



Republic of Macedonia
Ministry of Justice



Konrad
Adenauer
Stiftung

SHORT ANALYTICAL REPORT

JUDICIAL COOPERATION IN CRIMINAL MATTERS AND ALIGNMENT WITH THE EU ACQUIS – STATE OF PLAY AND FUTURE STEPS

ASSESSMENT OF MACEDONIA'S LEGAL ALIGNMENT WITH THE EUROPEAN UNION ACQUIS

This report is a summary of a broader analysis with a complete and detailed analytical examination of the EU acquis in this area, which was prepared by the Association for Development Initiatives "Zenith" and Prof. Dr. Gordana Lazhetikj Buzharovska, on request of the Ministry of Justice of the Republic of Macedonia.

DECEMBER 2013

**JUDICIAL COOPERATION IN CRIMINAL MATTERS
AND ALIGNMENT WITH THE EU ACQUIS
– STATE OF PLAY AND FUTURE STEPS**

ASSESSMENT OF MACEDONIA'S LEGAL ALIGNMENT WITH THE EUROPEAN UNION ACQUIS

SUMMARY

The alignment with the European Union (EU) acquis within the framework of Chapter 24 – which refers to policies in the area of justice, freedom and security – requires establishing legal guarantees, a sound legal framework and a solid implementation track record. The purpose of such alignment is to establish successful judicial cooperation which will enable effective and efficient detection, providing evidence and processing of criminal cases – particularly in the area of transnational organized crime. Judicial cooperation in criminal matters is especially contingent on mutual recognition of court decisions, harmonization of legislation and fulfilment of institutional pre-requisites for successful cooperation. It is important to note that the EU does not insist on full unification of the legislation in this area, but requires the introduction of mechanisms to enable unhindered cooperation between states and their judicial institutions, to avoid conflict of competences and mutual repudiation of the actions taken and decisions made.

The Republic of Macedonia, more precisely the Ministry of Justice, has implemented continuous reforms which will enable the effective application of the EU measures in this area. The ratification process is completed for all the relevant international instruments, conventions and their additional protocols in the area of international cooperation in criminal matters adopted by the Council of Europe. A solid national legal framework is established which aims to advance the cooperation in the area of criminal matters, considering the provisions of the International Cooperation in Criminal Matters Law and the new Law on Criminal Proceedings which was enforced in 2013. Successful institutional cooperation is taking place among the national-level institutions with the police, the judicial and penitentiary institutions. Additionally, there is intensive international cooperation in the police and judicial area, and activities are conducted in cooperation with Europol and Eurojust.

STATE OF PLAY

The principle of mutual recognition

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Programme of measures to implement the principle of mutual recognition of decisions in criminal matters (2001, OJ C 12/10)	No	Full

There is full harmonization in the area of mutual legal assistance in criminal matters with the analysed EU instrument. The European Convention on Mutual Assistance in Criminal Matters of the Council of Europe and its additional protocols ratified by the Republic of Macedonia, as well as the segment of the Law on International Cooperation in Criminal Matters related to the enforcement of criminal verdicts and transfer of convicted persons regulate the issue of recognizing and enforcing foreign court decisions. The individualization of sanctions is one of the basic principles which the courts take into account while deciding on sentencing, and the criteria are set out in the Criminal Code of the Republic of Macedonia. The alignment is also witnessed in the prevention of a person being prosecuted or convicted twice for the same facts or the same punishable conduct following a final court decision¹, and in the area of orders for obtaining evidence, freezing assets, confiscation or restitution to victims of criminal offences². The temporary seizure and apprehension of objects or property is a matter regulated in detail in the Law on Criminal Proceedings and the Law on International Cooperation in Criminal Matters. The care for the victims of criminal offences is specified with the Criminal Code, which envisions that the victim directed to take legal action for restitution during the criminal proceeding, can demand restitution from the value of the confiscated assets if the stipulated conditions are fulfilled. There are also legal basis for respecting the defined principles in relation to the sentencing, recognition and enforcement of imprisonment sentences and transfer of convicted persons³, as well as in relation to the post-sentencing follow-up decisions on supervision of conditionally sentenced or conditionally released offenders.⁴

The European Arrest and Extradition Warrant

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States – Statements made by certain Member States on the adoption of the Framework Decision (2002, OJ L 190/1) and Statements provided for in Article 31(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedure between Member States (2003, OJ L 246/1)	/	The European Arrest Warrant is inapplicable so long as Macedonia is not an EU Member State, however partial alignment is noted
Convention on Simplified Extradition Procedures between Member States of the European Union (1996, OJ C 313/12)	No	Full

The European Arrest Warrant as an accelerated form of surrender without extradition is inapplicable so long as Macedonia is not an EU Member State. However, the national legislation related to the possibility for a simplified extradition procedure can be assessed as fully aligned. Namely, the Law on International Cooperation in Criminal Matters regulates the simplified extradition procedure. Alignment with other aspects of this EU instrument is also noted due to

¹ Constitution of the Republic of Macedonia and Law on Criminal Proceedings.

² Criminal Code of the Republic of Macedonia and Law on International Cooperation in Criminal Matters.

³ European Convention on Mutual Assistance in Criminal Matters of the Council of Europe with two protocols, European Convention on transfer of convicted persons and Law on International Cooperation in Criminal Matters.

⁴ European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, Criminal Code of the Republic of Macedonia and Law on Sanction Enforcement.

the compatibility of national law with the European Convention for Extradition of the Council of Europe and its three additional Protocols, which have been ratified by Macedonia.

Procedural rights of suspects and accused persons in criminal proceedings

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Directive 2012/13/EU of the European Parliament and the Council of 22 May 2012 on the right to information in criminal proceedings (2012, OJ I 142/1)	No	Partial, but certain aspects are inapplicable before EU membership
Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (2010, OJ L 280/1)	Yes	Partial, but certain aspects are inapplicable before EU membership

The provisions of the Law on Criminal Proceedings and the Law on police ensure full alignment of national law regarding the timely informing of suspects and accused persons of their rights, including the right to information about the accusation. However, alignment is only partial as there is no provision in the Law on police that explicitly requires for arrestees or detainees to be informed in writing of their basic rights. The segment regarding the European Arrest Warrant, from the corresponding EU instrument on the right to information in criminal proceedings, is inapplicable so long as the Republic of Macedonia is not an EU Member State. The same applies to interpretation and translation during the procedure for implementing the European Arrest Warrant, and the responsibility of interpreters and translators to respect confidentiality. The Law on Criminal Proceedings ensures full alignment in the rights to interpretation and translation during criminal proceedings, with the exception of the possibility to provide interpretation with the use of communication technology and the duty of those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

Confiscation, freezing of property, and fines

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council framework decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (2005, OJ L 68/49)	Yes	Full
Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (2001, OJ L 182/1)	No	Full

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (2007, OJ L 332/103)	No	Full
Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (2006, OJ L 328/59)	No	Partial
Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (2003, OJ L 196/45)	No	Partial
Council framework decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005, OJ L 076/16)	No	Partial

The provisions of the Criminal Code and the Law on Criminal Proceedings ensure full alignment regarding the extended powers of confiscation. The Criminal code provides the same level of alignment in relation to the measure of confiscation of direct and indirect proceeds of crime, the incrimination of money laundering as a particular criminal act, the possibility for the confiscation of property the value of which corresponds to the proceeds of crime, as well as the possibility for the property to be returned to another state – in line with a ratified international agreement. Responding to the necessity to set up an institution which will manage the apprehended and confiscated property, Macedonia has created the conditions for the establishment of a distinct Seized Property Management Agency. It has arranged in detail its competences, the management of the property and the proceeds, the operating procedures, as well as the international legal assistance.⁵ The Law on International Cooperation in Criminal Matters enables the alignment of national legislation also in the area of forwarding spontaneous information from a national judicial institution to a foreign competent authority, under the condition of mutuality, and without previous request for international legal assistance. There is partial alignment when it comes to the mutual cooperation in executing orders for confiscation and orders for freezing of property or evidence in the EU. This stems from the fact that the collaboration is conditioned by whether the act is also punishable under national law, i.e., the principle of dual incrimination is applied.⁶

The prohibition of double prosecution (Ne bis in idem)

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Convention signed in Schengen on 19 June 1990 Implementing the Schengen Agreement of 14 June 1985 (CISA), Chapter III, Articles 54-58, Application of the ne bis in idem Principle (2000, OJ L 239/19)	No	Inapplicable so long as Macedonia is not an EU Member State

⁵ Law on Management of Confiscated property, proceeds and items seized in criminal and misdemeanour proceedings.

⁶ Law on International Cooperation in Criminal Matters and Law on Criminal Proceedings.

The Constitution of the Republic of Macedonia stipulates that no one can be prosecuted for an act for which there has already been a final court decision – further detailed in the Law on Criminal Proceedings – ensuring full alignment regarding the implementation of the *ne bis in idem* principle. The state is not bound however, unless it has initiated the prosecution itself, to recognize the *ne bis in idem* principle if the crime that was subject to trial was committed against a person, institution or property of public character, or if the person who was on trial has special authorizations. Full alignment is noted in the provision of national law stipulating that the period of deprivation of liberty during the extradition process and/or as a security measure will be taken into account at the time of sentencing in the national court, and if the penalties are not of the same nature the calculation will be done as the court sees fit.

Cooperation with Eurojust

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council Decision 187/2002/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002, OJ L 063/1)	Yes	Inapplicable so long as Macedonia is not an EU Member State
Council Decision 2009/426/JHA 16 Dec 2008 on the strengthening of Eurojust and amending Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (2009, OJ L 138/14)	Yes	Inapplicable so long as Macedonia is not an EU Member State
Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (2003, OJ L 245/4)	/	Inapplicable so long as Macedonia is not an EU Member State

A mutual agreement on cooperation was signed in 2009, resulting with continuous efforts to prepare the legislation and the institutions for successful cooperation with Eurojust once Macedonia becomes a Member State of the European Union. Almost all aspects of the EU instruments that are subjected to transposition in this area are assessed as inapplicable until Macedonia gains membership. Nonetheless, there is full alignment with the competences of Eurojust regarding the types of crime in relation to which Europol is authorised to act. This is extended to personal data processing as well as the prohibitions for processing such data.

Mutual legal assistance in criminal matters

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000, OJ C 197/1) and its protocols	Yes	Full
Joint Action 98/427/JHA of 29 June 1998 on Good Practice in Mutual Legal Assistance in Criminal Matters (1998, OJ L 191/1)	/	Inapplicable so long as Macedonia is not an EU Member State

The mutual legal assistance in criminal matters is assessed as fully aligned. Macedonia has signed and ratified all acts of the Council of Europe which regulate the matter of mutual legal

assistance, and part of the accepted responsibilities deriving from the international acts are further detailed in the Law on International Cooperation in Criminal Matters. Despite the full legislative alignment, the benefits from EU's good practice instrument would only be felt once Macedonia becomes an EU Member State.

Joint investigation teams

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (2002, OJ L 162/1)	Yes	Full
Council recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (2003, OJ C 121/01)	No	Full
Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT) (2010, OJ C 70/01)	No	Full

The full alignment in this sphere is enabled by the Law on International Cooperation in Criminal Matters which provides the necessary legal framework for detecting and investigating organized crime and corruption. Macedonia is receiving institutional assistance from both Europol and Eurojust in forming joint investigation teams. Namely, the signing of the Agreement for Operational and Strategic Cooperation between Macedonia and Europol enabled for a representative from Macedonia to participate in the meetings of the Heads of Europol National Units, and at the same time enabled for Europol to be included in the joint investigation teams (JITs).

Networks for cooperation in criminal matters

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union (1996, OJ L 191/1)	Yes	Inapplicable so long as Macedonia is not an EU Member State
Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (1998, OJ L 191/4)	No	Inapplicable so long as Macedonia is not an EU Member State
Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (2008, OJ L 348/130)	No	Inapplicable so long as Macedonia is not an EU Member State

The European Judicial Network creates responsibilities only for EU Member States. As a candidate country Macedonia has no such responsibilities. There is a recognized need to initiate a procedure for designating contact points for judicial cooperation (liaison magistrates) from the roster of judges.

Agreements for judicial cooperation between the EU Member States and other states

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council Decision 2003/169/JHA of 27 February 2003 determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen acquis in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen acquis (2003, OJ L 67/25)	No	Inapplicable, but aligned in principle
Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol (2004, OJ L 26/3)	No	Inapplicable, but aligned in principle
Council Decision 2003/516/EC of 6 June 2003 concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters (2003, OJ L 181/25)	No	Inapplicable, but aligned in principle

In relation to the listed EU measures, general alignment can be noted. This is due to the fact that Macedonia has ratified the acts of the Council of Europe related to extradition and mutual legal assistance in criminal matters, which are also signed by the EU Member States, given that they are simultaneously members of the Council of Europe.

Data from the criminal records

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (2009, OJ L 93/23)	No	Full
Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (2009, OJ L 93/33)	No	Inapplicable so long as Macedonia is not an EU Member State, but aligned in principle

According to the Law on International Cooperation in Criminal Matters, the transmission of excerpts from the criminal records falls in the domain of international legal assistance. The national law also contains provisions laying down the conditions for using personal data. The Law on International Cooperation in Criminal Matters specifies the cases when it is allowed to

use personal data that has been transferred from Macedonia to a foreign state upon formal request, and also under which circumstances requests by a foreign state for transfer of personal data can be rejected. The processing of personal data for the purpose of criminal proceedings has been elaborated in the Law on Criminal Proceedings. The elaborated regulation of the use, exchange and processing of personal data clears the way for access to the European Criminal Records Information System (ECRIS) once Macedonia gains EU membership.

The standing of victims of criminal acts

EU measure	Available translation to Macedonian language	Stage of transposition in national legal acts
Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (2001, OJ L82/1)	No	Partial, but certain aspects are inapplicable before EU membership
Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, (2004, OJ L 261/15)	Yes	Not transposed

There is full alignment of the Law on Criminal Proceedings with the Council Framework decision on the standing of victims in criminal proceedings in relation to the clear definition of a victim, and the possibility for a mediation procedure in criminal matters. The rights of victims are regulated in detail in terms of their participation in the procedure and the possibility to provide evidence. There is also alignment in relation to the special rights of vulnerable persons, including the special rights of victims of crimes against gender liberty and morality. The Law on Criminal Proceedings and the Law on witness protection are fully aligned with the EU instrument which requires a special witness protection program. The same level of alignment can be noted through the possibilities offered by the Law on Free Legal Aid and the national law related to the penal mediation and the active participation of the victim in this procedure. However, there is only partial alignment in relation to the existence of services or organizations for witness support, legal assistance, or counselling, and for informing the victim of the outcome of the proceedings and the sanctions decided upon by the court. There is partial alignment in relation to compensation and special needs of victims of criminal acts. Namely, there is no law which establishes a national fund for compensation of nationals of EU Member States who become victims of violent criminal acts on the territory of Macedonia, and there are no special training programs for attorneys who represent the victims of criminal acts. Lack of alignment can also be detected in relation to the requirements for providing safe and suitable facilities for accommodating victims prior to trial in order to prevent their secondary victimization. As soon as Macedonia gains EU membership it can utilize networks connected to the judicial system for the protection of victims of criminal acts, or networks of organizations for victim support.

FUTURE STEPS

- To further improve the judicial cooperation in criminal matters by ratifying international and bilateral agreements.
- To initiate a procedure for signing and ratifying the European Convention on International Validity of Criminal Judgments (ETS 070) of the Council of Europe, having in mind the fact that the Convention on the Transfer of Convicted Persons enables a simplified procedure when it comes to sentences of imprisonment, but in the area of recognizing fines the issue remains to be solved with bilateral agreements.
- To secure continuous translation of the relevant EU instruments in the area of international cooperation in criminal matters.
- To regularly organize seminars on the challenges and achievements in regional and transnational cooperation in the fight against organized crime in Southeast Europe, as well as regional workshops on judicial cooperation in criminal matters.
- To conduct trainings and seminars in the area of judicial cooperation in criminal matters, assistance and support to victims, in cooperation with the Academy for Judges and Public Prosecutors, as well as with the support of international organizations and foundations.
- To maintain the activities for cooperation with Eurojust.
- To meet all necessary prerequisites for the successful functioning of the record-keeping and statistics software for cases in mutual legal assistance in criminal matters.
- To continue with the practice of signing agreements for the establishment of joint investigation teams with active participation of prosecutors from the Basic Public Prosecution Office for Organised Crime and Corruption, in accordance with the UN Convention against Transnational Organized Crime and the Additional Protocols to the European Convention on Mutual Legal Assistance in Criminal Matters.
- To make continuous efforts for networking and joining the European judicial networks, especially the Network of Judicial Councils, the European Network of Supreme Courts, the European Judicial Education Network, the European Network of National Contact Points for Restorative Justice, as well as the European Crime Prevention Network.



**Association for Development
Initiatives "Zenith"**
www.zenith.org.mk



Republic of Macedonia
Ministry of Justice

**Ministry of Justice
of the Republic of Macedonia**
www.pravda.gov.mk



**Konrad
Adenauer
Stiftung**

**Konrad Adenauer Foundation
in the Republic of Macedonia**
www.kas.de/macedonia

For further information please contact us at:

zenith@zenith.org.mk

sectoreu@mjustice.gov.mk

skopje@kas.de

Note:

The content of this publication does not necessarily represent the official views of the Konrad Adenauer Foundation. The responsibility for the information contained in this publication is of the persons and institutions that have prepared this report.



**Association for Development
Initiatives "Zenith"**
www.zenith.org.mk



Republic of Macedonia
Ministry of Justice

**Ministry of Justice
of the Republic of Macedonia**
www.pravda.gov.mk



**Konrad
Adenauer
Stiftung**

**Konrad Adenauer Foundation
in the Republic of Macedonia**
www.kas.de/macedonia