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REGENERATIVE AND DIGITAL ECONOMY:

SOUTHEASTERN EUROPE'S PATH TO SUSTAINABLE COMPETITIVENESS

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**REGENERATIVE AND DIGITAL ECONOMY:
SOUTHEASTERN EUROPE'S PATH TO SUSTAINABLE
COMPETITIVENESS**

CONFERENCE PROCEEDINGS

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**PERSPECTIVES OF FACTORING AS AN ALTERNATIVE SOURCE FOR
FINANCING MACEDONIAN SMEs**

ABSTRACT

Factoring as a product of autonomous trade practice has become a very popular method for small and medium enterprises' (SMEs) financing. The financing through factoring is a specific way of fundraising through the account receivables sale by the factor provider who buys the account receivables for some financial interest. The main aim of the research is to analyze the factoring legal regime and practical application of factoring in the Republic of North Macedonia through some economic indicators. More specifically, it will be implemented comparative analysis on the legal regime and application in some Balkan countries. The main findings of the research highlight that the factoring in the Republic of North Macedonia is recognized in many legal acts but it's still missing a unitary regulation for the way on which the financial companies and banks will perform this service as factors. Considering the results of the research, the authors provide recommendations aimed to improve the application of factoring as an alternative source for SME's finding in North Macedonia.

Keywords: *factoring contract, SMEs, financing, lex specialis.*

JEL: K22, K12, C00, G32

1. INTRODUCTION

Factoring is a specific way of fundraising through the account receivables sale by the business entity via intermediary organization, i.e., factor or factoring-organization. This way of financing is characterized by many advantages where the client (producer) may collect its receivables before their maturity date, while the client (producer) maintains its current liquidity without new debits.

According to Bhogal and Trivedi, factoring is the selling of invoices by a seller to a third party called a factor. The factor processes invoices and allows the seller to withdraw money against the amount owed under the invoices (Bhogal & Trivedi, 2008, p. 132). Factoring is a combination of different services, ranging from risk hedging through collection and recovery management to invoice portfolio control (Flores-Ureba et al., 2023, p. 39).

With factoring, the company may obtain financing more easily and faster compared to how to obtain funding from banks. Factoring enables immediate cash flows by selling invoices to a third party at a discount (Palmieri & Ferilli, 2024, p. 497). In developed countries factoring is increasingly common as a source of external financing because of its uniqueness and the unique role of getting funds to companies. Considering the fact that SMEs are dominant in each economy and they are unable to raise sufficient financing, they are the main target group for factoring and reverse factoring.

Factoring helps in improving the cash flow of the companies, provides fresh working capital at the moment when they need it most and supports their growth and development. Also, the factor provider fills the lack of SMEs in the area of management, organization, promotion and commercial planning, thus the factor has elements of specialization, rationalization and information (Carvalho, 2021, p. 92).

The factoring market has demonstrated robust growth, increasing from \$3590.13 billion in 2023 to \$3876.8 billion in 2024, and is expected to reach \$5238.82 billion in 2028. (Credence Research Report). Due to the rise of cross-border trade and the number of SMEs that will need to mitigate the risks of non-paying trade partners, the potential of the factoring market is expected to grow constantly.

Annual Factoring data published by EU Federation shows that the total turnover for the factoring and commercial finance industry across Europe in 2023 was over 2,44 trillion euros and represented 12% of Europe GDP in 2023 (EU Federation Factoring and Commerce Finance, 2024). The statistics shows that the industry of factoring develops rapidly in China where the total volume reached 469,575 million euros in 2021 and the potential for growth is still great (Jing, 2023).

Small and medium sized enterprises (SMEs) are the backbone of many economies (Dörr, Schönhofer & Schwarz, 2024, p. 1). They are recognized as the engine of economic growth through employment generation, contribution to GDP, technological innovations, and other aspects of economic and social development. Many researches have shown that SMEs are faced with problems when they decide to acquire the necessary resources through external funding. Factoring is the alternative form for SMEs funding.

The paper is structured as follows. Section 2 elaborates on the recent research made on factoring and international legal framework. Section 3 explains data and research methodology. In Section 4, the authors present the legal framework of factoring with an overview of the case of North Macedonia and comparative analysis of the legal framework in some Balkan countries. The Factoring application in the Republic of North Macedonia through analysis of some economic indicators is elaborated in section 5. The last section concludes and recommends.

2. RECENT RESEARCH

The businesses can use different sources of financing during the different stages of a company's life. Factoring is a widely used source of business funding and established as a financial tool for a company's cash management (Flores-Ureba et al. 2023, p. 39). Many studies have attempted to explore the importance of factoring, the legal framework, the nature of factoring contracts and the role of factoring for financing SMEs.

The legal nature of factoring contract is unclear and complex (Paraschiv, 2013, p. 139), due to the fact that contract is mixed (Xinjun, 2020, p. 107) and contains elements from different types of trade contracts such as cession, contract for credit, service contract etc., but considering its originality (as a consequence of its origin and functioning in business practice) it is most correct to treat it as a specific sui generis contract (Spasić, 2010, p. 131).

It is essential to be pointed out that this contract is formal, must be signed in written form, prior prepared and offered by the factor. According to Dogaru and Bratiloveanu (2016, p. 29-30) some of the legal characteristics of factoring agreements are: mutually binding contract, consensual contract, onerous contract, continuing contract, contract of adhesion, ancillary contract, complex contract etc.

In practice there are different types of factoring. Hubbard (1987) points out that there is a difference between maturity factoring (the customer only expects to receive the full payment of the invoice in maturity date capitalizing on the credit protection given by factor) and discounting factoring (the customer receives a sight payment, as a discount, against assignment of the invoice to the factor). He also added a so-called over advance factoring which implies financing of customer's inventory (purchases) in anticipation of an assigning of future receivable to be created after sale of this inventory (Hubbard, 1987, p. 72). This practice ideally suits business with seasonal purchases/sales.

According to Erić et al. (2012, p. 132) factoring is primarily intended for small and medium enterprises that traditionally have harder access to bank loans, because of low credit capacity or inadequate collateral and is one of the best ways of securing a fast and safe payment of accounts receivable, based on the sale of goods or services.

Klapper (2006, p. 311) argues that factoring is becoming a growing source of external financing for SMEs and it is a comprehensive financial service that includes credit protection, accounts receivable bookkeeping, collection services and financing.

The globalization of factoring has been reinforced by some international bodies whose aim is to improve the process of harmonization and modernization of some trade acts. The most

important factoring international regulative, rules, definitions, guidance papers or other acts that are related to factoring are: UNIDROIT Convention on international factoring, Model law on factoring by UNIDROIT, United Nations Convention on the Assignment of Receivables in International Trade by UNCITRAL, FCI General rules for international factoring, Model Factoring law by IFG etc. The main purpose of all of these documents is establishing greater standardization, transaction rules as well as legal and regulatory frameworks in the area of factoring. The greater standardization will strengthen the profound effect of factoring, its utilization and transparency while using this alternative financing model worldwide.

On a national level, different national approaches may be noticed in the way the factoring is regulated. There are countries where factoring has not been regulated yet, countries that have adopted some articles in their civil or commercial codes/laws, and countries that have adopted special factoring law or special contract law provisions for factoring. Factoring is a legal product of common law but has been accepted by many jurisdictions that have a civil law tradition, thus becoming a global phenomenon. (Ruddy, Mills, Davidson, 2017). The survey conducted by EBRD in 2018 shows that many of EBRD countries of operation have started working on or have already introduced specialized laws or specific provisions in general commercial legislation facilitating factoring operations (EBRD, 2018).

The newest factoring survey in selected EBRD jurisdictions published in 2024, shows that Egypt, Greece and Türkiye have adopted a specific law on factoring, Armenia and Ukraine have some specific provisions on factoring in their civil codes, Georgia, Romania, Kyrgyz Republic and Uzbekistan do not have specific contract law rules on factoring and parties rely on the general assignment provisions when drafting contracts (EBRD, 2024, p. 14). One of the novelties of the new Chinese civil code, that entered into force on the first of January 2021 is that four new nominate contracts were added, including factoring contract (Herbots, 2021, p. 45).

The situation with the legislation in the range of European Union shows that several European countries have adopted factoring *lex specialis*, e.g. Germany, Italy, Austria, Hungary, France, Greece, Spain and Portugal (Gongeta, 2017, p. 321). The background of this situation stems from the fact that factoring as a specific financial service is not regulated on European Union level.

From the analysis on published papers and research in Macedonia related to factoring, Koevski, (2007, p. 43) states that in the country there is still not enough precision in the legal regulation, that does not allow interested subjects to use factoring advantages in full. Dabovic-Anastasovska et al. (2013, p. 113-114), elaborate all domestic laws where factoring as a contract or as activity is mentioned.

It is evident that in time of rapid development of factoring regulation and application in developed countries, there is a research gap into the field of factoring such as alternative way of business funding in the Republic of North Macedonia.

3. RESEARCH METHODOLOGY

The paper employs qualitative and quantitative methods based on the analysis of secondary data. Broaden analysis on the factoring legal framework including factoring related laws and by-laws adopted in Republic of North Macedonia, Serbia, Croatia, Bulgaria, Albania, Kosovo, Bosnia and Herzegovina and Montenegro, was made by using a qualitative method, method of analysis and comparative method.

Quantitative methods were used for analyzing collected data from the annual reports of National Bank of the Republic of North Macedonia (Data and Indicators of the Banking System in the Republic of North Macedonia), the State Statistical Office of the Republic of North Macedonia (Gross Domestic Product approach) issued for the time period 2009-2024 and Annual Review of FCI for 2023.

These data were compiled and analyzed by using Microsoft Excel in way to show the share of factoring to non-financial institutions incomes in North Macedonia and share of factoring to non-financial institutions in the North Macedonia in GDP and sum factoring volume by some Balkan countries. The visuals produced in Excel contribute to greater accuracy and clarity in the research.

4. ANALYSIS ON FACTORING LEGAL FRAMEWORK IN THE REPUBLIC OF NORTH MACEDONIA AND SOME BALKAN COUNTRIES

The Republic of North Macedonia has not signed the UNIDROIT Convention on international factoring nor the United Nations Convention on the Assignment of Receivables in International Trade by UNCITRAL. Factoring in the Republic of North Macedonia until recently was mentioned only in certain provisions of the Law on Banks and the Law on foreign exchange operations. The Law on Banks from 2007 formally recognized factoring as one of the financial activities that may be conducted by both banks and non-banking financial institutions. The Law does not specify the essence of factoring, types of factoring, operations of factors, legal relations between the contracting parties etc.

The basic text of the Law on Financial Companies adopted in 2010, has regulated factoring as a financial activity based on contract concluded in writing, where the financial company (factor) assumes the claims of another domestic or foreign legal entity (creditor), with or without recourse. The legislator refers to an application of the provisions of the Law on Obligations for the rights and obligations of the factor and creditor, although factoring as a named contract is not mentioned in the Law on Obligations.

The Law on amendments and supplements to the Law on Financial Companies (National Gazette No.154/2023) adopted in 2023, regulates in details the types of factoring (domestic or international, factoring with the right recourse and reverse factoring), the content of the factoring contracts, the legal repercussions in case of bankruptcy of the factor or the debtor.

The definition of factoring was also modernized and now states: “factoring is financial activity based on a contract concluded in written or electronic form, where the financial company (factor) buys receivables from another domestic or foreign legal entity (debtor or

client)”. This is in line with contemporary legislation, where the electronic form of contracts is already widespread in all the areas of commerce.

Although banks and financial companies are the only entities in North Macedonia that may be allowed to be factors, the legal sources regulating their factoring operations are different, the Law on Banks and the Law on Financial Companies. Law on Banks regulate factoring operations of banks in only a few provisions, thus it is necessary to regulate factoring in the Law on Banks in the same way as it is done by the Law on Financial Companies, or factoring should be regulated in a specialized factoring law.

The possibility for implementing factoring contracts in the Civil Code that is in the initial stage of drafting, may be insufficient in the manner that Civil Code won't prescribe the financial and administrative activities of banks and financial service companies. Therefore, it needs some form of legislation that specifically regulates the financing activities of factoring in order to fill the weakness of the Civil Code, and is more tailored to the practical needs of financing activities of factoring (Fauzie Yusuf, Ahmad, & Hamid, 2005, p. 52-53).

For the purpose of this research the authors made a comparative analysis on the legal framework of the Republic of North Macedonia with some Balkan countries: Serbia, Croatia, Bulgaria, Albania, Kosovo, Bosnia and Herzegovina and Montenegro. The table below presents: the valid legal framework; the minimum basic capital of factors and the number of registered factors.

The data is obtained from the official national gazette, and the number of the registered factors are from the national registers, publicly available on the web pages of competent national authority or bodies such as: National Banks, Agencies or Ministries of finance. The methodology of issuing a list of authorized factors differs in the Balkan countries: in some the lists of factors are published including both banks and non-banking financial institutions as factors (e.g. Kosovo), in other countries are published lists of non-banking financial companies with activities they are allowed to provide (e.g. Republic of North Macedonia, Bulgaria, Albania).

In the region, most of the Balkan countries, regulate factoring in *lex specialis*. Albania was the first of the analyzed Balkan countries that enacted a specialized law on factoring in 2006. Followed by Serbia, when in 2013 the Law on factoring have been adopted and further amended in 2018. Croatia have adopted the Law on factoring in 2014 and amended it in 2016. Afterwards the Federation Bosnia and Herzegovina have adopted a Law on factoring in 2016 and amended in 2020. In Montenegro factoring is regulated in special law dedicated to leasing, factoring, purchase of receivables, micro crediting and credit guarantee (Official Gazette Montenegro 73/17, 44/20). In this context, in those countries factoring is observed as a named contract (Bikić, 2021, p.11).

Table 1. Factoring regulation in some Balkan countries

Country	Factoring legislative	Factoring providers	Minimum basic capital for factor registration (excluding banks)	Number of registered factors
Republic of North Macedonia	the Law on Financial Companies (No. 158/10, 154/2023); Law on Banks (67/2007, 90/2009, and 122/2021)	a) Banks and b) non-banking financial companies	30.000.000 denars such as financial company (approx. 482.580 EUR)	16 out from 26 non-banking financial companies published in the Registry of non-banking financial companies, are allowed to be factors
Serbia	the Law on Factoring, dated 16.07.2013 (Gazette of the Republic of Serbia No. 62/2013) amended in 2018 (Gazette of the Republic of Serbia No 30/2018);	a) banks, b) companies organized such as joint stock companies or limited liability companies, licensed for factoring activity and c) foreign banks and foreign companies - exclusively for international factoring.	40.000.000 dinars (approx. 340.804 EUR)	26 factoring companies registered in Factoring register
Croatia	the Law on Factoring (No. 94/14, 85/15, 41/16);	a) companies organized such as joint stock companies or limited liability companies, licensed for factoring activity, b) factoring companies from other EU members c) subsidiary of foreign factor companies d) banks	1 million kuna (approx. 132.720 EUR)	3 factoring companies registered in a register published by Croatian financial services supervisory agency
Bulgaria	Law on Credit Institutions, dated 1.1.2007, last amended n. 70/2024	a) banks and b) financial institutions	1 million Bulgarian leva (approx. 511.290 EUR)	70 financial out of 252 financial companies registered in the Registry are allowed to be factors.

Country	Factoring legislative	Factoring providers	Minimum basic capital for factor registration (excluding banks)	Number of registered factors
Albania	Corporate Income Tax Act Promulgated, State Gazette No. 105/22.12.2006, effective 1.01.2007, amended and supplemented, SG No. 52/29.06.2007		According to Order No. 26, adopted by Bulgarian National Bank	12 financial companies from EU countries registered in Register in Bulgaria out of 15 are allowed to be factors
	Law on Factoring, No. 9630 dated 30 October 2006, amended no.10029 dated 11.12.2008	<ul style="list-style-type: none"> a) a) banks b) b) non-banking financial institutions and c) c) commercial companies allowed for factoring services 	Banks and commercial companies with minimum basic capital 20,000,000 (twenty million) all.) (approx. 193.760 EUR)	From 24 licensed non-banking financial entities, only 7 companies are allowed to be factors
Kosovo	Law on Banks, a) Microfinance Institutions and non-Banking Financial Institutions, No. 04/L-093 Official Gazette of the Republic of Kosova/ No. 11, 11 May 2012, Regulation on the registration of non-banking financial institutions, adopted by Central Bank of	<ul style="list-style-type: none"> a) Banks and b) Registered NBFIs 	EUR 150,000.00	List of 11 Banks and 25 NBFIs. Only 1 NBFIs is registered as a factor

Country	Factoring legislative	Factoring providers	Minimum basic capital for factor registration (excluding banks)	Number of registered factors
Montenegro	the Republic of Kosovo on 29 November 2019; Regulation on Factoring, Central Bank of the Republic of Kosovo on 29 October 2018; Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit-Guarantee Operations (Official Gazette of Montenegro, No 73/2017 of 3 November 2017)	a) factoring companies and banks b) banks	EUR 125.000,00	2 factoring companies
Bosnia and Herzegovina	Law on factoring (Sl. novine FBiH 14/16, 74/2020)	a) companies organized such as joint stock companies or limited liability companies, licensed for factoring activity, b) banks c) foreign banks and foreign factor companies	750.000,00 km (approx. 383.226 euro)	1 factoring company with revoked license

Source: Authors' research based on national legislative and National registers for factors

From the data presented above, five of the analyzed countries have adopted *lex specialis* on factoring. Kosovo and Bulgaria regulate factoring services while prescribing the work of Non-Banking Financial Institutions. The Republic of North Macedonia is unique in the way it regulates factoring as a financial activity. Unlike many other jurisdictions, factoring is merely mentioned in the Law on Banks, without any further elaboration or even a formal definition of the term.

For the first time the notion of factoring, types of factoring and factoring contract, the legal repercussions in case of bankruptcy of the factor or the debtor, were defined in the Law on amendments and supplements to the Law on Financial Companies adopted in 2023. Consequently, at this moment there is a legal gap in the factoring operation provided by the Banks. Dualism in the regulation of factoring services provided by banks or non-banking financial institutions should be resolved by unification of the provisions dedicated to factoring in both laws, or by adopting one specialized on factoring operation.

The number of registered factors in analyzed Balkan countries presented in Table 1, shows that there is a significant disproportion, starting with only a few registered factors in some Balkan countries, till lists of more than 70 registered factors. This may be a consequence of a wide range of circumstances such as: the number of active trade companies in the country that may have a role of debtor or creditor of receivables whose assignment may be an object of the factoring contract; number of populations; demand and popularity of these kind of services; the encouraging and suitable regulatory and legislative frame-work that generates more interest for financial companies to register for providing these kind of services, taxation of the factoring services etc.

In the region, a factor service permission may be given to banks, non-banking financial companies or other factor companies organized such as joint stock companies or limited liability companies with adequate basic capital. The amount of the basic capital for the non-banking financial institutions that offer factoring services varies from 125.000 euros in Montenegro, approx. 132.000 euro in Croatia, 150.000 euros in Kosovo, approx. 193.000 euros in Albania, approx. 383.000 euros in Bosnia and Herzegovina, approx. 340.00 euros in Serbia, approx. 482.000 euros in the Republic of North Macedonia, to approximately 511.300 euros in Bulgaria.

Also, taxation could accelerate or slow down the application of factoring. Comparative research has shown that in some Balkan countries the rate of VAT ranges from 0% (Croatia, Albania, Kosovo) to 18% (the Republic of North Macedonia) (EBRD, 2018, p: 11,32,47,68).

5. FACTORING APPLICATION IN NORTH MACEDONIA THROUGH ANALYSIS OF SOME ECONOMIC INDICATORS

For the analysis of factoring volume and its proportion of GDP in the Republic of North Macedonia in the period 2009-2024, data were utilized from the annual reports published by the National Bank of the Republic of North Macedonia and the State Statistical Office.

Figure 1 illustrates that the lowest recorded factoring volume occurred in 2011, amounting to 44 million MKD, while the highest was observed in 2012, reaching 378 million MKD. Namely, unlike the developed market economies where the share of factoring in GDP is over 12%, in our country it is insignificant and in the period from 2009-2024 it was between 0.006% and 0.081% in relation to GDP (Figure 2).

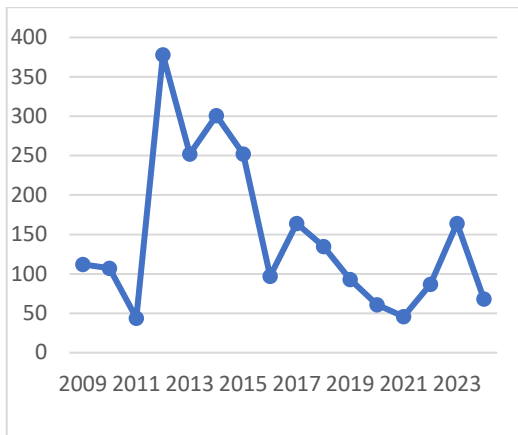


Fig. 1 Factoring to non-financial institutions in North Macedonia in MKD 2009-2024

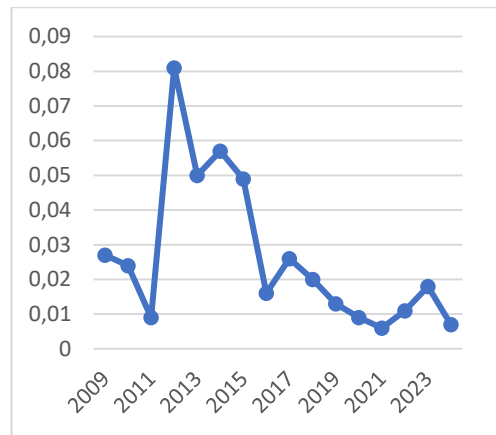


Fig. 2. % share of factoring to non-financial institutions in North Macedonia in GDP 2009-2024

Source: Authors' compilation from the annual reports issued by NBRM and the State Statistical Office of the Republic of North Macedonia, 2009–2024.

Source: Authors' compilation from the annual reports issued by NBRM and the State Statistical Office of the Republic of North Macedonia, 2009–2024.

The data in the Figure 3 shows the factoring volume in millions of euros in some Balkan countries in the period 2018-2022, and it can be concluded that total factoring volume in most of the analyzed Balkan countries is increasing, especially in Bulgaria in 2022.¹

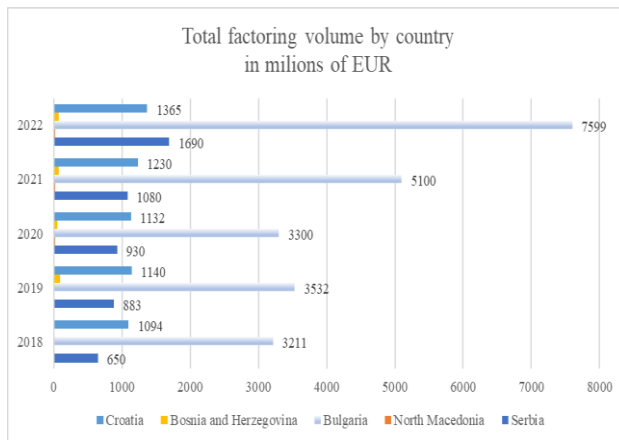


Fig. 3. Total Factoring volume by some Balkan countries

Source: FCI, Annual Review 2023, (FCI, 2023):31,32.

¹ n/a data for North Macedonia 2018, 2019 and Bosnia and Herzegovina for 2018.

Considering the data presented in above graphs, it can be concluded that in the Republic of North Macedonia the usage of factoring is trivial compared to the developed market economies where has been an evident growth. The rate of factoring volume even in some Balkan countries, such as Serbia, Croatia and Bulgaria shows an increasing trend. The international factoring statistics indicate that in the last 20 years the annual growth rate of global factoring is 8.68% (FCI, 2023, p.4). The strongest growth took place in the Asian continent between 2008 and 2015 (161%), followed by Europe (including Eastern Europe) with its plus 65 percent growth (Darabos & Bernadett Béresné, 2017, p.144). Statistical data in the EU shows that the total turnover for the factoring and commercial finance industry across Europe in 2023 was over 2,44 trillion Euros (EU Federation Factoring and Commerce Finance, 2024). The research confirms that this growth results mainly from the increased number of clients from the group of SMEs, which are in fact the backbone of each national economy. In particular, the clients' portfolio of FCI members consist mainly of SMEs, close to 64% in 2023 (FCI, 2023, p.23).

6. CONCLUSION

The SMEs in the Republic of North Macedonia rarely use factoring as a source of financing their business activities. Also, the application of factoring after the introduction into the legal system of Republic of North Macedonia, is in the initial stage of its development. The number of countries that have adopted specialized laws on factoring is increasing every year. Even five of seven forehead analyzed Balkan countries have adopted a factoring *lex specialis*. The Republic of North Macedonia, unfortunately keeps the particularism and dualism in regulating factoring services. The most desirable solution is adopting a specialized law for factoring services that will regulate the banks and the non-banking financial institutions factoring services in the same law. Unified law and introduction of a register of factors, would enable higher legal certainty for the participants in these contractual relations. While adopting the *lex specialis*, the legislator would take into consideration the international acts – conventions referring to factoring, the UNIDROIT model law and the positive experiences of the countries in the region.

In order to overcome this situation, it is important to increase the SMEs knowledge about the advantages of this funding source, since through factoring the businesses could provide the necessary resources and maintain their liquidity in a very simple and cheap way.

Considering this, it is recommended to:

- improve the factoring law regulation, time to rethink about adaptation of factoring *lex specialis*;
- establish a publicly available factors' register as a way to familiarize legal entities with all registered and authorized factors;
- carry out more aggressive campaign for promoting the factoring as an alternative source for financing the businesses;
- organize info sessions and presentations about the factoring in order to increase the awareness of business entities, especially SMEs about the benefits of this kind of funding.

EU and the Court of Justice of the European Union (CJEU) classify factoring as a debt-collection service, not as credit provision and the factoring services are subject to VAT in all EU Member States. In neighboring non-EU countries, approaches differ some countries treat factoring similarly to credit, making it VAT-exempt; others treat it as administrative/debt-collection services, making it VAT-taxable. The candidate countries should harmonize this issue with EU practice.

Only in this way, through adoption of a precise framework, by overcoming the legal gaps in factoring, also by increasing the knowledge about factoring, businesses will be encouraged to use this source for financing their investment projects. Therefore, the benefits of factoring will be recognized by the SMEs; banks, non-banking financial institutions and the whole national economy.

The introduction of a unified legal solution and the implementation of recommendations for promoting factoring could form the basis for future research, assessing their effectiveness in encouraging the application of factoring as an alternative financing tool for SMEs.

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