

Thematic Report from the Project

# „Justice Governance for Growth Monitor

(JuDGMeNT)“

**JUDICIAL COOPERATION COVERING FREE ACCESS  
TO INFORMATION, CROSS-BORDER  
ENFORCEMENT AND CROSS-BORDER  
PROCEEDINGS IN BANKRUPTCY  
AND TAKEOVER AND MERGERS**

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CONTENT:

03.

Introductory comments on the SEE 2020 Strategy:  
Jobs and European Perspective

04.

EU Legal Framework

06.

Legal Framework in the Republic of Macedonia

09.

Overview of aspects covered with the second priority from the SEE 2020 Strategy  
in the dimension Justice - Judicial cooperation covering free access  
to information, cross-border enforcement and cross-border  
proceedings in bankruptcy and takeover and mergers

12.

More significant developments in this area in the past few months

16.

RECOMMENDATIONS

17.

APPENDIX 1



# 1\* Introductory comments on the SEE 2020 Strategy: Jobs and European Perspective

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SEE 2020 Strategy: *Jobs and Prosperity in a European Perspective* aims to improve the living conditions in the region and to return the focus on the issues of competitiveness and development. The Strategy was adopted in 2013, and the process of development, adoption and implementation of the Strategy is coordinated by the Regional Cooperation Council (RCC). Strengthening regional cooperation is a precondition for the countries in the region in order to progress the EU accession process.

The strategy focuses on four interrelated development pillars, of which the pillar for **Government for Growth** has three dimensions: Effective public services, Anti-corruption and Justice. In the *Justice* dimension, three priorities have been identified, among which ***"Improving judicial cooperation covering free access to information, cross-border enforcement and cross-border proceedings in bankruptcy and takeover and mergers"***.

The Europe 2020 Strategy underlines that in the EU, and in the framework of judicial cooperation, instruments are foreseen for cross-border use of judicial services and free access to information on national judicial services. With cross-border enforcement, rights and registrations of companies, as well as with cross-border bankruptcy proceedings, the mergers and takeovers are more frequent and at the same time the common market is strengthened. Thus, states support free movement of goods, services and investments through cross-border enforcement and establishment of businesses.

Also the SEE 2020 Strategy, underlines the need for the countries in the region to increase their efforts in this regard and to strengthen cross-border cooperation specifically in the area of free access to information on judicial services, legal framework for cross-border registration of businesses, rights and possibilities for cross-border bankruptcy proceedings, as well as in regard to rules in cases of cross-border takeover and merger.

Undisputable is the relation of the objectives of this dimension with the negotiation Chapters 23 and 24 and the progress in this regard will be taken into consideration when the progress of countries is assessed having in mind EU accession. However, we need to highlight that the cross-border, or regional cooperation is above all, in the interest of the countries in the region in order to develop better business climate, to increase the number of jobs and generally, to increase prosperity in our societies.

## 2\* EU Legal Framework

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Taking into consideration that cross-border cooperation is implemented by accepting decisions from the European Union which have to be accepted in the approximation process, it would be useful to mention them. The legal basis for judicial cooperation in the European Union is given in Article 81, paragraph 1 from the Consolidated Version of the Treaty for the Functioning of the European Union, Protocol 20 and 21 from the Lisbon Treaty.<sup>1</sup>

In regard to determining jurisdiction, recognizing and enforcing judgments and decisions from extrajudicial matters the main instrument is the Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.<sup>2</sup> This Regulation creates conditions for harmonizing the rules on conflict of jurisdiction within the member states and for streamlining and expediting the recognition and enforcement of judicial decisions adopted in civil and commercial disputes.

This Regulation is amended with the Council Regulation 2201/2003 of November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility („Brussels Ila Regulation“).

Concerning cross-border bankruptcy proceedings, and with the objective of improving and expediting the bankruptcy proceedings, the Council adopted the Regulation 1346/2000. Currently this Regulation is being revised. Regulation 805 /2004 introduces a European Enforcement Order for uncontested claims.

Further on, in order to facilitate international debt collection in relation to maintenance, the Council adopted Regulation 4/2009 which unites all provisions concerning jurisdiction, applicable law, recognition and enforcement of decisions and cooperation of national competent bodies in one legal instrument.

The objective of Regulation 650/2012 of the Parliament and the Council is to eliminate all obstacles for the citizens which they may encounter when enjoying their rights related to international inheritance. Concerning the issue of improving access to cross-border disputes, the Council adopted the Directive 2003/8/EC establishing minimum common rules relating to legal aid for such disputes. The objective of this Directive is to guarantee a specific degree of legal aid in cross-border disputes for every person who does not have the necessary funds available.

In order to facilitate the access of companies and EU citizens to the judiciary and to make it more efficient, the European Union adopted common rules for administrating and accelerating cross-border disputes in relation to small claims and it enables cross-border payment of monetary uncontested claims for the whole area of the Union. These are stipulated in the Regulation 861/2007 on establishing small claims procedure and Regulation 1896/2006 creating a European order for payment procedure. These are procedures which are not mandatory over proceedings stipulated in national legislation. Directive 2008/52/EC establishes common rules for certain aspects of mediation in civil and commercial cases in order to increase the legal certainty and to encourage the use of mediation in dispute resolution.

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<sup>1</sup> The objective of EU action in the area of freedom of civil matters is the following:

- to achieve high degree of legal certainty for the citizens in cross-border relations regulated with the civil laws
- to guarantee the citizens simple and efficient access to courts hearing civil cases for cross-border disputes
- to simplify the cross-border cooperation instruments between national civil courts
- to support education of judges and court clerks

<sup>2</sup>(Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation))

Here it is also important to mention the instruments for cross-border cooperation between the judicial bodies in civil disputes. So, the Regulation 1393/2007 aims at simplifying and expediting the delivery of judicial and extrajudicial documents in member states and with this to speed up and improve the efficiency of court proceedings. The Council adopted another Regulation 1206/2001 in order to simplify and expedite the cooperation between the courts in member states in the taking of evidence in civil or commercial matters.

The Council Decision 2001/470/EC establishes a European Judicial Network in civil and commercial matters. The Decision 2001/470/EC is amended with the Decision 568/2009/EC in order to enhance and strengthen the role of the European Judicial Network in civil and commercial matters. This Decision opens the network to representatives of professional associations and to representatives of legal professions, especially to the bar associations of lawyers, notaries and enforcement agents.

It should also be mentioned that there is another instrument for simplifying the cooperation in civil matters, and that is the use of information and communication technology in judicial administration. It is a project which has been initiated in 2007 and has grown into a European strategy in the area of e-judiciary. The tools of e-judiciary are: establishing a European e-judiciary portal, interconnection of all penal records in Europe, greater use of video-conference in judicial proceedings, automated translation, dynamic network forms and a European repository of court translators and interpreters. Besides this, the EU Annual Report on the conditions in the area of judiciary is another informative tool of the Commission aimed to assist the member states in achieving higher quality judicial systems by providing objective, accurate and comparable data on the quality and efficiency of the judicial system in all member states.

Concerning bankruptcy proceedings, currently in Europe in force is the Regulation 1346/2000 on insolvency proceedings. Actually it is one of the most comprehensive regulations concerning international insolvency law. This Regulation entered into force on May 31 2002 and had profound impact on bankruptcy legislations and on EU candidate countries. Concerning SEE countries, this cooperation was in high degree encouraged by the establishment of the SEE Judicial Trainings Institutions Network, established in April 2016 and by the Regional Cooperation Council. The RCC has a key role within that network in providing opportunities for training judges and establishing a hub for information on regional meetings, workshops and seminars for training the representatives of the judicial institutions.

## 3\* Legal Framework in the Republic of Macedonia

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The courts actions concerning implementation of cross-border bankruptcy proceedings, takeovers and mergers as well as in relation to other issues relevant for cross-border business are regulated in several laws in the Republic of Macedonia. Main laws regulating this matter are as follows: Law on Companies,<sup>3</sup> Law on Taking Over Companies,<sup>4</sup> Law on Bankruptcy, Law on Enforcement and several by-laws based on these laws.

The analysis of the legal framework on bankruptcy in the Republic of Macedonia shows that there is legislation on cross-border bankruptcy and it is fully harmonized with the EU Regulation.<sup>5</sup>

The Law on bankruptcy currently in force in the Republic of Macedonia has a special Chapter titled International Bankruptcy. This part of the Law stipulates the rules from the so called international insolvency law<sup>6</sup> which is one of the more complex and more difficult legal areas covering several process, substantial and collision-legal actions.<sup>7</sup>

A feature of our insolvency law is that it regulates the recognition of a foreign court decision.<sup>8</sup> In the Law on Bankruptcy there is a provision regulating the recognition of a foreign court decision, referring to the

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<sup>3</sup>The Law on Companies regulates issues related to mergers, acquisitions and division of companies. The law does not differentiate between companies of domestic or foreign capital. If the company wishes to operate in the Republic of Macedonia it should be established in accordance with the Law on Companies and should adhere to the provisions of this law. These provisions are recognizable supportive of business operating in the Republic of Macedonia.

<sup>4</sup>Taking over of companies in the Republic of Macedonia is regulated with the Law on Taking Over Companies (Official Gazette of the Republic of Macedonia No. 69/13, 188/13, 166/14, 154/15 and 23/16). This law regulates the manner, the conditions and the procedure for taking over joint stock companies, it regulates the rights and the obligations of the parties in the taking over procedure and the supervision over the procedure for taking over joint stock companies. The provisions of this law also apply to securities listed on an authorized stock exchange and to securities issued by joint stock companies with special reporting obligations, in accordance with the Law on Securities. The provisions of this law do not apply to buying shares which are property of the Republic of Macedonia. The essence of this law, is contained in the provision that no person, by itself or together with other persons who act jointly, may have more than 25% of the securities with voting power issued by a specific joint stock company without previously giving an offer for takeover. The bidder is obliged to buy out all stocks of the company in a specific period of time and at a price which must not be lower than the highest price at which the company taking over has already bought shares in the past 12 months before announcing the intention for the takeover, or lower from the average price reached at the authorized stock exchange, or equal to the value of the securities determined by an authorized assessor. The objective of this law is to protect minority shareholders so they can sell their shares from the company which is being taken over, at a price identical to the one at which the majority of the shares in the company have been bought. Also the objective of this law is to prescribe a procedure for carrying out takeovers and for informing all interested parties so that they can give their opinion concerning the takeover. The acquirer reports the intention for the takeover to the Security Commission, to the management body of the company, to the authorized stock exchange and the Commission for Protection of Competitiveness and immediately after this is done the intention is published as soon as there is an approval from the Security Commission. The employees also should be informed. The takeover bid announces the number of shares to be acquired in order the takeover bid to be successful. Within 10 days after announcing the takeover bid, the management body of the company shall give its opinion concerning the takeover bid. This opinion may include the opinion of the employees, if any. The validity of the bid is 60 days since its announcement. Within this period the law gives a possibility for the company to obtain competitive bids from several bidders. The success or the failure of the bid shall be determined after the validity of the offer has expired. The Law also stipulates the manner and the procedure for transferring the shares sold to the acquiring company. The Security Commission controls the implementation of the takeover procedure. The law does not contain any special provisions concerning cross-border takeover, but taking into consideration the fact that according to the provisions of this law the bidder can by any natural or legal, domestic or foreign entity, they are all equal and can equally participate in the process of taking over companies.

<sup>5</sup>Contrary to former regulations, in the Law on Bankruptcy adopted in 2006 in the Republic of Macedonia the legislator has given the international bankruptcy greater attention and it contains several provisions which in detail regulate this proceedings. This is done with United Nations Commission on International Trade Law in mind, which is the model law on cross-border insolvency. Otherwise, the objective of this model law (which the states can completely take over or change some of its provisions) is not to harmonize the bankruptcy law in all of the states. The objective is much more limited and focused, above all, to encouraging cooperation between courts and other state bodies relevant for cross-border bankruptcy, to achieving greater legal certainty for trade and investments, ensuring fair and efficient administration in matters of cross-border bankruptcy as well as ensuring protection of the interests of all creditors and all stakeholders, including the debtor, protection and maximizing the value of the property of the debtor as well as facilitating and salvaging financially problematic companies by protecting investments and jobs.

<sup>6</sup>Several institutions have worked on developing international insolvency law, such as the Council of Europe which adopted the European Convention on Certain International Aspects of Bankruptcy of 09.06.1990. This Convention was signed by Belgium, Germany, France, Greece, Italy, Luxembourg, Turkey and Cyprus. It was ratified only by Cyprus and it has still not entered into force. In 1995 15 EU member states signed the text of the European Convention on Insolvency Proceedings which never entered into force. Further on, the International Monetary Fund through its legal department in 1999 developed a document called Orderly and Effective Insolvency Procedures. The World Bank in 2001 developed Principles and Guidelines for Effective Insolvency and Creditor Right Systems intended for developing countries as an assistance for developing their bankruptcy legislation and the banking system. In 2005 a revised draft was prepared. In 1988 the trade law section of the International Bar Association developed a Model International Insolvency Cooperation Act (MIICA). The same Association also developed the Cross-Border Insolvency Concordat. American Law Institute in 2000 developed a document titled Principles of Cooperation in Transnational Insolvency Cases among the Members of the North American Free Trade Agreement. This document contains recommendations, which are not mandatory, for closer cooperation of the NAFTA states (USA, Canada, Mexico) in the area of international bankruptcy law.

application of the general rules of law in the Republic of Macedonia which relate to recognizing foreign court decisions. This issue is regulated by the Law on International Private Law.<sup>9</sup> The foreign decision shall be considered equal to a decision made by a court in the Republic of Macedonia and shall generate legal action in the Republic of Macedonia only if it is recognized by a court in the Republic of Macedonia.<sup>10</sup>

The bankruptcy judge is the one who decides whether a foreign decision is recognized and whether a bankruptcy proceeding shall be commenced, while the courts with expanded jurisdiction shall decide upon the proposal for recognizing a foreign court decision for commencing a bankruptcy proceeding against the debtor made in another country. The proposal for recognizing a foreign court decision, that is a decision of another body competent for commencing a bankruptcy proceeding may be submitted by a foreign bankruptcy administrator as well as by the creditors of the debtor.<sup>11</sup> If the decision for commencing the bankruptcy proceeding is recognized it shall be considered that a bankruptcy proceeding for the estate of the debtor is commenced in the Republic of Macedonia.

Concerning enforcing foreign judgements in the Republic of Macedonia in civil and commercial disputes, first they should be recognized in accordance with the conditions prescribed in the Law on

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<sup>7</sup>Otherwise, the history of bankruptcy proceedings with foreign elements starts when several states accepted the principle of territoriality. According to this principle, the bankruptcy proceedings opened in another country should not have its legal consequences recognized in other states. This principle was valid for many years in the international law, so, many states in their bankruptcy legislation did not have at all provisions on international bankruptcy. It should be also highlighted that the basis for such legal interpretation of the principle of territoriality is the fact that the decision for starting the bankruptcy proceedings is an act of sovereignty of the state which commenced the bankruptcy proceedings due to which the legal consequences of that decision cannot be valid outside of the borders of that state. Also the principle of territoriality includes in itself another dimension, which is the protection of domestic creditors from shortcomings in the bankruptcy proceedings commenced in foreign states. The foreign decision for initiating bankruptcy proceedings could have been recognized only on the basis of bilateral or international agreements, provided there is guaranteed mutual recognition of bankruptcy proceedings between the signatories of that agreement.

<sup>8</sup>В меѓународното инсолвентно право постојат два системи на признавање на странски одлуки за отворање на стечајната постапка. Едниот систем предвидува автоматско признавање (ex lege) на странската одлука за отворање на стечајната постапка. Овој систем на признавање е предвиден со Регулативата на Европската унија. Вториот систем на признавање на странска одлука за отворање на стечајна постапка е исполнување со закон определени претпоставки за да дојде до признавање на странската одлука за отворање на стечајната постапка, а кои се испитуваат во посебена формална постапка. За овој систем се определило и македонското право.

<sup>9</sup>In the international insolvency law there are two systems for recognizing foreign decisions for commencing bankruptcy proceedings. The first system stipulates automated recognition (ex lege) of foreign decisions for commencing bankruptcy proceeding. This system is stipulated in the EU regulations. The second system for recognizing foreign court decisions for commencing bankruptcy proceeding requires several legally determined requirements to be met. This would lead to recognizing the foreign decision for commencing a bankruptcy proceeding, and these are examined in a special formal procedure. This is the system stipulated in the Macedonian law as well.

<sup>10</sup>Foreign court decisions are decisions of a court from a foreign state. Otherwise subject to recognition can be not only decisions for commencing bankruptcy proceedings adopted by foreign courts, but also other decisions made within these bankruptcy proceeding, so that the bankruptcy proceedings can be implemented and concluded. Such decisions are: a decision for dismissing the foreign bankruptcy administrator, a decision for determining and appointing members of the creditors committee, a decision for approving the proposed debt restructuring plan etc.

Also subject to recognition may be decisions adopted in an extrajudicial bankruptcy proceeding, which are in close relation to the commenced bankruptcy proceeding and relate to the bankruptcy estate and covering the claims of the creditors. Hence, the subject of recognition may be decisions made by a litigation court approving claims from a creditor, court decision in relation to a submitted complaint for contesting the legal actions of the bankruptcy debtor as well as a decision of a litigation court relating to a contract concluded before initiating the bankruptcy proceeding.

Besides the decision adopted during the open bankruptcy proceeding, subject of contesting may be decisions adopted in a preliminary procedure such as the decision for determining security measures.

<sup>11</sup>The procedure for recognizing a foreign court decision starts with the submission of a proposal. The court locally competent to decide upon the submission for recognizing a foreign court order is the court in which area the branch office of the debtor is located in the Republic of Macedonia. If the debtor does not have a branch office, locally competent court shall be the court in which area the estate or part of the estate owned by the debtor is located, for which the commencing of a bankruptcy proceeding is requested.

If the debtor has several branch offices on the territories of various courts or the estate is located on the territory of several courts, locally competent shall be the court which has first received the proposal for recognition of a foreign decision for commencing a bankruptcy proceeding. The third situation possible in relation to determining the local competency of the court which should decide upon the submitted proposal for recognizing a foreign decision is applied when the estate consists of a claim. In that case, the locally competent court to decide upon the proposal for recognizing a foreign decision for commencing a bankruptcy proceeding is the court on which territory the debtors to the bankruptcy debtor have their office or residence.

Otherwise the foreign court decision shall not be recognized if: the foreign court decision is not enclosed in its original form or as a certified transcript with a certificate from the competent foreign court or another body confirming the enforceability of the decision in accordance with the law of the state where the decision has been made; there is no certified translation of the foreign court order to the language which is in official use in that court, if the original of the foreign court decision or its certified transcript are not made in the language which is in official use in the court before which the procedure for recognizing that decision is commenced; there is no confirmation of the enforceability of that decision in accordance with the law in the country in which the decision has been made in cases when the request for recognizing the foreign court decision is also requesting recognition of its enforceability; if one of the parties provides evidence that due to irregularities in the procedure, it could not present its defense; if one of the parties proves that the summon, the claim or the decision which was used to initiate the proceedings were not delivered in accordance with the law of the country in which the decision has been made, and that there was no attempt to deliver it, unless in any way it decided to dispute the main matter in a procedure of first instance; if in the relevant matter there is an exclusive jurisdiction of a court or another body from the Republic of Macedonia; if in the same matter the court or another body in the Republic of Macedonia made a final decision or if in the Republic of Macedonia another foreign court decision concerning the same matter is recognized; if the action for its recognition is contrary to the public order of the Republic of Macedonia

International Private Law, or in the legal aid agreements concluded with some states. After this court procedure is finalized, they can be subject of enforcement in accordance with the Law on Enforcement. Otherwise, this Law does not contain provisions on cross-border enforcement.

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<sup>1</sup>In order the competent court to be able to act upon the submitted proposal for recognizing the foreign court decision, the following things need to be enclosed with the proposal: the foreign court decision in its original form or a certified transcript with a translation in Macedonian certified by an authorized court translator; a certificate issued by the foreign competent court or body concerning the enforceability of the decision; an inventory of known estate of the debtor in the Republic of Macedonia and a list of the creditors accompanied by relevant evidence. The requirements which cumulatively need to be met in order to recognize a foreign court decision for commencing a bankruptcy proceeding are as follows: the decision to be made by the court or the body which according to the law of the Republic of Macedonia is competent for ruling on matters having international elements; with other words, the decision of the foreign court shall not be recognized if there is exclusive jurisdiction of the court of the Republic of Macedonia. The decision should be enforceable according to the law of the state in which it is made even if it is not final; the recognition of the decision should not be contrary to the public order of the Republic of Macedonia; there should be reciprocity.

## **4\* Overview of aspects covered with the second priority from the SEE 2020 Strategy in the dimension Justice – Judicial cooperation covering free access to information, cross-border enforcement and cross-border proceedings in bankruptcy and takeover and mergers**

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Stakeholders directly concerned with the priority "*Improving judicial cooperation covering free access to information, cross-border enforcement and cross-border proceedings in bankruptcy and takeover and mergers*" in the Republic of Macedonia are the following: basic courts and courts of appeal, the Central Registry of the Republic of Macedonia, the Ministry of Justice and the Ministry of Foreign Affairs, the Security Commission, the National Bank of the Republic of Macedonia, The Bar Association, as well as the Chambers of Enforcement Agents, Notaries, Bankruptcy Administrators and chambers of commerce in the Republic of Macedonia.

On the other hand, unfortunately there are no civil society organisations which in a structured manner monitor the implementation of actions in this area. We also could not confirm the presence of a structured approach to monitor the basic indicator of the SEE 2020 Strategy, which is the indicator confirming an increase of effective governance, based on the World Bank Governance Index. According to this index, the governance index for the Republic of Macedonia, as in other SEE countries is gradually growing almost every year since 2010 onwards; however this progress is very slow and it does not indicate that the target of 2.9 until 2020 will be reached.<sup>12</sup>

Certain aspects of this area are monitored randomly, unsystematically, only if the interests of some civil society or political organisations overlap with activities related to international proceedings in bankruptcy, takeover and mergers. So, in the Republic of Macedonia we have noted the activities of the Macedonian Consumer Organisation and those of the political organisation Levica. They monitor the activities of the international businesses and if there is something that concerns the interests, objectives, principles and views for which they were established, they act accordingly. The impression is that there is no proper protection of interests and rights when conducting business and investment activities. From a formal and legal point of view, international bankruptcy, takeover and merger is regulated by the relevant laws of the Republic of Macedonia, which are fairly harmonised with the European legislation. However, there are no expert analyses about the extent and manner in which they are implemented; hence the knowledge about them is based on individual cases that attracted the attention of the public.

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<sup>12</sup>Changes in the effective governance indicator, according to the World Bank Governance Index on a scale from 0-5

	2010	2011	2012	2013	2014	2015
Albania	2.23	2.30	2.33	2.18	2.43	2.53
BiH	1.77	1.74	2.05	2.07	2.03	1.96
Croatia	3.13	3.06	3.21	3.20	3.19	3.01
Kosovo	1.89	2.00	2.12	2.10	2.18	2.08
MACEDONIA	2.41	2.39	2.44	2.45	2.65	2.63
Montenegro	2.59	2.60	2.64	2.67	2.78	2.66
Serbia	2.45	2.40	2.39	2.41	2.59	2.61
SEE AVERAGE	2.35	2.36	2.44	2.44	2.55	2.50

With regard to judicial cooperation in free access to information concerning cross-border enforcement, implementation of bankruptcy proceedings with foreign elements and takeover and merger of trade companies, these are different proceedings which are not always implemented by the courts.

Currently, in the Republic of Macedonia, no official information can be obtained about the implementation of cross-border enforcements because the initiation and implementation of that procedure falls within the private law. Even more, the enforcement of foreign court judgments is carried out by enforcement agents who are persons with public authorisations appointed by the Minister of Justice. If a creditor has obtained a decision by a foreign court, it can be enforced in the Republic of Macedonia provided that the decision fulfils the requirements for recognition laid down by law or an international agreement ratified in accordance with the Constitution of the Republic of Macedonia. Therefore, the only source of information concerning cross-border enforcement on the territory of the Republic of Macedonia is the Chamber of Enforcement Agents of the Republic of Macedonia, which is to monitor such cases, primarily concerning efficiency of the enforcement and public disclosure of information. If a legal entity requests enforcement of an enforceable document abroad, the access to information will depend on the law in the country where the enforcement is conducted, since there are different enforcement systems that exist in third countries.<sup>13</sup>

The situation with free access to information and judicial cooperation in bankruptcy proceedings involving a foreign element is somewhat different. Once again the implementation of this proceeding falls within private law, but the bankruptcy proceedings, particularly the secondary proceedings, commenced in foreign countries, are implemented by the court in the country where the estate is located and certain level of cooperation is established between the bankruptcy administrators. In principle, the information about these disputes should be published on the web page of the Central Register, the competent court and in the relevant official journal of the country.

The Republic of Macedonia, following the European Conventions in the area of international legal assistance, primarily in criminal matters, but also in civil cases, has signed a number of agreements with several countries, most of which belong to the SEE: Albania<sup>14</sup> Bosnia and Herzegovina,<sup>15</sup> Bulgaria,<sup>16</sup> Montenegro,<sup>17</sup> Croatia,<sup>18</sup> Kosovo,<sup>19</sup> Romania,<sup>20</sup> Ukraine,<sup>21</sup> Slovenia,<sup>22</sup> Serbia<sup>23</sup> and Turkey<sup>24</sup>.

The Republic of Macedonia is also a signatory of many international conventions and other documents on human rights, freedoms and other rights, and on issues of criminal and civil matter. Negotiations are expected to commence for signing agreements on mutual legal assistance with the Czech Republic, the Slovak Republic and the Russian Federation.

The 2016 Progress Report on the Republic of Macedonia states that a Cooperation Agreement with Eurojust is in force, but there is limited cooperation in practice.

There is scarce information concerning the judicial cooperation in Macedonia with other courts in the region. With regard to the legislation, it largely provides grounds for fair and just treatment of all parties in cases of takeover and merger of companies, but also in bankruptcy and liquidation proceedings. Unfortunately, there are not many cases that could lead to some conclusions as to how the laws are implemented.

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<sup>13</sup>Regulation (EC) No. 44/2011 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Official Journal of the European Union No. L 12 of 16.01.2001)

<sup>14</sup>Agreement between the Macedonian Government and the Albanian Government on legal assistance in civil and criminal cases, ("Official Gazette of the Republic of Macedonia" No.16/98), entered into force on 02.10.1998; Agreement between the Macedonian Government and the Albanian Government on extradition ("Official Gazette of the Republic of Macedonia" No.16/98), entered into force on 02.10.1998; Agreement between the Macedonian Government and the Albanian Government on mutual enforcement of court decisions in criminal cases ("Official Gazette of the Republic of Macedonia" No.16/98), entered into force on 02.10.1998

Within the Project, indicators were set in order to monitor the development in this area (Appendix 1). In order to obtain data about these indicators, requests for free access to public information were submitted to the Ministry of Justice. This information is still not delivered.

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<sup>15</sup> Agreement between the Republic of Macedonia and Bosnia and Herzegovina on legal assistance in civil and criminal cases ("Official Gazette of the Republic of Macedonia" No.10/06), entered into force on 06.01.2006; Agreement between the Republic of Macedonia and Bosnia and Herzegovina on extradition ("Official Gazette of the Republic of Macedonia" No.59/06); Agreement between the Republic of Macedonia and Bosnia and Herzegovina on mutual enforcement of court decisions in criminal matters ("Official Gazette of the Republic of Macedonia" No.59/06)

<sup>16</sup> Agreement on legal assistance in civil cases between the Republic of Macedonia and the Republic of Bulgaria ("Official Gazette of the Republic of Macedonia" No.13/02), entered into force on 07.04.2002

<sup>17</sup> Agreement between the Republic of Macedonia and Serbia and Montenegro on legal assistance in civil and criminal cases ("Official Gazette of the Republic of Macedonia" No.77/04); Agreement between the Republic of Macedonia and Montenegro on extradition ("Official Gazette of the Republic of Macedonia" No.40/2012); entered into force on 17.07.2012

<sup>18</sup> Agreement between the Republic of Macedonia and the Republic of Croatia on mutual enforcement of court decisions in criminal matters ("Official Gazette of the Republic of Macedonia" No.17/95), entered into force on 26.05.1995; Agreement between the Republic of Macedonia and the Republic of Croatia on legal assistance in civil and criminal cases ("Official Gazette of the Republic of Macedonia" No.19/95), entered into force on 26.05.1995; Agreement between the Republic of Macedonia and the Republic of Croatia on extradition ("Official Gazette of the Republic of Macedonia" No.57/2012), entered into force on 22.11.2012

<sup>19</sup> Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Kosovo on mutual legal assistance in criminal cases ("Official Gazette of the Republic of Macedonia" No.178/2011), entered into force on 24.06.2012; Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Kosovo on extradition ("Official Gazette of the Republic of Macedonia" No.178/2011) entered into force on 24.06.2012; Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Kosovo on transfer of convicts ("Official Gazette of the Republic of Macedonia" No.178/2011) entered into force on 24.06.2012

<sup>20</sup> Agreement between the Republic of Macedonia and Romania on mutual legal assistance in civil cases ("Official Gazette of the Republic of Macedonia" No.41/04), entered into force on 10.03.2007

<sup>21</sup> Agreement between the Republic of Macedonia and Ukraine on legal assistance in civil cases ("Official Gazette of the Republic of Macedonia" No.48/00), entered into force on 20.06.2003

<sup>22</sup> Agreement between the Republic of Macedonia and the Republic of Slovenia on legal assistance in civil and criminal cases ("Official Gazette of the Republic of Macedonia" No.24/96), entered into force on 05.09.1997; Agreement between the Republic of Macedonia and the Republic of Slovenia on mutual enforcement of court decisions in criminal cases ("Official Gazette of the Republic of Macedonia" No.24/96), entered into force on 05.09.1997; Agreement between the Republic of Macedonia and the Republic of Slovenia on extradition ("Official Gazette of the Republic of Macedonia" No.24/96), entered into force on 05.09.1997

<sup>23</sup> Agreement between the Republic of Macedonia and the Republic of Slovenia on mutual enforcement of court decisions in criminal cases ("Official Gazette of the Republic of Macedonia" No.24/96), entered into force on 05.09.1997; Agreement between the Republic of Macedonia and the Republic of Serbia on legal assistance in civil and criminal cases ("Official Gazette of the Republic of Macedonia" No.15/13), entered into force on 05.02.2013; Agreement between the Republic of Macedonia and the Republic of Serbia on mutual enforcement of court decisions in criminal cases ("Official Gazette of the Republic of Macedonia" No.24/13), entered into force on 23.02.2013

<sup>24</sup> Agreement on legal cooperation in civil and criminal cases between the Republic of Macedonia and the Republic of Turkey ("Official Gazette of the Republic of Macedonia" No.23/97), entered into force on 28.07.2000

## 5\* More significant developments in this area in the past few months

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Recently, in the Republic of Macedonia, there is only one bankruptcy proceedings concerning a subsidiary of a foreign company established in the Republic of Macedonia, namely the company Alpine Bau GMBH from Austria, the second biggest construction company in Austria. Namely, on 19.06.2013, the competent court in Austria, upon a proposal of the management bodies of the company commenced a bankruptcy procedure. Due to the bankruptcy procedure initiated in Austria, the bankruptcy administrator of Alpine Bau GMBH requested that a bankruptcy proceedings is commenced in the Republic of Macedonia, in accordance with the local laws. Based on the proposal of the foreign bankruptcy administrator, first, the foreign decision on commencing the bankruptcy proceedings was recognised, and then a bankruptcy proceedings was commenced for the subsidiary of the company Alpine Bau GMBH in the Republic of Macedonia.<sup>25</sup>

As of June 2016, the case of the attempted takeover of AD Makpetrol by Balkan Petroleum Holding Limited became a topical issue. The Cypriot company through an advertisement in the media announced its intention to take over Makpetrol. The media actively covered the developments associated with this situation and reported that the company was founded only 12 days earlier in London, with a seat in Cyprus. In addition, the media reported that this company had two employees and was founded with a capital of 1,000 (a thousand) euro. The company offered 25,908 denars for the Makpetrol shares, which on the stock exchange are sold at the price of 17,000 denars. The Makpetrol board of directors reviewed the letter from Balkan Petroleum Limited and decided that they cannot take any actions relative to the letter. The Macedonian Stock Exchange had a similar reaction indicating that they had received a letter with the same content. In its letter, Balkan Petroleum had not submitted an appropriate power of attorney to confirm the authority of the authorised person to act on behalf of the company, and that is why the Macedonian Stock Exchange did not make a decision in relation to this case. Otherwise, the bookkeeping value of one share of AD Makpetrol is 30,250 denars. Having in mind the offered price of 25,908 denars per share, it would mean that "Balkan Petroleum" shall have to provide a guarantee of around 47 million euro.

During the month of September the public interest about the possible takeover of "Makpetrol" AD Skopje by "Balkan Petroleum Holding Limited" continued. The Securities Commission of the Republic of Macedonia, on 19 September 2016, on its 98-th session adopted a Conclusion to stop the procedure initiated upon the Request for issuing a permit to give a bid for takeover of "Makpetrol" AD Skopje, submitted by "Balkan Petroleum Holding Limited". As reported by the Commission, the procedure was halted in order to resolve a previous issue at another competent state authority, after which it will continue.

On 3 October 2016, the political party Levica held a press conference in relation to the operation of BEG, the heating operator in the Republic of Macedonia. Levica tried to reveal the ownership structure of BEG, which according to them, additionally adds to the illegal abuse of many consumers of BEG. This is another example of monitoring the operation of a company that was established in Macedonia as a result of a cross-border business transaction. As it was previously noted, the monitoring is done in order to protect the specific interests of a certain group of stakeholders, in this case the consumers of the Company.<sup>26</sup>

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<sup>25</sup> The fast expansion in the Balkan countries, in Germany and in Poland is stated as a reason for initiating the bankruptcy procedure. This company, through its subsidiary, had around ten projects in the country in the amount of over 30 million euros.

On 24 and 25 November 2016, the Academy for Judges and Public Prosecutors together with the Open Regional Fund for South-East Europe – legal reform (GIZ) organised a regional conference on the topic “Strengthening the cooperation between the judicial institutions in the countries of Western Balkan”. The purpose of this regional conference was to convene the directors of judicial training institutions from Western Balkan and, through presentations of their achievements, to exchange ideas for further strengthening their cooperation.

On 15.11.2016, within IPA 2010 - project for further support to independent, accountable, professional and efficient judiciary and promotion of probation service and alternative measures, in the Judicial Council of the Republic of Macedonia a presentation and a round table were held on the topic: “How to turn data into applicable and effective knowledge.”<sup>27</sup> It was concluded that in order successfully to measure the results and monitor the judicial performance and its improvement, it is necessary to upgrade the ACCMIS system (Automated Court Case Management Information System) in the Republic of Macedonia with adequate software applications.

On 24 November 2016, the Academy for Judges and Public Prosecutors “Pavel Shatev”, in cooperation with the Open Regional Fund for South-East Europe – legal reform (GIZ) Skopje, organised a two-day regional conference “Strengthening the cooperation between the judicial institutions from the countries in Western Balkan”. The objective of the conference was exchange experiences and improve the efficiency and quality of trainings. The meeting of the Regional Cooperation Council also took place at this conference. The conference was attended by eight directors of judicial academies from South-East Europe and Turkey, representatives of the Academy of European Law (ERA) and the HELP Programme within the Council of Europe and the Secretary General of the European Judicial Training Network (EJTN).

This was the 18-th regional conference of the Academy, and until now the Academy has completed 64 projects with foreign embassies and organisation that involved over 660 lecturers.

On 28 November 2016, a discussion was held on public policies for judicial cooperation for free access to information, cross-border enforcement and cross-border proceedings in bankruptcy, takeover and merger. The main conclusion of the analyses on the situation with the judicial cooperation for free access to information, cross-border enforcement and cross-border proceedings in bankruptcy, takeover and merger is that information are limited, they are not structured in one information holder, and they are not monitored in a structured manner. Those cases that have been mentioned in this report only confirm that their development is monitored without great interest and only from a specific point of view, and not in relation to whether they express or ensure good governance for growth.

In addition, it was discussed that international cooperation is best implemented when actions are defined by law, and that it involves a lot of challenges, inter alia, those related to the language. The case of Slovenia was emphasised, where it is allowed to use English language in judicial communication, where necessary. Daily cooperation creates situations where one cannot always wait for a regular diplomatic procedure, and that is why the possibility to communicate on a mutually understandable language is necessary. However, the problem is that many professionals in the judicial area do not speak English. That is the case with most of the bankruptcy administrators.

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<sup>26</sup> <http://www.brif.mk/parite-od-beg-odat-na-privatni-smetki-na-vmro-dpmne-vo-kipar-obvini-levitsa/>

<sup>27</sup> The presentation was held by Adis Hodjikj – project expert for improvement of judicial performance, on the following topics: bureaucratic data collection, normative framework, capacities building, monitoring and evaluation and accountability and taking actions. It was emphasised that each country in the area of judiciary should strive to have an objective, independent, impartial and competent judiciary, and in order to achieve progress it needs to measure the results, which will also show the need to take adequate measures for achieving the objective. In that regard, the experience of the European countries was presented, namely of the Netherlands and Austria. Based on the data obtained from the Judicial Council of the Republic of Macedonia, a report was drafted based on the indicators “case resolution rate and case resolution time” in 2013, 2014 and 2015.

Second well regulated method of cooperation are the cooperation agreements signed between two countries or at an international level. Exchange of information may be conducted through most of the European registers formed for several purposes. Such, for example, are the registers of mergers and acquisitions, and also of takeovers.

Most laws in the Republic of Macedonia regulating matters of international cooperation are essentially good. The issues are often in their implementation. Bankruptcy causes the greatest interest. The percent of claims collected through bankruptcy proceedings is small, around 47.5%, whereas in OECD countries that percentage is around 75%. Furthermore, these are secured claims, and the collection of unsecured claims is even smaller. There are insufficient data from the bankruptcy proceedings, which preclude a sound analysis and potential change of some elements in the system, which could improve the performance in bankruptcy procedures.

Obtaining quality information is necessary for the businesses in the region, and the chambers could be a hub for many such information. They also prepare various studies, analyses, B2B activities and could provide their members with information on cross-border issues and potential partners. Moreover, they could assist members of foreign chambers to access domestic markets, and they are doing that as best as they can.

The Ministry of Justice is implementing a new project on international legal assistance for obtaining sound information about international proceedings, such as: how many have been commenced, how long did they last, and also information on their specifics. A new software is being developed that will facilitate the process of keeping records and monitoring. That should begin as of May 2017.

Cooperation in judicial processes is facilitated by the cooperation through bilateral and multilateral agreements. They define how foreign court decisions are recognised in domestic law. Local and foreign entities face a lot of problems when they have to enforce a foreign decision in another country. Communication is conducted through the Ministry of Foreign Affairs, with great assistance by the Ministry of Justice.

Situations in cross-border enforcements were also subject to discussion and interest. Special problem in the enforcement is the delivery of documents to Macedonian citizens with temporary residence abroad, due to the short deadlines defined in the Law on Enforcement. If there is an international cooperation agreement, the delivery could be done through the courts and the results are much better compared to the case where consular representative offices are used. The Ministry of Justice provides excellent assistance when problems arise.

Bilateral and multilateral cooperation of business associations, chambers, regulatory bodies (Securities Commission through IOSCO) and professional associations (Chamber of Enforcement Agents through the European Association and Neighbouring Chambers), (Chamber of Bankruptcy Administrators through the cross-border chambers) also facilitate data exchange and implementation of the proceedings for acquisition, merger, take-over, bankruptcy and enforcement.

The discussion led to important recommendations that were taken into consideration when drafting the recommendations in this document.

## 6) RECOMMENDATIONS

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Improvement of judicial cooperation in free access to information, implementation of cross-border enforcement and cross-border proceedings in bankruptcy, takeovers and mergers requires most of the institutions in the Republic of Macedonia to continue with their activities in this area, or to undertake new activities:

- Further negotiation and signing agreements for judicial cooperation, or for international legal assistance, and also concluding protocols for cross-border cooperation between institutions of same instances;
- Review of procedures related to implementation of international legal assistance, and in that sense simplifying the instruments for cross-border cooperation; parallel to this, to examine whether English language could be used in international legal assistance;
- Organizing regular training for diplomatic representatives on numerous issues related to international legal assistance and cooperation, such as delivery of writs, and to prepare protocols precisely defining the actions of competent institutions;
- The Academy for Judges and Public Prosecutors should be more active on topics related to cooperation of judicial authorities on civil and criminal matters;
- Introducing obligatory training for computers and English language for judges and judicial clerks, and establishing more rigid criteria for the appointment of bankruptcy administrators by insisting on computer literacy and knowledge of English;
- Setting-up a software and database is required, as well as statistics to monitor the cases of international legal assistance by the Ministry of Justice and/or the Ministry of Foreign Affairs;
- Establish contacts institutionally with the competent EU institutions keeping registers of insolvency, merger and takeover with the purpose of data exchange;
- Enable better access to information for the cases of enforcement, bankruptcy, acquisition, merger and takeover;
- Encourage cross-border cooperation between the chambers aimed at data exchange;
- Provide also information on the use of qualitative indicators for progress measurement;
- Pay attention to legal certainty taking into account the frequent amendments to the law, or encourage monitoring and analysis of the application of legal solutions in order to detect essential issues and eliminate deficiencies;

On the other hand, it is necessary to also familiarize the public concerning the importance of these matters and to encourage citizens' associations, primarily business associations, to monitor the cooperation activities of judicial authorities, particularly in the area of commercial matters, such as cross-border enforcements, mergers, bankruptcies and takeovers.

## APPENDIX 1:

Indicators defined for monitoring progress in the priority *Improving judicial cooperation in free access to information, implementation of cross-border enforcement and cross-border proceedings in bankruptcy, takeover and mergers*

Indicator	Data	Data collection method	Risks
Increase the government effectiveness index to 2.9, based on the World Bank governance indicators by 2020.	World Bank governance indicators	Monitoring of indicators	The index is monitored once per year
Number of bilateral agreements for judicial cooperation concluded	Ministry of Justice	Review of information	Late reporting
Individual cases indicating good or not so good behaviour of the institutions in the proceedings of international bankruptcy, takeover or merger	Information portals	Review of information	Irrelevant or biased sources
Availability of public information on matters of court jurisdiction	Courts and the Ministry of Justice	Review of web pages, questionnaires of the court administration	Lack of relevant information
Number of planned and recruited staff in the Department for International Legal Cooperation at the Ministry of Justice and their competency	Ministry of Justice	Review of documents	
Number and type of cases where the Republic of Macedonia was asked for international judicial cooperation and type of reply	Ministry of Justice, Ministry of Foreign Affairs	Review of documents	Late publication, lack of relevant data

Indicator	Data	Data collection method	Risks
Average time for handling requests made by foreign authorities	Ministry of Justice, Ministry of Foreign Affairs	Review of documents	Late publication, no relevant data
Number and type of cases for which the Republic of Macedonia asked for international judicial cooperation and type of reply	Ministry of Justice, Ministry of Foreign Affairs	Review of documents	Late publication, no relevant data
Average time of other countries handling requests made by the Republic of Macedonia	Ministry of Justice, Ministry of Foreign Affairs	Review of documents	Late publication, no relevant data
Number of cases for cross-border enforcement where the Republic of Macedonia was asked for international judicial cooperation and whether it was provided	Ministry of Justice, Ministry of Foreign Affairs	Review of documents	Late publication, no relevant data
Number of cases for cross-border enforcement where the Republic of Macedonia asked for international judicial cooperation and whether it was provided	Ministry of Justice, Ministry of Foreign Affairs	Review of documents	Late publication, no relevant data
Number of cross-border proceedings in bankruptcy, takeover and mergers where the Republic of Macedonia was asked for international judicial cooperation and number of cases where it was provided	Ministry of Justice, Central Register, courts	Review of documents	Late publication, no relevant data
Number of cross-border proceedings in bankruptcy, takeover and mergers where the Republic of Macedonia asked for international judicial cooperation and number of cases where it was provided	Ministry of Justice, Ministry of Foreign Affairs	Review of documents	Late publication, no relevant data

