, maternal and paternal disputes, and probate proceedings concerning succession when immovables are part of the estate. Exclusive jurisdiction is the ground for refusing recognition of a judgment that has been rendered by a foreign court instead of by the exclusively competent court in Bosnia and Herzegovina (Art. 89 para. 1 PIL).

B.3 KOSOVO*⁸⁷

1. General overview

International legal cooperation in civil and commercial matters in Kosovo* may still be underdeveloped but it is growing rather rapidly and surely. The year 2022 has been monumental in development of this area of law in Kosovo*, given the adoption and entry into force of two key laws and two bilateral agreements on international legal cooperation in civil matters. In 2021, Kosovo*'s courts, through Ministry of Justice Department for International Legal Cooperation made over 430 requests to other jurisdictions and received over 630 responses back⁸⁸. Empowered by two new laws that regulate the field of private international law and international legal cooperation, Kosovo*'s legal framework in this area today is as complete and apt as it has ever been. The first wing or constituent is the Law on International Legal Cooperation in Civil Matters⁸⁹ (hereinafter: Law on ILCCM) whose purpose (Article 1) is to define the competencies, order and procedures of international legal cooperation in civil and commercial matters between Kosovo* and other jurisdictions. The main components of the Law on ILCCM are the provisions on service of documents (Chapter II) and taking of evidence (Chapter III) but there are also other provisions that regulate international legal cooperation in general.

2. Outlines on Enforced Bilateral Treaties

Besides the Constitutional and legal order, the Law on ILCCM itself makes way for application of bilateral agreements that may 'differently' regulate international legal cooperation between economies⁹⁰. There is, however, a positive developing trend on this matter in Kosovo*. It recently concluded two new Bilateral Treaties with two jurisdictions in the region – Albania and North Macedonia. The first agreement with North Macedonia has been in force since March 2022⁹¹, whereas the agreement with Albania has been entered into force shortly after and is in force since June 2022⁹². Notwithstanding this, there is hope that this positive trend of concluding bilateral agreements is accelerated in the near future, at least with the jurisdictions in the region. One vital document, which does not appear amongst the international treaties in the Official Gazette, is an agreement on Procedures for Mutual Legal Assistance between Kosovo* and Serbia. Though it is not known or listed as a typ-

87 The report for Kosovo* is a condensed version of the report written by GIZ-contracted expert Dr. Donikë Qerimi in the context of this project; GIZ is in the process of publishing the complete report. Based on the report of the Expert, the author of this report has reflected in this part the main summarised findings for Kosovo*.

88 Written response of Mr. Gazmend Çitaku, Director of Department for International Legal Cooperation, Ministry of Justice, Kosovo*, on 10 November 2022, to questions of the author as requests for access to public information. The author wishes to thank Mr. Çitaku for providing accurate and up-to-date information on bilateral treaties and data from the Department's everyday practice in a very prompt fashion. Any mistakes or inaccuracies remain author's own.

89 Law No. 08/L -020 on International Legal Cooperation in Civil Matters, Official Gazette of Kosovo* / No. 11 / 26 April 2022, Pristina, available here: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=57515>.

90 Article 2.3 "The provisions of this Law shall not apply to matters that fall within the scope of this Law, if they are regulated differently by an international agreement"

91 Law No. 08/L-106 on Ratification of the Agreement on Mutual Legal Assistance in Civil Matters Between the Government of Kosovo and the Government of North Macedonia, Official Gazette of Kosovo* / No. 9 / 15 March 2022, Pristina, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=55531>.

92 Law No. 08/L-130 on Ratification of Agreement Between the Government of Kosovo and Council of Ministers of Albania for Mutual Legal Assistance in Civil and Commercial Matters, Official Gazette of Kosovo* / No. 13 / 30 May 2022, Pristina, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=59289>.

ical international treaty between two jurisdictions on mutual legal assistance, this document has the same elements of one: it has been negotiated between two economies and there is a reflection of agreement of both parties, therefore fulfilling the criteria of the Vienna Convention on the Law of Treaties to be seen as an international treaty. Remarkably, this agreement is the most fruitful or successful agreement Kosovo* has with other economies, in civil or commercial matters⁹³. In 2021, Kosovo* has made 239 Mutual Legal Assistance requests to Serbia, out of total of 430 sent to all jurisdictions that year. This means that over 55% of all requests annually were sent to Serbia. In exchange, in 2021, 324 responses out of a total of 624 Kosovo* received that year were from Serbia. That translates to over 51% of all responses⁹⁴.

3. Current State of Affairs with Regard to Multilateral Conventions

Given its history, challenges, political status and the current political climate, Kosovo* falls behind its neighbours on bilateral agreements, multilateral treaties and membership in the HCCH. Positive trends in this direction are welcome, with the economy having concluded two new bilateral treaties with – Albania and North Macedonia. Furthermore, the data shows that a short agreement on procedures for mutual legal assistance with Serbia has been proven to be very effective in practice. However, lack of circulation of judgements with Serbia and Bosnia and Herzegovina remains a red flag at least for the foreseeable future due to political disputes. It is recommended that Kosovo* invests more in conclusion of bilateral treaties with economies in the region but also other European jurisdictions with which it has a significant exchange of people, goods and services. Perhaps more importantly, Kosovo* should heavily invest in achieving membership at HCCH and/or at least strive for accession to some of its Convention, especially the HCCH 2019 Judgements Convention and the Convention on Choice of Court Agreements.

4. Compatibility and Relationship with Ratified HCCH Conventions

Kosovo* is not a member of the Hague Conference on Private International Law and is only a connected jurisdiction therein. Kosovo* was only allowed to accede to the first Convention in 2015,⁹⁵ which was followed by numerous objections and declarations from Serbia and, later, other contracting parties.⁹⁶ To this day, this Convention remains the only multilateral Convention Kosovo* has acceded to, in the field of private international law. Kosovo*'s membership in international organisations, such as the HCCH, is hampered by its disputed political status. These Conventions operate in a system akin to a 'sisterhood', where member jurisdictions agree to unify the rules of international law amongst them, so that this leads to easier cooperation between them in various proceedings before the respective competent bodies of each jurisdiction and, at the very end, to recognition of each other's decisions. This privilege is not automatically extended to those jurisdictions which are not members of the Conference, in one form or another.

93 This agreement is not limited to civil and commercial matters. See section [Procedures on Mutual Legal Assistance with Serbia](#)

94 Statistical data provided by Department for International Legal Cooperation

95 Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention); See <<https://www.hcch.net/de/news-archive/details/?varevent=438>>.

96 See <<https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1319&disp=resdn>>.



5. Relationship with HCCH 2019 Judgments Convention

Although the HCCH 2019 Judgments Convention is also open for signature to non-members, Kosovo*'s adherence to this Convention could be accompanied by numerous challenges. Not only is there a long and complicated process of adherence to the Conference, but each Convention also offers the possibility to the signatories of that convention to make reservations about and declarations on the implementation of an instrument (or part of it) to a certain jurisdiction. E.g. this is what happened with the only Convention to which Kosovo* is officially a signatory - the Apostille Convention - in which Serbia has made a statement opposing Kosovo*'s signing of it.⁹⁷

97 See <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1319&disp=resdn>, and see, for example, the response of Switzerland: <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=349&disp=resdn>.

B.4 MONTENEGRO⁹⁸

1. General overview

The main legal act on cross-border/boundary cooperation in civil and commercial matters in Montenegro is the Private International Law of Montenegro.⁹⁹ The PIL regulates the three basic pillars of private international law, jurisdiction, choice of law, and recognition and enforcement of judgments, including the recognition and enforcement of arbitral awards, with regard to status, family, inheritance, contracts and torts and property matters. There are no specialised courts or other authorities for the application of PIL in cases with an international element. A special role is only designated to the Ministry of Justice. According to Article 13 of PIL domestic authorities may ask the Ministry of Justice to provide information on the content of the applicable foreign law, but it is also possible to ask legal experts or specialised institutions.

2. Outlines on Enforced Bilateral Treaties

Montenegro has signed several bilateral agreements on civil and commercial matters with Western Balkan economies:

Table 5

- Treaty between Montenegro and Bosnia and Herzegovina on legal assistance in civil and commercial matters of 2010¹⁰⁰
- Treaty between Montenegro and Serbia on legal assistance in civil and commercial matters of 2010¹⁰¹
- Treaty between Montenegro and North Macedonia on legal assistance in civil and commercial matters of 2014¹⁰²

So far, there is no bilateral agreement on legal assistance in civil and commercial matters signed between Montenegro and Albania or Kosovo*.

98 The report for Montenegro is a condensed version of the report written by GIZ-contracted expert Prof. Dr. Zlatan Mekic in the context of this project; GIZ is in the process of publishing the complete report. Based on the report of the Expert, the author of this report has reflected in this part the main summarised findings for Montenegro.

99 OJ of Montenegro. No. 1/2014, 6/2014 –amended by 11/2014 – amended by 14/2014 and 47/2015.

100 OJ of Montenegro – *International agreements*, no. 015/10 of 23.12.2010

101 OJ of Montenegro – *International agreements*, no. 7/2010 of 30.6.2010

102 OJ of Montenegro – *International agreements*, no. 9/2014 of 4.8.2014

3. Current State of Affairs with Regard to Multilateral Conventions¹⁰³

Montenegro is a jurisdiction party to a rather large number of Hague conventions on private international law, overall 13 at the time of writing this report¹⁰⁴:

Table 6

▪ Convention of 1 March 1954 on civil procedure
▪ Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions
▪ Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents
▪ Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
▪ Convention of 4 May 1971 on the Law Applicable to Traffic Accidents
▪ Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
▪ Convention of 2 October 1973 on the Law Applicable to Products Liability
▪ Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
▪ Convention of 25 October 1980 on International Access to Justice
▪ Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
▪ Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
▪ Convention of 30 June 2005 on Choice of Court Agreements
▪ Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

¹⁰³ This section reflects the current state of affairs with regard to multilateral conventions until the date of realization of this report.

¹⁰⁴ See <https://www.hcch.net/en/states/hcch-members/details1/?sid=219>.

4. Compatibility and Relationship with Ratified HCCH Conventions¹⁰⁵

With regards to the international judicial assistance, there are four Hague Conventions that directly regulate this matter:

Table 7

- Convention of 1 March 1954 on civil procedure
- Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
- Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; Convention of 25 October 1980 on International Access to Justice

The main Hague convention ratified by Montenegro that deals with the recognitions and enforcement of foreign judgements is the Hague Choice of Court Convention of 2005. Montenegro is also the only economy within this regional analysis that ratified the convention.

In addition, Montenegro is a party to:

Table 8

- European Convention on International Commercial Arbitration of 1961¹⁰⁶
- New York Convention of 1958,¹⁰⁷ UN Maintenance Convention 1956¹⁰⁸
- CISG¹⁰⁹
- European Foreign Law Convention¹¹⁰
- European Agreement of 27 January on Transmission of Applications for Legal Aid¹¹¹.
- Convention of 27 September 1956 on the issue of certain extracts from civil status records for use abroad¹¹²
- United Nations Convention of 10 December 1962 on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages¹¹³
- Convention 8 September 1976 on the issue of multilingual extracts from civil status records¹¹⁴

¹⁰⁵ This section reflects the compatibility and relationship with ratified HCCH Conventions until the date of realization of this report.

¹⁰⁶ Taken over by virtue of succession on 23 Oct 2006.

¹⁰⁷ Taken over by virtue of succession on 23 Oct 2006.

¹⁰⁸ United Nations Convention of 20 June 1956 on the recovery abroad of maintenance, 268 UNTS 3.

¹⁰⁹ United Nations Convention of 11 April 1980 on the International Sale of Goods, 1489 UNTS 3.

¹¹⁰ European Convention of 7 June 1968 on information on foreign law, 720 UNTS 147.

¹¹¹ ETS No 92.

¹¹² 299 UNTS 211.

¹¹³ 521 UNTS 231.

¹¹⁴ 1327 UNTS 3.

5. Relationship with HCCH 2019 Judgments Convention¹¹⁵

Montenegro is still not a party to the Hague Judgments Convention. The Hague Judgments Convention of 2019 provides for an effective system of recognition and enforcement of judgments, with somewhat narrow scope of application. While Montenegro's PIL contains very modern provisions on recognition and enforcement applicable to all civil and commercial matters, the Hague Judgments Convention excludes many matters from its scope of application and it only applies to judgments rendered on certain enlisted grounds of indirect jurisdiction.

Furthermore, the convention does not bring any added value when it comes to reciprocity for recognition of judgments in Montenegro, as reciprocity is no longer a requirement for recognition and enforcement under Montenegro's PIL. Also, under PIL, foreign judgement are not be recognised if the foreign court has no jurisdiction under this Law. However, the grounds for indirect jurisdiction in the Hague Judgments Convention are quite usual and do not provide an added value, as under Article 5 of the Convention Montenegrin courts would have jurisdiction and therefore the foreign judgment could be recognised in Montenegro based on PIL.

At the current stage, the Hague Judgments Convention is only acceded by the EU, while the other important jurisdictions such as U.S. and the Russian Federation have only signed, but not ratified the convention. Obviously, ratification of the Hague Judgments Convention would bring easier recognition of Montenegrin judgments in the EU as the scope of application is not limited to the exclusive choice of court agreements, as is the case with the Hague Choice of Court Convention.

Bilateral treaties with Serbia and Bosnia and Herzegovina, just like Montenegro's PIL, have a wider scope of application; however, as already explained above with regards to the conditions for recognition and enforcement of foreign judgments, they do not bring any simpler requirements than is already the case in PIL.

¹¹⁵ This section reflects the Relationship with HCCH 2019 Judgments Convention until the date of realization of this report. On April 21st, 2023 Montenegro signed the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).

B.5 NORTH MACEDONIA¹¹⁶

1. General overview

The legal provisions on cross border/boundary cooperation in civil and commercial matters in North Macedonia are covered by two different categories of legal sources: domestic legal sources and international agreements. Coordination between domestic legal sources and international agreements is provided for by Article 118 of the Constitution of North Macedonia¹¹⁷, which stipulates the supremacy of international agreements over domestic legal sources.¹¹⁸ Moreover, the Law on Courts¹¹⁹ explicitly jurisdictions that in situations when the Court considers that the internal law is in collision with the provisions of the international agreement ratified in accordance with the Constitution, then conditionally, if the provisions in the international agreement are directly applicable, the Court will apply the provisions of the international agreement.¹²⁰ Such a position is also envisaged in the Private International Law (hereinafter: PIL)¹²¹ where the supremacy of international agreements stipulates that PIL provisions are not applicable if they are regulated by ratified international treaties.¹²² The supremacy of international agreements can also be seen in the Law on Civil Procedure (regarding international judicial assistance)¹²³ and the Law on Legalisation of Foreign Public Documents.¹²⁴

2. Outlines on Enforced Bilateral Treaties

North Macedonia develops friendly relations with other jurisdictions with general aim to enhance its trade and cooperation. For this purpose, there is a significant number of bilateral agreements concluded in different PIL areas.

116 The report for North Macedonia is a condensed version of the report written by GIZ-contracted expert PhD. Ilija Rumenov in the context of this project; based on the report of the Expert, the author of this report has reflected in this part the main summarised findings for North Macedonia.

117 Official Gazette of RM, no. 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 03/09, 49/11 and Official Gazette of RNM, no. 06/19 with the Constitutional Act on implementation of the Amendments XXXIII - XXXVI of the Constitution of Republic of Macedonia, Official Gazette of RNM, no. 06/19.

118 “The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.”

119 Law on Courts, Official Gazette of RM, no. 58/06, 62/06, 35/08, 150/10, 83/18, 198/18 and Official Gazette of RNM, no. 96/19.

120 Art. 18 para. 4 of the Law on Courts

121 Private International Law (Закон за меѓународно приватно право), Official Gazette of Republic of North Macedonia, no. 32/2020.

122 Art. 2 of the PILA 2020.

123 Art.171, 173 and 174.

124 Art.1.

Table 9

<ul style="list-style-type: none"> ▪ Agreement between the Macedonian Government and the Albanian Government on legal assistance in civil and criminal matters¹²⁵
<ul style="list-style-type: none"> ▪ Agreement between the Republic of Macedonia and Bosnia and Herzegovina on legal assistance in civil and criminal matters¹²⁶
<ul style="list-style-type: none"> ▪ Agreement between the Republic of Macedonia and Bosnia and Herzegovina on amendments and changes to the Agreement between the Republic of Macedonia and Bosnia and Herzegovina on legal assistance in civil and criminal matters¹²⁷
<ul style="list-style-type: none"> ▪ Agreement between the Republic of Macedonia and the Republic of Serbia on legal assistance in civil and criminal matters¹²⁸
<ul style="list-style-type: none"> ▪ Agreement between the Republic of Macedonia and the Republic of Montenegro on legal assistance in civil and criminal matters¹²⁹
<ul style="list-style-type: none"> ▪ Agreement between the Government of the Republic of North Macedonia and the Government of Kosovo* on mutual legal assistance in civil matters¹³⁰

3. Current State of Affairs with Regard to Multilateral Conventions

North Macedonia is a member to a considerable number of multilateral conventions covering private international law aspects. Some of these multilateral agreements have been signed and ratified by North Macedonia, while others have been succeeded from SFRY.

Table 10

<ul style="list-style-type: none"> ▪ HCCH Convention on civil procedure from 1 March 1954¹³¹
<ul style="list-style-type: none"> ▪ HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents from 5 October 1961¹³²
<ul style="list-style-type: none"> ▪ HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions from 5 October 1961¹³³
<ul style="list-style-type: none"> ▪ HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters from 15 November 1965¹³⁴
<ul style="list-style-type: none"> ▪ HCCH Convention on the Taking of Evidence Abroad in Civil or Commercial Matters from 18 March 1970¹³⁵

125 Official Gazette of the Republic of Macedonia, No.16/1998.

126 Official Gazette of the Republic of Macedonia, No.10/2006.

127 Official Gazette of the Republic of Macedonia, No.13/2014.

128 Official Gazette of the Republic of Macedonia, No.15/2013.

129 Official Gazette of the Republic of Macedonia, No.55/2016.

130 Official Gazette of the Republic of North Macedonia, No.279/2021.

131 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.6/1962.

132 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.10/1962.

133 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.10/1962.

134 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.29/2008.

135 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.140/2008

▪ HCCH Convention on the Law Applicable to Traffic Accidents from 4 May 1971 ¹³⁶
▪ HCCH Convention on the Law Applicable to Products Liability from 2 October 1973 ¹³⁷
▪ HCCH Convention on the Civil Aspects of International Child Abduction from 25 October 1980 ¹³⁸
▪ HCCH Convention on International Access to Justice from 25 October 1980 ¹³⁹
▪ HCCH Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption from 29 May 1993 ¹⁴⁰
▪ HCCH Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ¹⁴¹
▪ HCCH Convention on Choice of Court Agreements from 30 June 2005 ¹⁴²
▪ HCCH Convention on the International Recovery of Child Support and Other Forms of Family Maintenance from 23 November 2007 ¹⁴³
▪ HCCH Protocol on the Law Applicable to Maintenance Obligations from 23 November 2007 ¹⁴⁴

Table 11

▪ European Convention on Information on Foreign Law from 1968 with additional Protocol from 1978 ¹⁴⁵
▪ European Agreement on the Transmission of Applications for Legal Aid from 1977 ¹⁴⁶
▪ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children from 1980 ¹⁴⁷
▪ European Convention on Nationality from 1997 ¹⁴⁸

136 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.26/1976.

137 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.8/1977.

138 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.7/1991.

139 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.4/1988.

140 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.103/2008.

141 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

142 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

143 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

144 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

145 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.13/2002

146 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.47/2002

147 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.12/2002

148 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.12/2002

Table 12

▪ Convention on the Recovery Abroad of Maintenance from 20 June 1956 ¹⁴⁹
▪ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) from 10 June 1958 ¹⁵⁰
▪ European Convention on International Commercial Arbitration from 21 April 1961 ¹⁵¹
▪ Convention on the settlement of investment disputes between States and nationals of other States from 18 March 1965 ¹⁵²
▪ Protocol on Arbitration Clauses from 24 September 1923 ¹⁵³
▪ Convention on the Execution of Foreign Arbitral Awards from 26 September 1927 ¹⁵⁴
▪ United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11 April 1980 ¹⁵⁵

4. Compatibility and Relationship with Ratified HCCH Conventions

The relationship of the HCCH and North Macedonia can be traced to the early HCCH old conventions from the beginning of the 20th century. North Macedonia is member jurisdiction to the HCCH. It is member to the following conventions either by ratification or by succession from the Socialist Federal Republic of Yugoslavia:

Table 13

▪ HCCH Convention on civil procedure from 1 March 1954 ¹⁵⁶
▪ HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents from 5 October 1961 ¹⁵⁷
▪ HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions from 5 October 1961 ¹⁵⁸
▪ HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters from 15 November 1965 ¹⁵⁹
▪ HCCH Convention on the Taking of Evidence Abroad in Civil or Commercial Matters from 18 March 1970 ¹⁶⁰

149 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.2/1960.

150 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.11/1981.

151 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.12/1963.

152 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.7/1967.

153 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.4/1959.

154 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.4/1959.

155 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.10/1984.

156 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.6/1962.

157 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.10/1962.

158 Official Gazette of the Federal Peoples Republic of Yugoslavia, No.10/1962.

159 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.29/2008.

160 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.140/2008

- HCCH Convention on the Law Applicable to Traffic Accidents from 4 May 1971¹⁶¹
- HCCH Convention on the Law Applicable to Products Liability from 2 October 1973¹⁶²
- HCCH Convention on the Civil Aspects of International Child Abduction from 25 October 1980¹⁶³
- HCCH Convention on International Access to Justice from 25 October 1980¹⁶⁴
- HCCH Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption from 29 May 1993¹⁶⁵

In 2019 North Macedonia signed the following four HCCH instruments which are still not ratified:

Table 14

- HCCH Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children¹⁶⁶
- HCCH Convention on Choice of Court Agreements from 30 June 2005¹⁶⁷
- HCCH Convention on the International Recovery of Child Support and Other Forms of Family Maintenance from 23 November 2007¹⁶⁸
- HCCH Protocol on the Law Applicable to Maintenance Obligations from 23 November 2007¹⁶⁹

The HCCH Convention on recognition and enforcement of foreign judgments in civil and commercial matters from 2019 is not signed by North Macedonia. The HCCH Conventions according to the subject matter can be categorised in three larger groups: family matters; judicial proceedings; trade and financial matters. The core of this second group is consisted of the following Conventions:

161 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.26/1976.

162 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.8/1977.

163 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.7/1991.

164 Official Gazette of the Socialist Federal Republic of Yugoslavia, Supplement International agreements, No.4/1988.

165 Official Gazette of the Republic of Macedonia, Supplement International agreements, No.103/2008.

166 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

167 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

168 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

169 Signed in 2019 but still not ratified by the Assembly of the Republic of North Macedonia.

Table 15

<ul style="list-style-type: none"> ▪ HCCH Convention on civil procedure from 1 March 1954
<ul style="list-style-type: none"> ▪ HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents from 5 October 1961
<ul style="list-style-type: none"> ▪ HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters from 15 November 1965
<ul style="list-style-type: none"> ▪ HCCH Convention on the Taking of Evidence Abroad in Civil or Commercial Matters from 18 March 1970
<ul style="list-style-type: none"> ▪ HCCH Convention on International Access to Justice from 25 October 1980
<ul style="list-style-type: none"> ▪ HCCH Convention on Choice of Court Agreements from 30 June 2005
<ul style="list-style-type: none"> ▪ HCCH Convention on recognition and enforcement of foreign judgments in civil and commercial matters from 2019

5. Relationship with HCCH 2019 Judgments Convention

In comparison, all of the bilateral agreements contain provisions regarding recognition and enforcement. Bilateral agreements with Kosovo*, Montenegro and Serbia include referring provisions that the procedure of recognition and enforcement of foreign judicial decisions and arbitral awards would be conducted according to the domestic provisions of the contracting jurisdictions.¹⁷⁰ The other two bilateral agreements with Albania and Bosnia and Herzegovina include set of provisions regarding the procedure for the recognition and enforcement and the conditions for recognition and enforcement.¹⁷¹

Recognition and enforcement between the jurisdictions that contain referring provisions would not constitute problems for the recognition and enforcement, since North Macedonia PIL contains very liberal provisions on the recognition and enforcement of foreign judgments¹⁷² and its thresholds are lower than the other jurisdictions. This means that the foreign judgments that come from these jurisdictions will be recognised and enforced if they fulfil the basic procedural standards (finality and enforceability of the judicial decision, exclusive jurisdiction of the Courts of North Macedonia, exorbitant jurisdiction of the foreign court (mirror principle), conflicting decisions, public policy and due process). So one of the most important aspects of PIL is that it does not contain provisions on reciprocity (as oppose to Kosovo* and Serbia) and judgments from these jurisdictions would not be discriminated based on the place where the judgment originate. In other words, if there is no reciprocity standard in PIL, it means that its formal requirements are met.

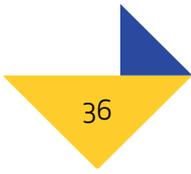
In comparison to the HCCH 2019 Judgments Convention, regarding the type of decisions and the subject matter of the decisions,¹⁷³ bilateral agreements with Albania and Bosnia and Herzegovina have

¹⁷⁰ Article 19 of the bilateral agreement with Kosovo*, Article 24 of the bilateral agreement with Montenegro and Article 24 of the bilateral agreement with Serbia.

¹⁷¹ Articles 20-23 of the bilateral agreement with Albania and Article 24-29 of the bilateral agreement with Bosnia and Herzegovina and Article 3 of the amendments to the bilateral agreement with Bosnia and Herzegovina.

¹⁷² For more on the procedure on recognition and enforcement in North Macedonia see I Rumenov, Country Report on the cross-border recognition and enforcement of foreign judicial decisions in South East Europe and perspectives of HCCH 2019 Judgments Convention – North Macedonia (GIZ 2021)

¹⁷³ Article 1, 2 and 3 of the HCCH 2019 Judgments Convention.



broader scope of application covering status, family law, and succession, while bilateral agreement with Bosnia and Herzegovina also applies to arbitral awards. For the formal requirements, the HCCH 2019 Judgments Convention generally corresponds to the formal requirements in bilateral agreements. However, there is some discrepancy between the formal requirements in bilateral agreements and PIL regarding the certificate of the party against whom the decision was rendered, since this certificate is not required under PIL. Regarding the procedure for recognition and enforcement, the HCCH 2019 Judgment contains similar provision to the bilateral agreements that the procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment are governed by the law of the requested jurisdiction unless this Convention provides otherwise. The aspects regarding the transmission of the request are not provided in the HCCH 2019 Judgments Convention.

B.6 SERBIA¹⁷⁴

1. General overview

In Serbia, the cross-border/boundary judicial cooperation in civil and commercial matters is regulated by domestic and international legal sources¹⁷⁵. The possible conflicts between domestic and international legal sources have to be solved in accordance with the provisions of Article 194 of the Constitution of Serbia¹⁷⁶ which regulate their hierarchy within the legal system of Serbia. Pursuant to these provisions, all general acts and regulations enacted in Serbia and ratified international treaties have to be in compliance with the Constitution, while the general acts (laws) and regulations have to be in compliance with ratified international treaties as well. It means that ratified international conventions rank above general acts and regulations, but under the Constitution¹⁷⁷. For the purposes of this report the cross-border/boundary judicial cooperation in civil and commercial matters is to be understood to cover the following issues: international judicial (legal) assistance, which includes service of documents and taking evidence abroad, entitlement to legal aid, *cautio iudicatum solvi*, exemption from the payment of costs of civil proceedings for foreigners, legalisation of foreign public documents, providing information on the content of domestic and foreign law and recognition and enforcement of foreign judgments. As concerns domestic legal sources, the above mentioned issues of cross-border/boundary judicial cooperation in civil and commercial matters are primarily regulated by the Private International Law¹⁷⁸ (henceforth abbr. Serbian PIL), Litigious Procedure Act¹⁷⁹ (henceforth abbr. LPA) and the Act on Legalisation of Documents in International Intercourse¹⁸⁰ (henceforth abbr. ALDI).

2. Outlines on Enforced Bilateral Treaties

Serbia is also a party to many bilateral conventions that regulate cross-border/boundary judicial cooperation in civil and commercial matters¹⁸¹. For the purposes of this study the most important are those concluded with the jurisdictions of Western Balkans region, such as:

174 The report for Serbia is a condensed version of the report written by GIZ-contracted expert Prof. Dr. Slavko Đorđević in the context of this project. Based on the report of the Expert, the author of this report has reflected in this part the main summarised findings for Serbia.

175 See more S. Djordjevic, 'Serbia', in: Basedow, Jürgen *et. al.* (eds.), *Encyclopedia of private international law*, Cheltenham (UK); Northampton (MA): E. Elgar, cop. 2017, pp. 2469 – 2472; T. Varadi, B. Bordaš, G. Knežević, V. Pavić, *Međunarodno privatno pravo*, Beograd, 2018, 62 etc.; M. Stanivuković, M. Živković, 'Serbia', in: Verschraegen, B. (ed.), *International Encyclopedia of Laws*, vol. 2, *Private International Law*, supp. 21, Kluwer Law International 2009, 35 etc.

176 Official Gazette of RS, No. 98/2006.

177 Also it is expressly stated in Art 3 of Serbian Private International Law that the international conventions have primacy in application over the provisions of this act.

178 The Law on Resolution of Conflict of Laws with Regulations of Other Countries (Serbian Private International Law Act, henceforth: abbr. Serbian PILA), Official Gazette of SFRY, No. 43/82 and 72/82 – Amendment Official Gazette of FRY, No 46/96 and Official Gazette of RS, No. 46/2006 – other law.

179 Official Gazette of RS, No. 72/2011, 49/2013 – decision of Constitutional Court, 74/2013 – decision of Constitutional Court, 55/2014, 87/2018 and 18/2020.

180 Official Gazette of SFRY, No. 6/73 and Official Gazette of Serbia and Montenegro, No. 1/2003 – Constitutional Charter.

181 The text of numerous bilateral conventions in the field of private international law can be found on the website of Serbian Ministry of Justice, see <https://www.mpravde.gov.rs/tekst/25261/bilateralni-sporazumi-u-gradjanskim-stvarima.php>; see also A. Jakšić, op. cit., 213-217. T. Varadi, *et. al.*, op. cit., 72 – 76; M. Stnivuković, M. Živković, 'Serbia', 45 – 49.

Table 16

- Treaty between Serbia and Montenegro and the Republic of Bosnia and Herzegovina on Legal Assistance in Civil and Criminal Matters of 2005¹⁸² (amended by the Treaty between the Republic of Serbia and the Republic of Bosnia and Herzegovina of 2010¹⁸³)
- Treaty between the Republic of Serbia and the Republic of Montenegro on Legal Assistance in Civil and Criminal Matters of 2010¹⁸⁴
- Treaty between the Republic of Serbia and the Republic of Macedonia on Legal Assistance in Civil and Criminal Matters¹⁸⁵

There is no bilateral treaty in this area between Serbia and Albania. These treaties show great similarities and contain very similar or almost identical provisions for many issues covered, which enables analysing them together. Despite that, it must be born in mind that there are still some differences between treaties not only in their wording, but also with regard to certain issues of judicial cooperation regulated by them.

3. Current State of Affairs with Regard to Multilateral Conventions

With respect to international legal sources, Serbia is a contracting party to many multilateral and bilateral treaties specifically dedicated to cross-border/boundary judicial cooperation in civil and commercial matters. Serbia has ratified numerous multilateral conventions that cover issues of cross-border/boundary judicial cooperation in civil and commercial matters¹⁸⁶, most important of which are those adopted within the Hague Conference on Private International Law¹⁸⁷:

Table 17

- HCCH 1954 Convention Relating to Civil Procedure¹⁸⁸
- HCCH 1961 Apostille Convention¹⁸⁹
- HCCH 1965 Service Convention¹⁹⁰,
- HCCH 1970 Evidence Convention¹⁹¹
- HCCH 1980 Access to Justice Convention¹⁹²

182 Official Gazette of Serbia and Montenegro – International treaties, No. 6/2005-6

183 Official Gazette of RS – International treaties, No. 13/2010-35

184 Official Gazette of RS – International treaties, No. 1/2010-57.

185 Official Gazette of RS – International treaties, No. 5/2012-1.

186 See the overview of most important multilateral conventions in the field of private international law: A. Jakšić, *Međunarodno privatno pravo, opšta teorija*, Beograd 2017, 201-205; T. Varadi, et. al., *op.cit.*, 67-72; see also website of Serbian Ministry of Justice <https://www.mpravde.gov.rs/tekst/25263/multilateralni-sporazumi-u-gradjanskim-stvarima.php>.

187 See <https://www.hcch.net/en/states/hcch-members/details1/?sid=65>

188 Official Gazette of FPRY – Supplement, No. 6/62.

189 Official Gazette of FPRY – International treaties, No. 10/62.

190 Official Gazette of RS – International treaties, No. 1/2010 and 13/2013.

191 Official Gazette of RS – International treaties, No. 1/2010.

192 Official Gazette of SFRY – International treaties. No. 4/88.

- HCCH 1980 Child Abduction Convention¹⁹³
- HCCH 1993 Adoption Convention¹⁹⁴
- HCCH 1996 Child Protection Convention¹⁹⁵
- HCCH 2007 Child Support Convention¹⁹⁶

Within the Hague Conference on Private International Law, Serbia has ratified the following conventions which are exclusively dedicated to conflict-of-law issues: HCCH 1961 Form of Wills Convention¹⁹⁷, HCCH 1971 Traffic Accident Convention¹⁹⁸, HCCH 1973 Product Liability Convention¹⁹⁹; and HCCH 2007 Maintenance Obligation Protocol²⁰⁰. In addition to the HCCH Conventions, Serbia is also a party to other multilateral conventions dedicated to certain issues of cross-border/boundary judicial cooperation, such as the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR),²⁰¹ 1963 Vienna Convention on Civil Liability for Nuclear Damage,²⁰² European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and Restoration of Custody of Children,²⁰³ 1956 New York Convention on Recovery Abroad of Maintenance²⁰⁴, 1968 European Convention on Information on Foreign Law²⁰⁵, etc.

4. Compatibility and Relationship with Ratified HCCH Conventions

The HCCH 1965 Service Convention contains the rules on transmission of judicial and extrajudicial documents concerning civil and commercial matters for service abroad²⁰⁶. It provides that the service of documents is to be performed through Central Authorities designated by each Contracting Party whose task is to receive requests for service coming from other Contracting Parties and to proceed in conformity with the rules of this Convention on transmission of documents²⁰⁷. Considering that Serbia has not yet concluded the bilateral treaty on cross-border/boundary judicial cooperation in civil and commercial matters with Albania, the HCCH 1965 Service Convention applies in relations between Serbia and Albania, since both jurisdictions are Contracting jurisdictions to this convention.

The HCCH 1970 Evidence Convention provides for two methods of taking evidence abroad in civil or commercial matters: (1) taking evidence by submitting the letter of request and (2) taking evidence by diplomatic officers, consular agents and commissioners. Pursuant to the first method, a judicial au-

193 Official Gazette of SFRY – International treaties, No. 7/91

194 Official Gazette of RS – International treaties, No. 12/2013.

195 Official Gazette of RS – International treaties, No. 20/2015

196 Official Gazette of RS – International treaties, No. 4/2020.

197 Official Gazette of FPRY – International treaties, No. 10/62.

198 Official Gazette of FPRY – International treaties, No. 26/76.

199 Official Gazette of FPRY – International treaties, No. 8/77.

200 Official Gazette of RS – International treaties, No. 1/2013.

201 Official Gazette of FPRY – Supplement, No. 11/1958.

202 Official Gazette of SFRY – Supplement, No. 5/1977.

203 Official Gazette of FRY – International treaties, No. 1/2001.

204 Official Gazette of FPRY – Supplement, No. 2/60.

205 Official Gazette of SFRY – International Treaties, No. 7/91

206 Art. 1 of the HCCH 1965 Service Convention

207 Art. 2 of the HCCH 1965 Service Convention.

thority of one Contracting jurisdiction may, in accordance with the law of that jurisdiction, request the competent authority of another Contracting jurisdiction, by using a letter of request, to obtain evidence or to perform some other judicial act²⁰⁸. Considering that Serbia has not yet concluded the bilateral treaty on cross-border/boundary judicial cooperation in civil and commercial matters with Albania, the HCCH 1970 Evidence Convention applies in relations between Serbia and Albania, since both jurisdictions are Contracting jurisdictions to this Convention.

The aim of the HCCH 1980 Access to Justice Convention is to facilitate international access to justice, which it mainly achieves by its rules on availability of legal aid for court proceedings and exemption from *cautio iudicatum solvi*, whereas the chapter dedicated to legal aid is obligatory for all Contracting jurisdictions (it is not possible to accept the Convention and exclude this chapter)²⁰⁹.

The HCCH 1961 Apostille Convention aims to abolish the requirement of diplomatic or consular legalisation for foreign public documents. It applies to public documents which have been executed on the territory of one Contracting jurisdiction and which have to be produced in the territory of another Contracting jurisdiction²¹⁰. Considering that Serbia has not yet concluded the bilateral treaty on cross-border/boundary judicial cooperation in civil and commercial matters with Albania, the HCCH 1961 Apostille Convention applies in relations between Serbia and Albania, since both jurisdictions are Contracting jurisdictions to this Convention.

5. Relationship with HCCH 2019 Judgments Convention

After negotiations that lasted almost three decades²¹¹, Hague Conference on Private International Law adopted the Convention on Recognition and Enforcement of Judgments in civil or commercial matters on 2 July 2019 (abbr. the HCCH 2019 Judgments Convention). The aim of the HCCH 2019 Judgments Convention is to establish the universal and comprehensive cross-border/boundary regime of recognition and enforcement of foreign judgments that should be applied worldwide²¹². In order to achieve this aim, the HCCH 2019 Judgments Convention has been drafted as a very flexible international instrument. 'Flexibility' means that this Convention enables the Contracting jurisdictions to limit its territorial²¹³ and material²¹⁴ scope of application as well as to preserve the domestic regimes of recognition and enforcement²¹⁶. Considering that some EU Member Jurisdictions (such as Austria, Sweden, Netherlands) require the existence of diplomatic reciprocity in respect of recognition and enforcement of foreign judicial decisions, the only way for Serbia to overcome this obstacle is ratification of the HCCH 2019 Judgments Convention to which the EU has already acceded, since the

208 Art. 1(1) of the HCCH 1970 Evidence Convention.

209 Explanatory Report, <https://assets.hcch.net/docs/8e0c3d91-2d3c-4d62-b509-439fd8cb7bd3.pdf>, p. 30.

210 Art. 1(1) of the HCCH 1961 Apostille Convention.

211 About origins of this convention see more in: Explanatory Report by Francisco Garcimartin & Genevieve Saumier, <https://assets.hcch.net/docs/alb0b0fc-95b1-4544-935b-b842534a120f.pdf>, par. 3 – 6; L.E. Teitz, *Another Hague Judgments Convention? Bucking the Past to Provide for the Future*, Duke Journal of Comparative & International Law, Vol. 29, 2019, 492 etc.; R. Brand, *the Hague Judgments Convention in the United States: A "Game Changer" or a New Path to the Old Game?*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3747078, стр. 6 и даље; H. van Loon, *Towards A Global Hague Convention on the Recognition and Enforcement of Judgments in Civil or Commercial Matters*, Zbornik radova Pravnog fakulteta u Nišu, No. 82, 2019, 15 etc.

212 See Explanatory Report, par. 12 – 19; M. Wilderspin, L. Vysoka, *the Hague Judgments Conventions through European Lenses*, NIPR 2020, <https://www.nipr-online.eu/pdf/2020-138.pdf>, 35.

213 See Art. 29 of the HCCH 2019 Judgments Convention.

214 See Art. 17, 18 and 19 of the HCCH 2019 Judgments Convention.

conclusion of bilateral or multilateral treaties in this matter with EU jurisdictions is currently almost impossible. Therefore, by signing and ratifying the HCCH 2019 Judgments Convention, Serbia could have an opportunity to establish comprehensive cross-border/boundary regime of recognition and enforcement of foreign judicial decisions with EU Member Jurisdictions as well as with the jurisdictions in any part of the world.

Article 23 of the HCCH 2019 Judgments Convention contains four provisions that regulate relationship of this Convention with other international instruments (i.e. bilateral and multilateral treaties). Pursuant to the first provision, this Convention is to be interpreted so far as possible to be compatible with other treaties in force for Contracting jurisdictions, whether concluded before or after this Convention²¹⁵. This means that where the provision contained in the Convention is reasonably capable to have two meanings, the meaning that is most compatible with the provisions of other international instrument prevails²¹⁶. From a Serbian point of view, the provisions of Article 23 of the HCCH 2019 Judgments Convention deem to be very clear with regard to the relationship between this Convention and bilateral treaties Serbia concluded with Montenegro, Bosnia and Herzegovina and North Macedonia. Since these bilateral treaties were concluded before the HCCH 2019 Judgments Convention, they would prevail when (and if) Serbia and mentioned WB jurisdictions become Contracting Parties to this Convention.

As concerns bilateral treaties, there is a need to make distinction between the treaties with Montenegro and Bosnia and Herzegovina, on one side, and the treaty with North Macedonia, on the other side. Bilateral treaties with Montenegro and Bosnia and Herzegovina regulate mutual recognition and enforcement of judicial decisions in detail and they do not provide the list of 'jurisdiction filters' as the HCCH 2019 Judgments Convention does. According to these bilateral treaties, the jurisdiction of courts of the jurisdiction of origin has no influence on the recognition and enforcement, except when it violates the exclusive jurisdiction of courts of requested jurisdiction (in which case this exclusive jurisdiction represents the ground for refusal of recognition and enforcement). Therefore, it can be concluded that, in this respect, these treaties are more liberal than the HCCH 2019 Judgments Convention. On the other hand, the treaty with North Macedonia does not regulate mutual recognition and enforcement of judicial decisions in detail, but contains only one provision, which simply refers that the proceedings with regard to recognition and enforcement of judicial decisions shall be conducted in accordance with domestic legislation of both contracting jurisdictions²¹⁷.

215 Art. 23(1) of the HCCH 2019 Judgments Convention.

216 Explanatory Report, par. 371.

217 See Art. 24 of the Treaty with North Macedonia. This means that the mentioned provision establishes only a formal diplomatic reciprocity with regard to mutual recognition and enforcement of judicial decisions between Serbia and North Macedonia, while the courts of both contracting parties have to determine whether the substantial reciprocity exists in each specific case by examining the domestic PIL rules of both contracting parties on recognition and enforcement of foreign judicial decision, especially those related to the jurisdiction of their courts.

C. Deductions on Individual Economy Findings and How a Strengthened Judicial Cooperation Can Support CRM Implementation and the Overall Socio-Economic Progress of WB region²¹⁸



218 The deductions presented in this part are, *inter alia*, based on the conclusions of each of the expert report for the economies of Albania, Kosovo*, Montenegro, North Macedonia, Bosnia and Herzegovina and Montenegro.

In 2018, the EU released an official expansion strategy for the Western Balkans,²¹⁹ establishing a timeline for Serbia and Montenegro's possible admission to the Union by 2025 and outlining the next stages for membership for Albania, Bosnia and Herzegovina, Kosovo*, and North Macedonia.²²⁰ The European Union approved the start of accession discussions with North Macedonia and Albania in March 2020 and adopted a new revised accession talks framework at the same time.²²¹ On 19 July 2022 the European Union launched the accession negotiation process with Albania and North Macedonia through first intergovernmental conferences for each jurisdiction. The EU's Western Balkans policy for 2018 and the new framework for accession discussions in 2020 centre on strengthening the rule of law, fighting corruption, and combating organised crime.²²² For the previous fifteen years, the European Union's expansion strategy towards the Western Balkans has been on autopilot, and the accession process has been seen as a mere box-ticking exercise by academics and members of the European Parliament.²²³ The initiative of expanding the EU to the Western Balkans was proposed by the European Commission, and it received widespread support from EU member jurisdictions.²²⁴ As a result, the expansion strategy was revived, and the integration of the Western Balkans into the EU became a top priority.²²⁵ The State of the Union speech from 2017 emphasised the importance of the rule of law, justice, and basic rights as important criteria in EU accession discussions with the Western Balkans.²²⁶ Fifteen years after the previous EU-Western Balkans Summit, held in Thessaloniki in 2003,²²⁷ the Commission adopted the Credible Enlargement Perspective for an Enhanced EU Engagement with the Western Balkans policy in February 2018.²²⁸ The 2018 EU-Western Balkans plan considered the region as a geostrategic investment for the Union bloc, and it included some new policy goals for EU expansion in the future.²²⁹ However, the EU as a whole sought to refocus its efforts following the devastating Brexit decision by reinvigorating the Union's overall future orientation.²³⁰ Louwerse and Kassoti²³¹ argue that the Western Balkans' accession discussions with the EU will be fruitful only if the rule of law prerequisites laid forth in the Copenhagen criteria are met.²³²

219 European Commission - Press release "Strategy for the Western Balkans: EU sets out new flagship initiatives and support for the reform-driven region", Strasbourg, 6 February 2018, www.ec.europa.eu accessed online on 14 December 2022.

220 Ibid.

221 Hoxhaj A, The EU Rule of Law Initiative towards the Western Balkans (2020) 13 Hague Journal on the Rule of Law 143.

222 Ibid.

223 Ibid.

224 European Parliament (2015) The Western Balkans and EU Enlargement: Lessons learned, ways forward and prospects ahead. Policy Department, Directorate-General for External Policies.

225 Gstohl S (eds) (2016) Introduction: The European neighbourhood policy in a comparative perspective. In: The European neighbourhood policy in a comparative perspective: models, challenges, lessons. Routledge, Abingdon, pp 1–14.

226 European Commission President Jean-Claude Juncker, State of the Union Address, 13 September 2017.

227 Van Meurs W (2003) The next Europe: South-eastern Europe after Thessaloniki. SEER J Labor Soc Af East Eur 6(3):9–16.

228 In the EU-Western Balkans Summit in 2003 in Thessaloniki, the EU initially made a pledge to expand the Union into the Western Balkans. See the European Commission Press Release (18 June 2003), The Thessaloniki Summit: A Milestone in the European Union's Relations with the Western Balkans.

229 European Commission (2018), 'Communication on A credible enlargement perspective for and enhanced EU engagement with the Western Balkans', COM (2018) 65 final.

230 Ker-Lindsay J (2017) The United Kingdom and EU enlargement in the Western Balkans: from ardent champion of expansion to post-Brexit irrelevance. J Southeast Eur Black Sea Stud 17(4):555–569

231 Louwerse L, Kassot E (2019) Revisiting the European commission's approach towards the rule of law in enlargement. Hague J Rule Law 11(1):223–250

232 Ibid.

The expansion process remains one of the liveliest and widely debated subjects, not just inside the Union but also in the accession and pre-accession economies. Because of the EU's evolution and increased complexity, meeting the requirements to membership has grown more difficult on a technical level. The jurisdictions that constitute the Western Balkans have a number of obstacles on their path, which may be subdivided into regional as well as jurisdiction-specific categories. While it is true that the EU would be saddled with more responsibilities as a result of the Western Balkans' membership journey, the region as a whole will be safer and the Balkans will be stabilised as a result. Collaboration between regional judiciary on civil and commercial issues is a factor to be considered when addressing ways to better the region in its entirety.

The European Union's model of harmonised law based on mutual recognition and trust demonstrates how this might improve judicial collaboration. The rule of law is the foundation upon which mutual trust may be built. Having shared norms and beliefs is the foundation for trust. The Western Balkans judicial system is governed by international treaties, bilateral agreements, and domestic laws that govern judicial cooperation in civil issues. The current international and bilateral accords provide a reasonable level of judicial cooperation. Further legislative harmonisation at the domestic level is assured through the process of harmonising laws with the EU *acquis*.

Western Balkans jurisdictions export markets are modest and highly reliant on their immediate neighbours. The implementation of a manufacturing process within the framework of regional division of labour, and the proliferation of shared free-trade zones within the area would all contribute to a deeper level of integration between the jurisdictions of the Western Balkans. The European Commission issues yearly reports that include recommendations for domestic reforms in each candidate or potential candidate economy. It remains to be seen whether the citizens of the Western Balkans have a clear understanding of the correct and incorrect actions taken by their governments with regard to European Integration. Also, time will show if the years to come will result in a lengthening of the accession timeframe or if the Western Balkans authorities will come to the realisation that the policy changes need to be done comprehensively in order to achieve the ultimate goal of "sitting at the table with other EU Member States and having an equal voice on the issues which tackle the Union". In addition, closer economic ties established by the Common Regional Market, which are based on EU regulations and standards, have the potential to make the region more appealing to investors. Last decade saw a renewed push for economic union amongst the Western Balkans jurisdictions. Many current efforts have yielded tangible results for regional integration. Economic growth is aided by increased regional integration. The European Union's (EU) internal market and four freedoms have served as inspiration for both the Regional Economic Area and the Common Regional Market. It is anticipated that judicial collaboration in civil and commercial proceedings will be a useful instrument in this domain to promote economic cooperation.

International trade and commerce have steadily increased and the number of people living abroad continues to grow. A recognition of foreign judgements and their enforcement saves time, money, and eliminates the need to litigate the same issue between the same parties in a court of a different jurisdiction. Since the commencement of the European integration project, mutual recognition of decisions has been a crucial aspect of cooperation under civil law. It should come as no surprise that the phrase 'cross-border/boundary judicial cooperation' covers a fairly wide range of activities. Researchers claimed that the major purposes for these kind of progression, as the Maastricht Treaty presented the so-called third cornerstone, a set of regulations on collaboration in Justice and Home Affairs matters, were primarily a need for unification in the disciplines of criminal law and illegal mi-

gration, cooperation in the fields of customs, police cooperation, and so on, thus judicial cooperation in civil matters was secondary. The Amsterdam Treaty, which has connected cooperation in civil affairs with the free movement of physical individuals, was the catalyst for the EU's more active participation in this sector. This was the concept behind the single market. The construction of the single EU market involves improvement of judicial collaboration, or judicial cooperation plays a crucial role in the implementation of single market. Judicial cooperation is an integral aspect of the regional market-building process and a prerequisite for socio-economic development as a whole. In the territory of the Western Balkans, the single market is presently incomplete owing to the un-harmonised nature of certain areas of cooperation.

Reforms to the judicial systems in the Western Balkan economies are progressing steadily as the work towards EU membership, with the main goal of bolstering the autonomy, impartiality, and competence of the judiciary to satisfy European standards for judges. Overcoming the heterogeneity of various systems in the area and fostering mutual confidence and recognition via closer judicial collaboration amongst Western Balkans authorities is essential. The fact that Western Balkans have developed bilateral relations in the sphere of civil cooperation with the jurisdictions in the region does not indicate that this task was achieved. There are certain jurisdictions of the Western Balkans that do not work in such close coordination with one another. A more robust framework for judicial cooperation in civil procedures is necessary. The extent and cohesion of bilateral agreements are severely constrained, and they do not include all Western Balkans jurisdictions. Thus, the Regional Convention on the jurisdiction, recognition, and execution of foreign judgements might be a viable option (the so-called Sarajevo Convention).

Building confidence amongst the justice institutions of the WB is necessary for increased judicial collaboration, in addition to amending the laws. Dependability in adhering to the rule of law is fundamental to trust. To this purpose, the fight against corruption in the legal system, together with its independence and effectiveness, is of paramount importance. Communicating and exchanging best practices across the Western Balkans courts helps to foster a culture of trust. There is doubt about the fate of the Sarajevo Convention at this moment, which provides an opening for the Hague Conference on Private International Law's 2019 Judgments Convention. When it comes to enforcing agreements, the jurisdictions in the Western Balkans region have another option: signing bilateral agreements with provisions for recognition and enforcement. In addition to addressing issues of recognition and enforcement, bilateral agreements often set down rules for foreign judicial aid in a variety of different contexts, including civil and commercial cases.

There is already a foundation of trust and uniformity in law amongst ex-Yugoslav jurisdictions, which would make it easier to implement the Brussels I Regime via regional convention. The Sarajevo Convention was anticipated to be ratified by the end of 2013 and would be available for ratification by CEFTA and Lugano Convention parties under a simplified regime, as well as by any other jurisdiction meeting the additional requirements of Article 72 of the Lugano Convention. According to Article 71 of Sarajevo Convention, all other jurisdictions are required to communicate information about their judicial systems, including the appointment and independence of judges, their internal law regarding civil procedure and judgement enforcement, and their private international law pertaining to civil procedure. Nonetheless, notwithstanding the endorsement of a substantial portion of the scientific community, Sarajevo Convention was never ratified by any jurisdiction and was never put into effect.

When examining the economic dynamics of the Western Balkans, it is apparent that trade is heavily skewed towards the EU and has a major impact on the economies of individual jurisdictions. This is attributable to the longstanding ties that have existed between these economies and the fact that the vast majority of them are members of CEFTA. Due to the region's dynamic economy, there must be enhanced legal communication amongst the Western Balkan economies. Rapid settlement of disputes is essential for economically active people to promote legal clarity and predictability. The laws on the recognition and execution of foreign judgments and the international judicial assistance agreements aid these individuals in obtaining and enforcing court judgements made in other economies. While bilateral agreements do not affect the level to which domestic law is harmonised with EU law, newly passed laws on international private law in several Western Balkan economies indicate harmonisation with EU international private law to a large extent. Since established bilateral treaties latency is far behind developments and trends at the EU and international levels, it is first recommended that they be updated and expanded to conform to the framework of European private international law, as well as conventions acknowledged within the Council of Europe and the Hague Conventions. The second proposal is that rather than concluding six identical or comparable bilateral treaties, these economies would be better served by concluding a multilateral agreement, since it would be more efficient and bring them closer together. Sustaining judicial collaboration in mutual recognition and enforcement of foreign judgments in civil and commercial matters and assuring a legal certainty in cross-border/boundary commercial relations are accelerated in the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention). By streamlining and enabling cross-border/boundary collaboration in civil and commercial cases amongst judiciaries in Western Balkan economies not only will processes become less complicated and shorter, but costs will also be drastically reduced.

For several reasons, this turn of events had been widely anticipated. For instance, the majority of jurisdictions in the region used to be a part of SFRY, therefore they all have a common history (with exception of Albania). Therefore, it was not a theoretically difficult issue to accomplish bilateral treaties, or even a completion of a multilateral treaty, in the domain of judicial cooperation, as a result of their mutual familiarity and the overlap of their separate legal systems to this day. In addition, there are many parallels in the social and economic situations. All of the economies in the region aspire to join the European Union, and as has been said, this means that they must gradually integrate EU law into their own legal systems.

In addition, closer economic ties established by the Common Regional Market, which are based on EU regulations and standards, might make the area more appealing to investors. In response, the Western Balkans has proposed an Action Plan for a Common Regional Market (CRM) that aims to be fully operational by the year 2024. This ambitious agenda is comprised of specific measures to be taken in the following four main areas: (i) regional trade area: free movement of products, services, money, and people, as well as cross-cutting initiatives such as Green Lanes, to conform with EU-compliant norms and standards and give possibilities for businesses and persons; (ii) regional investment area, aligning investment regulations with EU standards and worldwide best practices and promoting the region to foreign investors; (iii) Western Balkans digital area to integrate into the pan-European digital market; and (iv) regional industrial and innovation zone, with the goals of modernising the region's manufacturing sectors, influencing the value chains to which they are integral, and making them better equipped to face the problems of the present and the future.

D. Recommendations²³³



233 The recommendations presented in this part are, *inter alia*, based on the conclusions and recommendations of each of the expert report for the economies of Albania, Kosovo*, Montenegro, North Macedonia, Bosnia and Herzegovina and Montenegro.

Although enhancing cross-border/boundary judicial cooperation is not specifically mentioned in the CRM Action Plan, it is intrinsically linked to the first key area, namely, actions enabling the four freedoms in the regional trade area. This means that any statute, international (bilateral or multilateral) instrument, or political agreement pertaining to the growth and/or enhancement of legal/judicial cooperation in the Western Balkans region could be interpreted as a support for the implementation of CRM.

Overcoming the heterogeneity of various systems in the area and fostering mutual confidence and recognition via closer judicial collaboration amongst Western Balkans authorities is essential. In the jurisdictions of Western Balkans, the single market is presently incomplete owing to the un-harmonised nature of certain areas of cooperation. Judicial cooperation is an integral aspect of the regional market-building process and a prerequisite for socio-economic development as a whole. To that end, it is expected that judicial collaboration in civil and commercial proceedings would play a significant role in promoting economic cooperation. Harmonised law based on mutual recognition and trust, as seen in the European Union, ensures greater judicial collaboration. Rule of law is the foundation upon which mutual trust may be built.

The following recommendations should be considered in light of the findings presented in this study report at the jurisdictions and regional levels:

- 1- Western Balkans jurisdictions must therefore focus on developing prevalent networks by expanding on existing RCC-established Western Balkans Working Group on Justice (WB WGJ) and South East Europe Judicial Training Institutes (SEE JTI) network activities and by establishing a software platform to provide facts on judicial cooperation in civil and commercial matters, including relevant laws, institutions, and best practices.
- 2- There is a need for revision of the present legislative framework for judicial collaboration in civil and commercial issues in Western Balkans, as by bringing domestic laws in line with the EU *acquis*, greater harmonisation of domestic laws is guaranteed. While bilateral agreements do not affect the level to which domestic law is harmonised with EU law, newly passed laws on international private law in several Western Balkans jurisdictions indicate the alignment with EU international private law to a large extent.
- 3- Western Balkans jurisdictions should create a comprehensive legal regime on cross-border/boundary judicial cooperation in civil and commercial matters to facilitate international trade and direct foreign investments by fostering legal certainty, predictability, and mutual trust; enhancing international access to justice; and decreasing the likelihood of redundant litigation.
- 4- In addition to amending the law, enhancing judicial collaboration needs the Western Balkans justice institutions to develop a degree of confidence. The fulfilment of the rule of law standards is the basis of trust. Strengthening judicial collaboration in civil and commercial disputes necessitates that future Western Balkans acts be guided by two essential principles:
 - 4.1- *First*, Western Balkans should further improve the legal framework on judicial cooperation in civil and commercial matters by (i) adopting a regional agreement on the jurisdiction of civil and commercial cases, recognition and execution of judgements, and related topics; (ii) adhering to the Hague Convention on the recognition and enforcement of

judgments in civil and commercial matters; (iii) proceeding with the process of harmonising domestic laws with the EU acquis.

- 4.2- *Second*, Western Balkans should build trust by (i) strengthening the effectiveness and impartiality of judiciary; (ii) improving anticorruption index; and (iii) increasing cooperation and exchange of good practices between courts.
- 5- From a regional perspective, it is necessary to develop a new system of mutual recognition and implementation of foreign court rulings in civil and commercial matters. It would seem that the HCCH 2019 Judgment Convention would be the most appropriate method to create such a regime, especially in light of uncertain future of the Draft of Sarajevo Convention. However, in order to implement this approach, it is necessary to disregard the limitations on recognition and implementation of judgements included in bilateral treaties with Western Balkans jurisdictions.
- 6- Bilateral treaties amongst Western Balkans jurisdictions require better solutions based on more mutual trust between jurisdictions that have long shared a joint legal tradition and want to be part of the EU. Apart from the validity of public deeds without need for further authentication, there is hardly any area where the full potential of mutual trust is reached. It would be beneficial if the bilateral treaties would provide for direct communication as a rule and communication through the Central Authority as an exception. Recognition and enforcement of judgments is hardly any easier within the bilateral treaties than under the respective domestic laws and information on foreign law could be improved through joint databases or some further cooperation mechanism. Provisions on taking of evidence are not detailed enough and should use the EU Regulation 2020/1783 as a model with regards to the use of technology, videoconferencing, direct taking of evidence and deadlines for answering the requests. A model bilateral treaty could solve all of these issues at once.
- 7- Bilateral treaties in respect of judicial collaboration in civil and commercial matters have a significant impact on legal environment of Western Balkans jurisdictions. These treaties facilitate international judicial cooperation in certain degree, albeit they take different approaches to the same issues. It is suggested that bilateral treaties are revised in the near future to allow for common standards that may support the CRM and comply with EU legislation. Respectively:
- 7.1 – The revision of bilateral treaty aiming to establish a direct communication, in context of the Service Regulation, between courts of the two jurisdictions, respectively Albania and North Macedonia, needs to be considered in the future, because the bilateral treaty between the two jurisdictions does not provide for direct communication between the courts as is the situation with the other Western Balkans jurisdictions.
- 7.2- The revision of bilateral treaties between Serbia, Montenegro, Bosnia and Herzegovina and North Macedonia, because while the Service Regulation enables direct communication between transmitting and receiving agencies especially designated by Member States for the purpose of service of documents, bilateral treaties with Montenegro and North Macedonia provide for direct communication between courts, which could be (to certain extent) in line with the Service Regulation, and the bilateral treaty with Bosnia

and Herzegovina provides for communication between Ministries of Justice (except for the service of invitation for initiating the succession proceedings), which significantly deviates from the Service Regulation. Also, Service Regulation provides for digital transmission of documents through established IT system or any other rapidly appropriate way, while bilateral treaties are still stuck with old fashion way of transfer of documents upon submitted letter of requests in hard copy.

- 7.3- The revision of bilateral treaty concluded between Serbia and Bosnia and Herzegovina with regard to service of documents and taking of evidence, since it enables (direct) communication only in respect of servicing the invitation for succession proceedings and taking of inheritance statements (in all other cases communication is between Ministries of Justice), and differs significantly from that prescribed by HCCH 1965 Service Convention and HCCH 1970 Evidence Convention (transmission through Central Authorities, i.e. Ministries of Justice).
- 7.4- The revision of bilateral treaties concluded between Serbia and other Western Balkans jurisdictions as concerns the alternative means of service of documents provided by Art. 10(a)(c) of HCCH 1965 Service Convention and the special method of taking of evidence by diplomatic officers, consular agents and commissioners provided by Art. 15-22 of HCCH 1970 Evidence Convention, because bilateral treaties contain no provisions on these issues.
- 7.5 – The revision of bilateral treaties between North Macedonia and Bosnia and Herzegovina in the context of HCCH Convention since there are certain discrepancies, such as those in the Evidence Convention. For example, if the requested court or relevant authority is not competent, it will transfer the Letter of Request to the competent court or relevant authority and will inform the authority to whom it transmits the Letter of Request. This provision, and others like it, need further revision because they contain a critical mistake. Evidently erroneous, since the requesting jurisdiction's authority is the intended recipient of the Letter of Request. In Bosnian version, this authority differs, and its duty is to inform the authority that issued the Letter of Request (requesting authority).
- 7.6- The revision of bilateral treaties concluded between Serbia and other Western Balkans jurisdictions, because bilateral treaties provide that the requested jurisdiction can refuse to execute the Letter of Request if it considers that such execution would jeopardise its sovereignty or security or would be contrary to its legal order. Although a similar rule can be found in HCCH 1965 Service Convention and HCCH 1970 Evidence Convention, it must be stressed that both conventions provide for additional rule that expressly states that the refusal cannot be solely based on the ground that the requested jurisdiction claims exclusive jurisdiction over the subject matter of the action or that its internal law would not permit the action upon which the application is based. Since such rule does not exist in bilateral treaties, there is a possibility that the requested jurisdiction refuses to execute the letter of request in situation in which it claims exclusive jurisdiction or does not permit the action, if it considers that it would jeopardise its sovereignty or would be contrary to its legal order. In order to prevent different interpretation of the rules of bilateral treaties, this additional rule contained in both conventions should find its place in these bilateral treaties.

- 7.7- Although the bilateral treaties concluded between Serbia and other Western Balkans jurisdictions regulate in detail which data the letter of request must contain, the mandatory model of the letter of request, which is prescribed by HCCH 1965 Service Convention, has not been provided in bilateral treaties, which represents the disadvantage that can cause practical problems. It would be very useful to introduce such mandatory model in the existing bilateral treaties as well as in any future bilateral treaty.
- 7.8- The revision of bilateral treaties between North Macedonia and other Western Balkans jurisdictions in relation to the refusal provisions aiming to bring them in line with HHCH 1970 Evidence Convention, because implementation could potentially depend on the interpretation of these provisions and whether they include exclusive jurisdiction or the law does not permit specific action as a basis for refusal of taking of evidence.
- 7.9- The revision of bilateral treaties amongst Western Balkans jurisdictions in the light of EU Evidence and Service Convention aiming to fulfil the lack of information regarding the costs of teleconferencing and videoconferencing. Such provisions are found only in the bilateral agreement between North Macedonia and Kosovo*.
- 7.10 – The revision of bilateral treaty between the jurisdictions of Serbia and North Macedonia in the light of cross-border/boundary judicial cooperation is of a great importance, since it significantly overlaps with the bilateral treaties concluded between Serbia and Montenegro and Bosnia and Herzegovina. Even though the bilateral treaty explains more closely that civil matters covers status, family, labour, commercial, property and other relations of natural and legal persons, it does not regulate cross-border/boundary succession law issues at all.
- 7.11 – The revision of bilateral treaties concluded between the jurisdiction of Serbia and other Western Balkans jurisdictions in the light of cross-border/boundary judicial cooperation, because none of the treaties regulate the situation with dual citizenship (especially the case where a person possesses citizenship of one contracting jurisdiction and of a third jurisdiction), which is left to be solved by domestic PIL rules. In order to avoid problems which can arise in such situations, it is highly recommendable to amend the treaties by introducing the provision that deals with dual citizenship cases.
- 7.12 - The revision of existing bilateral treaties amongst the Western Balkans jurisdictions in the light of HCCH 1980 Access to Justice Convention, which provides for the model forms for transmission of application for legal aid, and which cannot be found in bilateral treaties. It would be very useful to introduce such model forms in the existing bilateral treaties in order to avoid potential practical problems.
- 8- Since the Brussels Ibis Regulation can be applied in relation to all Western Balkans jurisdictions when they become EU Member States, it is recommended that Western Balkans jurisdictions are encouraged to, under certain conditions, apply for accession to Lugano Convention. Eventual accession could be characterised as a ticket for entrance in the so-called European Judicial Area, since Lugano Convention contains the same or similar rules to those of Brussels Ibis Regulation and is in force in EU and EFTA parties.

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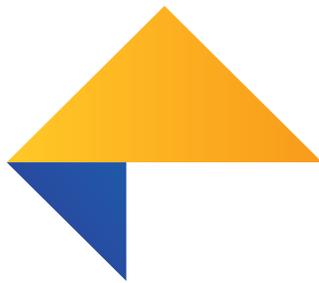
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