

# FREE MOVEMENT OF CRIME

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SUMMARY: 1. A Brief Critique of Judicial Cooperation in the Western Balkans.

## **1. A Brief Critique of Judicial Cooperation in the Western Balkans.**

Free movement of people, goods, services, and capital. These four fundamental freedoms, on which the European Union's single market is based, are not unlimited. They are regulated by norms, which make the single market a space of justice, freedom, and security.

Unlike the prescriptive concept of the EU's four freedoms, the title “Free Movement of Crime” is descriptive. It serves as a figure of speech for contrast, used to illustrate the situation in the Western Balkans compared to that in the European Union.

The difference is understandable: neither have the Western Balkan countries reached a level of economic-social integration, nor have they achieved the level of political-legal integration of EU member states. However, this does not mean that there is no freedom of movement of crime in the European Union, nor that there is no freedom of movement of people, goods, services, and capital in the Western Balkans. The point is that Western Balkan countries are not showing readiness to establish a regional space of justice, freedom, and security, which would be an advancement of some kind of regional market. This demonstrates their lack of readiness for what they aspire to on a larger scale. And they aspire, at least declaratively, to membership in the European Union.

The best illustration of this unreadiness is judicial cooperation. In the European Union, it operates on the principle of mutual recognition of decisions. In the Western Balkans, it is still regulated by international instruments, bilateral agreements, and national laws. Finally, in the EU this area is called judicial cooperation, while in the Western Balkans it is still international legal assistance. Analyses have shown that Western Balkan countries do not use even the existing mechanisms to their full potential. On the contrary, some examples of clear violations of obligations from bilateral agreements have been recorded, unimaginable in the European Union. Instead of an area of justice, freedom, and security, the Western Balkans appear to be an area of politics, irresponsibility, and insecurity.

The “evidence explosion” from the SKY app has revealed the extent of transnational crime in our region. It is a devastating fact that there is a Balkan cartel, but there are no joint investigative teams between the Western Balkan countries. If we add to this the question of the legal validity of evidence from the Sky app raised in the professional community, then the law, instead of being a mean of achieving justice, becomes an obstacle to it.

On the other hand, instead of regional cooperation, Western Balkan countries are developing “bilateral cooperation” with the European Union, concluding agreements with the EUROJUST unit and sending liaison prosecutors to The Hague, designating contact

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points for the European Judicial Network in criminal matters, and recently concluding working arrangements with the European Public Prosecutor Office. The European Union, for its part, finances and implements multi-million projects to strengthen the rule of law, often overlapping and thematically repeating. This money is frequently spent on expertise-for-the-sake-of-expertise, resulting in project-for-the-sake-of-project realization.

Once, the countries of the Western Balkans had a level of judicial cooperation like the European Union has today. This was in the former Yugoslavia. Today, they do not use the capital of origin from the common Yugoslav legal system (except for Albania, which was not part of it), nor the capital of a common language and the absence of linguistic barriers (excluding Kosovo and partly North Macedonia). This reveals a paradox: these countries strive for judicial cooperation with those further away (EU), without developing to the fullest extent international legal assistance with those closer (WB). One of the reasons is that there is a variable between EU member states that does not exist in the Western Balkans, a guiding principle of judicial cooperation: it is called *trust*.

There is also a certain passivity among the Western Balkan countries and an expectation that every answer will come from Brussels. The exception is (and this claim is not subjective) Montenegro. It is the only country whose Ministry of Justice is a regular host of the Regional Forum on Judicial Cooperation in Criminal Matters, which brings together representatives of the ministries of justice, courts, and prosecutors of the Western Balkan countries. This forum has, among other things, been dedicated to the revision of bilateral agreements, and every topic on the forum's agenda is illuminated by EU standards. Montenegro has met the challenges in this area by adopting the Law on Judicial Cooperation in Criminal Matters with EU member states as early as 2018. This law represents a small codification of EU instruments, including the European arrest warrant, the European investigation order, the European protection order, and other instruments. It is envisaged that the Law will start to be applied on the day of Montenegro's membership in the EU.

This proactive approach by Montenegro is in line with the basic principle of the European Union: the principle of subsidiarity. According to it, higher instances should not take away the initiative from lower instances, which they can achieve with their own means and potential.

The higher instance in this sense is the European Union, and the lower instances are the Western Balkan countries. To become part of the EU, the EU needs to become part of them.