

**Peer Assessment mission to Montenegro on International Judicial Cooperation**

**Mission timeframe: from 10 to 14 March 2019**

**Authors of the report:**

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Main abbreviations used in this report:

Es: the undersigned experts

IJC: international judicial cooperation

JITs: Joint Investigation Teams

MoJ: the Ministry of Justice of Montenegro

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## **1. Disclaimer/Introduction**

The undersigned experts (Es) put all their commitment and professionalism for achieving the objectives of the Peer Review Mission on International Judicial Cooperation (IJC) which took place in Montenegro on March 10-14, 2019. Es drafted this final Report on the basis of the information they were provided with by EU and Montenegro authorities as well as by other interlocutors they had met with.

The opinions expressed in this Report pertain to the authors exclusively without involving the accountability of anybody else. In no circumstances, this Report may be regarded as stating an official position of the European Commission.

### **1.1 Mission Objectives**

In compliance with TOR (UEs) were tasked to achieve the following objectives:

#### **- general objectives**

to provide an assessment of the overall progress of the Montenegro in the field of judicial co-operation in civil and criminal matters, including the

- legislative alignment with the EU acquis
- state of implementation of the main EU principles and standards in judicial cooperation
- implementation and knowledge among key players of the main CoE and Hague Conference instruments on judicial cooperation
- use of modern communication tools (such as video-conference equipment) to handle practical judicial cooperation with third countries
- organization of the judicial cooperation, human and material resources
- respective role of the governmental, prosecutorial and judicial authorities in judicial cooperation and quality of cooperation between them
- awareness, skills and knowledge of concerned judges and law practitioners, including linguistic knowledge
- operational effectiveness of the judicial cooperation
- quality of implementation of judicial cooperation (processed/requested)
- inter-ministerial/agency cooperation at the national and international levels, in particular with Eurojust
- specific objectives

to review and assess the following aspects of the country's policy in judicial cooperation, in both the civil and criminal matters, especially with EU Member States:

#### **legal dimension**

- the main legislation in the field of judicial cooperation, its implementing rules and strategies/plans of actions – and remaining gaps
- the state of play of ratification of and implementation of international conventions on judicial cooperation – and remaining gaps
- the state of play of legislative alignment with the EU acquis (taking into account the reviews of legal alignment already conducted in 2014, and the reports produced by EU experts since then)

#### **institutional framework**

- the institutional set up, respective roles of stakeholders (including the Montenegrin liaison prosecutor in Eurojust), and how judicial cooperation incoming and outgoing requests are handled

#### **capacity**

- the efficiency and effectiveness of judicial co-operation (including administrative capacity, financial, human and technical resources, internal coordination, documents flow, information system/LURIS, statistics on processed cases, average timeframe for processing of requests, existence of a cases' backlog, etc.)
- the quality and quantity of training of judges and prosecutors on judicial cooperation (both initial training and vocational training), remaining gaps and needs
- the level of knowledge of English language of judges and prosecutors confronted with cases for which international judicial cooperation is necessary

#### **quality**

- the quality of court-to-court judicial cooperation with EU Member States and other countries, in particular with other Western Balkan countries
- the quality of processed international judicial cooperation requests, based on the analysis of a sample of at least 10 cases (e.g. on mutual assistance, extradition, transfer of sentenced persons, transfer of proceedings and foreign enforcement of international legal cooperation, civil cases of child abduction , cross-border maintenance cases)
- the impact and effectiveness of JITs set up, if any

### **1.2 Methodology**

In order to fulfill their tasks and namely to prepare their mission on the spot adequately Es deemed necessary to take some preliminary steps which included:

- reviewing the information sent by EC services on transposition of EU acquis into relevant Montenegro legislation
- drafting the questionnaire (a) on this transposition and sending it to Montenegro authorities
- checking the answers which Montenegro authorities gave to questionnaire (a)
- drafting further questions to be asked to Montenegro interlocutors during the mission on the spot

- analysing the sample of 16 cases which Montenegro authorities had provided with and which concerned legal co-operation both in criminal and civil matters between Montenegro and some EU and Western Balkan countries
- drafting the questionnaire (b) on the 16 cases and sending it to Montenegro authorities
- checking the answers which Montenegro authorities gave to questionnaire (b)

### **1.3 Mission on the spot**

As scheduled, during the course of their Mission on the spot Es had the opportunity to have several meetings with a number of relevant interlocutors and namely the

March 11, 2019

- Ministry of Justice (MoJ)
- Supreme State Prosecutor
- Special State Prosecutor
- President of Supreme Court
- President of High Court in Podgorica
- Representative of Project EUROL 2

March 12, 2019

- President, Chief Prosecutor, Judges and Prosecutors of the Basic Court in Bar
- President, Chief Prosecutor, Judges and Prosecutor of the Basic Court of Ulcinji

March 13, 2019

- Representatives of Judicial Training Centre and Police Academy
- Officials of MoJ
- Representatives IPA/2017 Project on Countering Serious Crime in Western Balkans
- Representatives of Montenegro MoJ and Ministry of Interiors

### **1.4. EU and MNE Assistance**

Es enjoyed the full and precious support of European Commission's representatives. Although intense, the mission took place regularly and fruitfully thanks to their commitment and professionalism. The skill of interpreters too facilitated the continuous dialogue ES had with all of Montenegro officials as well as with the representatives of IPA/2017 Project on Countering Serious Crime in Western Balkans. Es appreciated the sound, frank and constructive discussions they could have with them. For this Es feel the obligation to express their unconditional gratitude to all of those whom they had the opportunity to meet with.

## **2. Findings**

A the outcome of the Mission, on March 13, 2019 and during the last meeting they had with Montenegro authorities, Es presented the content of a draft short report which dealt with the main topics related to IJC in Montenegro. This final report will follow the same scheme.

**2.1. State of alignment of national legal framework with the *acquis* and European standards**

Before carrying the Mission on the spot, EC-DG NEAR provided with Es a table below with the mention of

- EU/CoE legal instrument/document (first column)
- State of alignment (second column)
- Montenegro legal instrument/assessment (third column)

Then Es forwarded the questionnaire (a) to Montenegro authorities by asking them to report the steps they had scheduled for aligning fully domestic legislation with *acquis* and European standards.

On the basis of the answers promptly given, now Es are in the position to update the table by adding their comments in italic (second column)

**2.1.1. International Judicial Cooperation in Criminal Matters**

EUROPEAN ARREST WARRANT AND EXTRADITION			
European Union			
1	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 <sup>1</sup>	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
2	32003C0929 (01) (Eurlex 19.30.20) 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	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
3	31995F0330(01) (Eurlex 19.30.20),	aligned (see 1.)	This Convention was replaced

	Convention of 10 March 1995 on Simplified Extradition Procedures between the Member States of the European Union		by Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (see 1.)
4	31996XG1212 (Eurlex 19.30.20) Explanatory report on simplified extradition procedure between the Member States of the European Union	aligned (see 1.)	
5	41996A1023(02) (Eurlex 19.10.30.10) Convention drawn up on the basis of Article K.3 of the Treaty on European Union, of 27 September 1996 relating to Extradition between the Member States of the European Union	aligned (see 1.)	This Convention was replaced by Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (see 1.)
6	51997XG0623 (Eurlex 19.30.20) Explanatory report on Convention relating to Extradition between the Member States of the European Union	aligned (see 1.)	
Council of Europe			
7	European Convention on Extradition (Paris, 13 December 1957) and its Protocols	aligned	Law on International Legal Assistance in Criminal Matters (Convention, Protocol I and Protocol II) (2008, amended in 2013)
DETENTION RELATED INSTRUMENTS			

European Union			
8	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purposes of their enforcement	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
9	Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
10	Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions of supervision measures as an alternative to provisional detention	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
Council of Europe			
11	Convention on the Transfer of Sentenced Persons (Strasbourg, 21 March 1983) and its Protocol	aligned	Law on International Legal Assistance in Criminal Matters (Convention, Protocol I and Protocol II) (2008, amended in 2013)
RECOGNITION OF JUDICIAL DECISIONS			
European Union			

12	Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
13	Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial	aligned	Law on Judicial Cooperation in Criminal Matters with EU M (2018)
14	Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal matters	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
<b>CONFISCATION, FREEZING OF PROPERTY AND FINANCIAL PENALTIES</b>			
European Union			
15	Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
16	Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property	alignment planned or under process	Domestic legislation will be aligned with new Regulation 2018/1805 of 14 November 2018 on Mutual Recognition of Freezing and Confiscation Orders



	or evidence		
17	Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders	alignment planned or under process	Domestic legislation will be aligned with new Regulation 2018/1805 of 14 November 2018 on Mutual Recognition of Freezing and Confiscation Orders
MUTUAL LEGAL ASSISTANCE 2000			
European Union			
18	Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocols	not yet aligned	analysis for alignment is ongoing
OBTAINING CRIMINAL EVIDENCE			
European Union			
19	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
JOINT INVESTIGATION TEAMS			
European Union			
20	Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams	alignment planned or under process	JITs acquis will be transposed by next amendments to Law on Judicial Cooperation in Criminal Matters with EU MS
21	Council recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (JIT)	alignment planned or under process	JITs acquis will be transposed by next amendments to Law on Judicial Cooperation in Criminal Matters with EU MS (foreseen by 2020)

22	32010G0319(01) (Eurlex 19.30.20) Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT)	alignment planned or under process	JITs acquis will be transposed by next amendments to Law on Judicial Cooperation in Criminal Matters with EU MS(foreseen by 2020)
CO-OPERATION NETWORKS IN CRIMINAL MATTERS			
European Union			
23	Joint Action 98/427/JHA of 29 June 1998 on Good Practice in Mutual Legal Assistance in Criminal Matters	not aligned	Joint Action 98/427/JHA was replaced by Regulation 2016/95 of 20 January 2016
24	Joint Action 98/428/JHA of 29 June 1998 on the Creation of a European Judicial Network (EJN)	aligned (see 25.)	Joint Action 98/428/JHA was replaced by Council Decision 2008/976/JHA of 16 December 2008 on the Creation of a European Judicial Network (EJN)
25	Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network	aligned	Law on Judicial Cooperation in Criminal Matters with EU MS (2018)
JUDICIAL CO-OPERATION AGREEMENTS IN CRIMINAL MATTERS BETWEEN THE EUROPEAN UNION AND NORWAY, ICELAND AND THE UNITED STATES OF AMERICA			
European Union			
26	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	not aligned	Still under discussion

	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		
27	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 thereto	not aligned	Still under discussion
28	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	not aligned	Still under discussion
EUROJUST			
European Union			
29	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 <sup>2</sup>	aligned	Law on Ratification of the Agreement on Cooperation between Montenegro and EUROJUST (2017)

<sup>2</sup>NB COM(2013)535 adopted on 17 July 2013 a proposal currently under negotiation. The Decision will be replaced by a Regulation to be adopted in early 2018

30	Council Decision 187/2002/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime <sup>3</sup>	aligned	Law on Ratification of the Agreement on Cooperation between Montenegro and EUROJUST (2017)
31	32002Q1122(01) (Eurlex 19.30.20) Rules of procedure of Eurojust	alignment planned or under process	Regulation 2018/1727 on the European Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing Council Decision 187/2002/JHA, will be transposed by next amendments to Law on Judicial Cooperation in Criminal Matters with EU MS (foreseen by 2020)
32	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	alignment planned or under process	Regulation 2018/1727 on the European Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing Council Decision 187/2002/JHA, will be transposed by next amendments to Law on Judicial Cooperation in Criminal Matters with EU MS (foreseen by 2020)
33	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	alignment planned or under process	JITs acquis will be transposed by next amendments to Law on Judicial Cooperation in Criminal Matters with EU MS (foreseen by 2020)
CRIMINAL RECORDS INFORMATION			
European Union			
34	32009F0315 (Eurlex 18.00) Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted	not yet aligned	Networking MoJ into the European system for the exchange of data from criminal records (ECRIS) will be a matter of activities within IPA/2017 Countering Serious Crime in Western Balkans in 2019

	from the criminal record between Member States		
35	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 OJ L 93, 7.4.2009, p. 33–4 <sup>4</sup>	not yet aligned	Networking MoJ into the European system for the exchange of data from criminal records (ECRIS) will be a matter of activities within IPA/2017 Countering Serious Crime in Western Balkans in 2019

### 2.1.2. International Judicial Cooperation in Civil Matters

FAMILY LAW			
1.	Convention on the Civil Aspects of International Child Abduction (The Hague, 25 October 1980)	aligned	Convention ratified
2.	Convention on private international law on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children	aligned	Convention ratified

	(The Hague, 19 October 1996)			
APPLICABLE LAW				
3.	41998A0126 (02) (Eurlex 01.20) Convention on the Law applicable to Contractual Obligations (Rome, 19 June 1980) as amended, and its protocols. OJ C 027, 26/01/1998 p. 0034 – 0046 (consolidated version)	well aligned	in the international private law the significant part of decisions from Regulation Rome I has been transposed, regulation preceded by the Rome Convention from 1980 as the basic legal act.  The solutions from the Convention will apply directly by the accession of Montenegro into the EU, through the application of the solution from the Regulation	
JURISDICTION, RECOGNITION AND ENFORCEMENT IN CIVIL AND COMMERCIAL MATTERS				
4.	Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (new Lugano Convention, 30 October 2007). OJ L 147 , 10 June 2009, p.5 -39	well aligned	the International Private Law has transposed a set of rules with a reference to the Lugano Convention; this law is to a considerable extent harmonized with these instruments;	
5.	Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of	well aligned	the International Private Law has transposed a set of rules with a reference to the Regulation Brussels I (which was preceded by	

	judgments in civil and commercial matters (OJ C 27 of 26 January 1998, p.1) as subsequently amended by accessions		the Brussels Convention as the main legal act), so this law is to a considerable extent harmonized with these instruments	
MEDIATION				
6.	32008L0052 (Eurlex 19.40) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. OJ L 136, 24.5.2008, p. 3–8	alignment planned or under process	the required implementation has been conducted within the Draft Law on Alternative Dispute Resolution Methods, which is in the phase of draft; as it is pointed out by Montenegro that the approval of the law by the Government is envisaged for the fourth quarter of 2019 and no legal obstacle has been indicated, it is fair to affirm that the alignment, still far from being concluded, has started;	
FAMILY LAW				
7.	Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. OJ L 192 of 22 July 2011. p. 51	not yet aligned		

INSOLVENCY				
8.	The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents	alignment planned or under process	the required implementation has been conducted within the Draft Law on Legalization of Documents in International Traffic, which is in the phase of draft; as it is pointed out by Montenegro that the approval of the law by the Government is envisaged for the third quarter of 2019 and no legal obstacle has been indicated, it is fair to affirm that the alignment, still far from being concluded, has started;	
EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTER				
9.	Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, OJ L 174 of 27.06.2001, p. 25, amended by Decision 2009/568/EC of the European Parliament and of the Council of 18 June 2009. OJ L 168 of 30.6.2009,	not yet aligned		



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PART II

JUDICIAL COOPERATION IN CIVIL AND COMMERCIAL MATTERS				
APPLICABLE LAW				
1.	32007R0864 (Eurlex 19.20) Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). OJ L 199, 31.07.2007 p. 40-49	aligned		The Law on Private International Law. There is sufficient technical equipment, and there is no need for the adoption of new by-laws.
JUDICIAL COOPERATION IN CIVIL AND COMMERCIAL MATTERS				
2.	32007R1393(Eurlex19.20)Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) Br. 1348/2000 . OJ L 324 , 10/12/2007. P. 0079 – 0120	alignment planned or under process		the amendments to the Civil Procedure Code and the Law on Enforcement and Security are currently in the procedure of adoption by the Parliament of Montenegro, so the harmonization of the national law must be considered near
3.	32001R1206 (Eurlex 19.20) Council Regulation (EC) No 1206/2001 of 28	alignment planned or		the amendments to the Civil Procedure

	May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. OJ L 174 of 27.06.2001, p. 1	under process	Code and the Law on Enforcement and Security are currently in the procedure of adoption by the Parliament of Montenegro, so the harmonization of the national law must be considered near	
APPLICABLE LAW				
4.	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). OJ L 177, 04.07.2008 p. 6-16	aligned	The Law on Private International Law. There is sufficient technical equipment, and there is no need for the adoption of new by-laws.	
JURISDICTION, RECOGNITION AND ENFORCEMENT IN CIVIL AND COMMERCIAL MATTERS				
5.	Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	aligned	The Law on Private International Law	
EUROPEAN PROCEDURES				
6.	Regulation (EC) No 805/2004 of the	alignment	the amendments to	

	European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims as amended	planned or under process	the Civil Procedure Code and the Law on Enforcement and Security are currently in the procedure of adoption by the Parliament of Montenegro, so the harmonization of the national law must be considered near	
7.	Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment Procedure	alignment planned or under process	the amendments to the Civil Procedure Code and the Law on Enforcement and Security are currently in the procedure of adoption by the Parliament of Montenegro, so the harmonization of the national law must be considered near	
8.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure	alignment planned or under process	the amendments to the Civil Procedure Code and the Law on Enforcement and Security are currently in the procedure of	

			adoption by the Parliament of Montenegro, so the harmonization of the national law must be considered near	
FAMILY LAW				
9.	Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations	aligned	The Law on Private International Law. There is sufficient technical equipment, and there is no need for the adoption of new by-laws.	
10.	Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation	aligned	The Law on Private International Law	
11.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 as amended (see annex)	aligned	The Hague Convention, 1966 and 1980	
EUROPEAN PROCEDURES				

12.	Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters	not aligned		
FAMILY LAW				
13.	Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes	not aligned		
14.	Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships	not aligned		
INSOLVENCY				
15.	Regulation (EU) 2015/848 on insolvency proceedings (recast)	not aligned		
16.	Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings	not aligned		
SUCCESSIONS				
17.	Regulation (EU) No 650/2012 of the	not aligned		

	European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession			
18.	Regulation (EU) No 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012	not aligned		

### 2.1.3. Comments

As the above tables show, the alignment of Montenegro legislation with *acquis* and European standards is mostly achieved. The commitment for achieving this goal fully looks genuine and intense.

As per IJC in criminal matters, the overall legal framework is made by a number of instruments including multilateral and bilateral treaties, domestic legislation- which is submitted to the primacy of international law- and bilateral agreements with a number of countries, including Bosnia Herzegovina, Croatia, Italy, North Macedonia and Serbia. Additionally operational *memoranda* of understanding signed with neighbouring Prosecution Offices are into force for the purpose of making mutual cooperation easier and faster. Domestic legislation *ad hoc* is based on two main pillars, *i.e.*

- Law on International Legal Assistance in Criminal Matters (Convention, Protocol I and Protocol II), adopted in 2008 and amended in 2013

- Law on Judicial Cooperation in Criminal Matters with EU MS, adopted on December 18, 2018

This latter is a multi-faceted bill which will be applicable when Montenegro becomes a part of European Union. For this the Law is intended to be amended by 2020 in view of incorporating new EU tools such as those related to EUROJUST, European Public Prosecutor (EPPO), Joint Investigation Teams (JITs) and Mutual Recognition of Freezing and Confiscation Orders.

With regard to JITs, it has to be said that right now their setting up in Montenegro is possible on the basis of Additional Protocol of European Convention on Mutual Legal Assistance.

The question about which service will get the authority for signing the Agreements on JITs deserves some attention. Es understood that once Montenegro be a part of European Union, the Supreme State Prosecutor Office authority should keep this authority for signing Agreements on JITs. However when counterparts will be third countries the consent by the Minister of Justice should be necessary.

As discussed during the course of the Mission, Es expressed their perplexities about this double approval mechanism since the intervention of a member of Government might hinder the independent exercise of prosecutorial functions, or at least generate the perception that such independence is not full.

With regard to IJC in civil matters, it has to be pointed out that:

- Law on alignment of domestic system to EU acquis was approved and it will be applicable upon EU accession. It will be open to any necessary amendments in order to encompass incoming EU legal instruments. In addition, in 2014 the significant part of Rome I was already transposed into international private law;
- Draft Law on Alternative Dispute Resolution Methods and Draft Law on the Legalization of Documents in International Traffic are foreseen to be approved by Parliament by mid-2020, which is a fair timing to allow for a positive evaluation of the efforts of Montenegro also in this field;
- with regard to the harmonization of domestic legislation with Regulation 655/2014, Regulation 2016/1103, Regulation 2016/1104 and Regulation 650/2012, timing is not yet predictable although Montenegro is just planning to conduct the necessary analysis in order to draft the Law; the alignment is then in its early phase.

## **2.2. Workload and Resources**

### **2.2.1. Flow of Incoming and Outgoing Requests**

The current flow of incoming and outgoing requests of IJC – both in criminal and civil matters – looks to be proportionate to the resources deployed by Courts, Prosecution Offices and MoJ. Even in relation to the foreseeable increasing flow of cases- both incoming and outgoing - the number of Judges that may deal with these requests stand good, taking into account that the ordinary workload for each of them is not overpowering. In general with reference to material resources available, during the Mission no particular critical issues were recorded.

Figures put at the disposal of by MoJ showed that the total number of such requests is not overwhelming.

In 2018 this flow was as it follows

passive cooperation

- the incoming requests of IJC in criminal matters were 473 in total –169 from EU, 271 from Western Balkans and 3 from other countries-
- the incoming requests of IJC in civil matters were 467 in total –295 from EU, 124 from Western Balkans and 48 from other countries

#### active cooperation

- the outgoing requests of IJC in criminal matters were in total 603 –179 to EU, 366 to Western Balkans and 68 to other countries
- the outgoing requests of IJC in civil matters were in total 404 –233 to EU, 105 to Western Balkans and 66 to other countries

Of course not all requests – be incoming or outgoing, civil or criminal matters related – were either complex or highly time-consuming.

So, for instance, in 2018 the total number of incoming requests of IJC in criminal matters was 473. However out of these just 70 were requests of extradition and 56 requests of hearings.

It is worthy to add that during the same year 27 criminal cases involving Montenegro were dealt with by EUROJUST with the assistance of the liaison Prosecutor seconded part-time at The Hague-NL by the Supreme State Prosecution Office.

In civil matters, in 2018 265 out of 295 were requests from EU, 100 out of 124 were requests from Western Balkan countries and 36 out of 48 requests from other countries were just about service of documents, while there were – for the all figure - only 25 cases of taking of evidence cooperation and six cases of international child abduction.

It has to be added that matching figures of 2018 with those of 2017 shows no global sharp increase of the number of incoming and outgoing requests.

### **2.2.2. High Courts**

As per the involvement of Judiciary, the two High Courts in Podgorica and Bijelo Polje - which are competent for serious crimes - play a crucial role in processing the incoming requests of IJC in criminal matters they receive from the MoJ.

Es met with the President of the High Court of Podgorica, who explained that 2 Judges - each of them on duty for 2 weeks - were tasked to deal with all these requests. In fulfilling such functions

- they used to execute the requests of hearings within 1-2 months and those of extradition within a bit longer period
- they had refused the execution of these requests in a very low number of cases only



- they did not have to address any significant legal issue on the consistency of domestic legislation with European standards was raised before these Judges
- they might have direct contacts with foreign Courts, having just the obligation to notice MoJ
- they made use of videoconferences for executing some of the requests on case-to-case basis
- they collected financial information which was regularly provided by banks – and then forwarded to requesting authorities- after issuing a disclosing orders to all of 15 banks operating in Montenegro
- they had the authority to freeze bank accounts and seize assets - in view of confiscating them- as urgent measures

### **2.2.3. Basic Courts**

Basic Courts are competent for dealing with cases of criminal offences which are punished by imprisonment up to 10 years. Civil cases also fall within the competence of Basic Courts. Basic Courts manage just IJC requests related to such cases.

As hereditary matters are delegated to the public notaries, it must be concluded that the human resources (talking about judges) employed by Montenegro are undoubtedly sufficient to guarantee rapid and effective cooperation, at least for incoming cases, which can ensure satisfactory results.

Es had meetings in the Basic Courts of Bar and Ulcinij with their respective Presidents and Chief Prosecutors.

With regard to the Court of Bar Es understood that

- the jurisdiction of the Court covered a population of 40-50.000 people
- the President and 8 judges – with 51 administrative staff - were acting in 2 sections, one for civil cases and one for criminal ones; the Prosecution Office by the Court employed 1 Chief Prosecutor and 6 Prosecutors
- in 2018 the global number of incoming cases – both criminal and civil – was 4527
- the average workload per Judge was of around 600 cases
- none of its Judges was specialized in IJC due to the small size of the Court and the limited number of IJC requests
- generally Judges had a poor knowledge of English and so far none of them attended training courses of EUROL 2 Project
- in 2018 the incoming requests of international requests – both in criminal and civil matters- were 19; 15 of them were executed and 4 refused
- in 2018 the outgoing requests of IJC were 177; 60 were related to criminal cases and 117 to civil ones
- most cases of IJC concerned former Yugoslavia countries – and Serbia first of all - with whom contacts were easier because of the common language as well as of the proximity of legal systems

- incoming requests came from MoJ; however direct contacts occurred regularly with a number of foreign countries on the basis of bilateral Agreements
- cases of IJC were recorded both on PRIS– the e-Registry for Basic Courts cases- and KMP, the e-Registry dedicated to international cooperation
- incoming requests of IJC had to be translated into Montenegrin language while the translation of those outgoing as necessary pertained to MoJ
- incoming requests of IJC were executed in due time and without any major issue

With regard to the Court of Ulcinj Es were told that

- the jurisdiction of the Court covered a population of 26.000 persons
- the President and 5 Judges – with 26 administrative staff - were acting in 2 sections, one for civil cases and one for criminal ones
- the Prosecution Office by the Court employed 1 Chief Prosecutor and 2 Prosecutors
- the average workload per Judge was of around 600 cases
- in 2018 the incoming requests of IJC were 16–14 of which supervening during the course of the year; these requests came directly – on the basis of bilateral agreements - or via MoJ
- in 2018 the outgoing requests of IJC were 15 – 14 of which related to civil cases and 1 to a criminal one

In both Courts hereditary matters in IJC were delegated by the judges to public notaries.

The interlocutors of both Courts shared the view that bilateral agreements – mostly signed with former Yugoslavia countries- by allowing direct contacts among the concerned parties made judicial co-operation much easier and quicker.

#### **2.2.4. Supreme State Prosecution Office and Special State Prosecution Office**

The State Supreme Prosecution Office has its own Prosecutor in charge of IJC cases. Moreover, in view of improving it with EU countries mostly in the fight against organized crime the Office seconded a liaison Prosecutor working part-time by EUROJUST at the Hague-NL. For the same purposes it appointed its representatives in the Southeast European Advisory Group (SEEPAG) as well as in the European Judicial Network (EJN).

The State Supreme Prosecution Office is used to attend international/regional *fora* such as the 2018 meeting among the Prosecutors General of Europe and of the Mediterranean that took place in Nice-FR.

Then this Office intends to widen the area of operational *memoranda* of understanding by signing new ones with Austria, Argentina, Cyprus and Slovenia.

The Special State Prosecution Office is the central prosecutorial authority dealing with serious crimes such as organized crime, corruption, money laundering, and terrorism and war crimes. Due to the frequent transnational dimension of cases it manages, one of its 11 Prosecutors is specialized in IJC.

### **2.2.5. MoJ**

Es were explained that

- MoJ was the centralized authority for managing the flow of incoming and outgoing requests of IJC
- two MoJ Divisions - with 10 highly professional officials – were operational, the first dealing with international judicial co-operation and the second with mutual legal assistance; a contact point was available full time ( 24/7/365), being such service the only one active in the entire Western Balkans area
- the role of these Divisions was far being just a mail box ; actually, their mission was to be a genuine center of expertise by fulfilling multiple tasks such as : supporting domestic and foreign partners, checking the accuracy of outgoing requests – being around 5% of them blocked because of their poor quality - and providing with translations if necessary
- in December 2018 MoJ organized the fifth Regional *Forum* on International Judicial Co-operation, the only meeting bringing together all the Ministries of Justice authorities of Western Balkans
- MoJ is negotiating new bilateral agreements with Kosovo and Albania; it intended to revise some of the ones already in force at the occasion of the next Regional *Forum* that will take place in May 2019

### **2.2.6. IPA 2017 Project Countering Serious Crime in the Western Balkans**

Es were told by the representative of this Project that

- the mission of IPA 2017 was to support local authorities in dealing with transnational serious crime cases by facilitating operational contacts with relevant foreign and international authorities
- in 2018 the number of such cases was 30 for criminal offences including drug trafficking, tobacco smuggling, money laundering

### **2.2.6. Comments**

Montenegro different authorities share the tasks related to international cooperation in a balanced and rational way. Actually the system is based on the plurality of roles the various judicial and prosecutorial bodies as well the central Governmental authority – *i.e.* MoJ- are called to play. This system does not differ from that existing in several countries, including those which are part of EU.

Any of these players looks to use legal tools of IJC as necessary. Of course, having Basic Courts less opportunities than High Courts and MoJ to deal with cases of IJC, they need to improve their legal and practical skills, including the mastery of foreign languages.

The detachment Judges/Prosecutors to international/regional entities also attests the commitment of Montenegro to improve its performances on the international arena. This open attitude is corroborated by

the operational day-by-day assistance granted – upon request - by the officials working within the above mentioned IPA Project 2017.

### **2.2.7. MoJ and Supreme Court Role**

As always, any central authority plays a key role in order to assure uniformity to the judicial answers to the challenges imposed by IJC in view of attaining both more efficiency and higher quality in the cooperation. For this the adequate mastery of relevant issues – be legal, institutional, linguistic, etc. – is required.

It pertains to MoJ to be a constant point of reference for Judges and Prosecutors by avoid in the meantime any kind of interference on the merits of steps taken by the former ones.

On their side Judges and Prosecutors should grant a continuous flow of information towards MoJ in order to allow this latter to monitor properly the functioning of the system and the creation of a data basis of all cases IJC. This e-archive should be mainly exploited for drawing lessons from past experiences.

Es understanding is MoJ should continue its commitment on the way of strengthening its role of supporting entity. Namely, it would be advisable that it goes on

- updating the accessible information on all relevant legal instruments, providing guidelines and disseminating best practices on IJC
- monitoring the activities of Judges and Prosecutors in the area of IJC provided that no merit interference be exercised
- monitoring the activities of public notaries, taking into account that – according to the domestic Montenegro Law - they are called to play a role in IJC involving hereditary matters
- collecting and storing all relevant data – be legal and factual- and then making them available to Judges and Prosecutors involved in IJC in view of preventing mistakes

Although skillful and motivated, the staff – 10 officials – working in the two MoJ Divisions in charge of IJC should be strengthened. It is predictable that the flow of IJC requests will increase and if MoJ intends to consolidate its crucial role of center of expertise – i.e. fully supporting entity- for improving the quality of answers it is necessary that this central authority as from now plans the improvement of its resources, including translators.

Always for the sake of grating a uniform and foreseeable follow up to IJC incoming requests, Supreme Court should grant the dissemination of its opinions on IJC widely and promptly among Courts and Prosecution Offices at largest extent.

### **2.3. Training**

Due to its high degree of technicality and to the vastness of its legal framework, IJC requires a remarkable level of training of the judges involved in such cases.

It must be said that *ad hoc* training for Judges and Prosecutors improved a lot during the last years as showed mainly by EUROL 2 Judicial Cooperation Training Programs for 2018 and 2019, whose job has been precious for organizing the training and making Judges and Prosecutors more aware of the importance of it.

In this regard Es were told that

- Judicial Training Center (JTC) provided Judges and Prosecutors of Montenegro with training courses – be initial or vocational – which were focused on International Law, European Law and ECHR Case Law with the assistance of EUROL 2 Project which started in April 2017 for a duration of 36 months; these courses were initiated in 2008 by the European Institute of Public Administration (EIPA) based in Luxemburg
- JTC provided also Judges and Prosecutors with English language courses, both in Podgorica and in Bjelo Polje; in the future JTC might organize e-learning as well as decentralized courses
- in 2019 a cycle of 12 courses on IJC was foreseen to be held thanks to the strong support of EUROL 2- ; the goal was to involve one Judge and one Prosecutor from any of Montenegro Basic Courts so that they could become the experts locally
- in accordance with EU law participation in the courses was not mandatory for Judges and Prosecutors; however each of them had the legal obligation to attend (at least) 2 days of training per year, being free to choose the one they like
- in general the interest in courses was good as confirmed by the fact that in 2018 the total number of participants was 85 – out of 430 judges and 312 Prosecutors
- The Police Academy too planned courses on International Law, EU Law and International Cooperation

It is Es understanding that:

- IJC takes a limited space within the overall activities of Courts and Prosecutions Offices and not all Judges and Prosecutors are usually involved in such cases; therefore it should be enough for the majority of them at least once attend a course focused on IJC; otherwise a more intensive training should be granted to those Judges and Prosecutors who for whatever reason have to deal with IJC matters more frequently
- training should be focused on legal as well as practical issues, enjoying the contribution of foreign experts too
- taking into account the complexity of IJC and the continuous updating imposed by the frequent enrichment of the sources - sentences, legal instruments, international conventions-, JTC - ideally in cooperation with the MoJ - should draft manuals- including the collection of relevant international /EU instruments

- a good knowledge of legal English language is essential

#### **2.4. Performance**

On the basis of the information they got Es understood that Montenegro was capable to grant foreign countries a fairly good assistance with no significant delays. So statistics provided by the MoJ showed that the requests of assistance in criminal matters executed during the course of 2017-2018 were 331 in 2017 and 322 in 2018 before the total number respectively of 603 and 473 of requests which were forwarded from abroad. In the meantime, it may be taken as a general indicator of performance the fact that the number of refusals is relatively small and from being irregular. Obviously, a thorough assessment on such refusals would imply a more analytic knowledge. Namely, it would be necessary to get the whole spectrum of the reasons of these refusals, which goes beyond the scope of this peer review,

However this favorable evaluation was corroborated by the positive outcome of the questionnaire (b) Es forwarded to foreign countries who had requested assistance from Montenegro. This questionnaire was composed by the following questions:

- did Montenegro co-operation meet the expected goals?
- if not, did the issues concern a) legal obstacles, b) linguistic barriers c) available resources, d) contacts, e) timing, etc.?
- in the situations sub 2) can you briefly describe them?
- in the situations sub 2) issues could be addressed eventually?
- documents sent to/by Montenegro authorities were translated in English/national language?
- was it necessary to have phone/e-communications? if so, at which level? in which language?
- the outcome of the case was followed by an assessment on the effectiveness of the co-operation?

The following countries answered as it follows

#### **2.5. Vertical Flow of Information**

The flow of information between the central and the local authorities is strategic for the good management of all requests of IJC. Then this flow only makes possible the assessment of the state of IJC and its further improvement as necessary.

So both quality and efficiency of IJC require getting the complete and updated knowledge of this flow. Constant monitoring is crucial for achieving and maintaining high standards in the judicial response. This implies that the collection of statistical data should be continuous. Moreover, having a global a precise picture of the issues will facilitate Montenegro in adequating its human and material resources to new challenges.

Es believe that the interconnection between the data collection system at local level (PRIS) and at the central level (LURIS) should be implemented fully and automatically, by providing the two systems with similar database and assuring the possibility of mutual recognition and transfer between the two systems.

During the interviews emerged that Courts adopt every year a plan of the judicial work for the incoming year, with the indication of the jobs assigned to every judge. It would be appropriate too that the annual work plan names Judges and Prosecutors respectively responsible for the accuracy and the precision in data entry, given the highly technical legal complexity of the data. In view of getting a full knowledge of the entire flow of incoming/outgoing requests of IJC, the communication of data related to cases directly managed by local Courts and Prosecution Offices should be regularly inserted in a specific IT framework, as well as specifically communicated to MoJ. At the central level, at least, should also be useful to appoint an IT technician who carries out a supervisory activity on the completeness and the regular updating of the central IT system (LURIS) and its adequate interconnection with the IT system working at the local level (PRIS).

### **3. Final Recommendations**

#### **3.1. Legal Alignment**

Montenegro achieved most of the goals and it is close to the full alignment of its legislation with acquis and European standards. In the short term it should go on signing further bilateral agreements – to be fully consistent with such acquis and standards- mostly with all those Western Balkans countries which share common legal systems and/or interests and/or borders with Montenegro. Obviously, since now opportunities of Court-to-Court cooperation provided by Second Additional Protocol to the MLA European Convention in Criminal Matters should be exploited at largest extent.

As Montenegro is expected to amend the Law on Mutual Legal Assistance with third countries by the end of 2019 it would be necessary to clarify the sharing of responsibility among judiciary and Government. Namely the signing the Agreements on JITs should fall entirely within the authority of the Supreme State Prosecutor Office. This for the reasons Es stressed at point 2.1.3.

#### **3.2. Resources**

The current flow of incoming and outgoing requests of IJC is not huge and human resources deployed for IJC by MOJ, Courts and Prosecution Offices looks to be adequate. However, in view of the predictable increasing of this flow - and the strengthening role of MoJ as supporting entity –it is desirable that as from now the central authority plans the improvement of such resources – in particular ministerial staff and translators.

#### **3.6. MoJ and Supreme Court Role**

On the way of strengthening its role of center of expertise – i.e. supporting entity- it would be advisable that MoJ goes on updating the accessible information on all relevant legal instruments, providing guidelines and disseminating best practices on IJC . Taking into account of notaries role in IJC related to hereditary matters, it is advantageous that MoJ systematically monitor these activities.

On its side, Supreme Court should grant the dissemination of its opinions on IJC among Courts and Prosecution Offices at largest and promptest extent.

### **3.7. Flow of Information**

In view of putting MoJ in the best conditions of getting the full knowledge of the overall flow of incoming/outgoing requests of IJC which occurs without passing through the central authority, Courts and Prosecution Offices should have the clear legal obligation of communicating regularly these cases to MoJ. For this purpose the closer technical connection between PRIS and LURIS should be implemented

### **3.8. Performance**

It is true that the processing of incoming requests of IJC does not suffer significant delays as well as the number of refusals of assistance looks to be inside the normality. However, in order to prevent any serious shortcoming, MoJ should consolidate its monitoring functions by proceeding to the analysis into depth of the reasons both of delays and refusals

### **3.7. Training**

The commitment JTC looks to be strong and motivated. It should continue on diffusing skills on IJC among Judges and Prosecutors on IJC. For this the precious assistance EUROL 2 should be kept as a unique opportunity. Coping with new challenges in such additional training should be facilitated by

- granting a basic training on IJC to all Judges and Prosecutors - as well as to notaries with regard to their specific competence, in view of getting a stronger mastery of legal tools which are available, including EUROJUST with its all range of opportunities
- providing a more intense training to those Judges and Prosecutors who are called to deal with IJC cases regularly because of their functions
- drafting a Manual on IJC in civil and criminal matters, including the collection of most relevant international/EU instruments and law cases
- making courses of legal English
- focusing courses both on legal/practical issues and inviting foreign experts