



TAIEX

**Peer Review Assessment Expert Mission to
Montenegro
on Capacities in the areas of Counterterrorism
(CT) and Preventing/Countering Violent
Extremism (P/CVE)**

**organised in co-operation with
the European Integration Office (Montenegro)**

26 - 29 November 2019

Venue:

Podgorica

Beneficiary:

Montenegro

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of the European Commission



Aim of the Expert Mission:

The objective of this peer-review mission is to provide the European Commission and the beneficiary country with an assessment of the country's capacity to effectively address challenges posed by terrorism and violent extremism, including strategic and institutional framework, legislation, sub-legal acts, as well as operational capacities of judiciary, intelligence and law enforcement agencies.

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Disclaimer

The views articulated and expressed in this report are purely those of the authors and may not in any circumstances be regarded as stating an official position of the European Commission.

I. INTRODUCTION AND BACKGROUND INFORMATION

A TAIEX Peer Review Mission (PRM) on Counterterrorism (CT) and Preventing and Countering Violent Extremism (P/CVE) was organised in Podgorica, Montenegro (MNE) between 26 and 29 November 2019. The mission took place in the context of the Commission Strategy for the Western Balkans, and more specifically in relation to Flagship Initiative 2. It also aimed at following up on the EU expert mission of EU officials to Podgorica of 10-12 July 2019 on CT and P/CVE.

The aim of this PRM is to provide the European Commission and the beneficiary with an assessment of the authorities' capacity to effectively address challenges posed by terrorism and violent extremism, including strategic and organisational framework, legislation, sub-legal acts, as well as operational capacities of judiciary, intelligence and law enforcement agencies.

The team of experts met with all relevant institutions, covering strategic, legislative and operational aspects. This includes law enforcement, prosecution, Ministry of Internal Affairs (including the CVE Coordinator), Ministry of Justice, National Security Agency, Police Directorate, Financial Intelligence Unit, Prison Administration, European Integration Office, Ministry of Labour and Social Welfare. The experts also met with international organisations working on the ground, NGO's working in the field, key donor countries and the Montenegrin Youth Centre.

The objectives of this assessment report have been divided into five main sections, namely:

1. Assessment of the Strategic Framework, and the ability of the operational threat assessment process.
2. Identifying and assessing the judicial response, particularly the legal and institutional framework.
3. The key area of effective prevention and countering violent extremism.
4. An assessment of building capacity to combat money laundering and terrorist financing.
5. An assessment on critical infrastructure, hybrid threats, weapons and explosives and cooperation and coordination.

With these five sections the experts cover the five objectives as "the Joint Action Plan on Counter-Terrorism for the Western Balkans" signed by the EU and all the Western Balkans partners.

The Panel records its appreciation to all participants involved throughout this mission and also acknowledges the high level of professional commitment and fortitude displayed by all in keeping Montenegro and its citizens safe from harm.

II. EXECUTIVE SUMMARY

Terrorism and Violent Extremism is not the main problem in Montenegro. There is a small number of individuals who joined terrorist groups in Syria and Iraq present in the country. In this regard, the Montenegrin Ministry of Interior estimated that 26 individuals joined Islamic State or Al-Qaeda affiliates and splinter groups, which are the lowest figures of all Western Balkans countries.

Nevertheless, the Montenegro authorities demonstrated during the PRM a significant commitment to the prevention and fight of terrorism and violent extremism. The Panel recognises and welcomes the amount of work and investment that has taken place during the last years.

In the first chapter, the Panel made an assessment of the Strategic Framework, and the ability to conduct an operational threat assessment process. The Panel recommends to review and improve the existing coordination and oversight process of both CT and CVE Strategies. This is intended to avoid the potential risks of silo working and the duplication of effort thereby providing greater transparency between CT activity and related CVE initiatives and build greater synergy between the two areas.

Furthermore, the Panel proposes to review the methodology of the Action Plan using SMARTER methodology and prioritise the Action Plan based on assessed national threat, harm, vulnerability and risk. Regarding the national threat assessment, the Panel recommends the establishment of a model to deliver a joint national threat assessment process within a Joint Intelligence Centre. To support the development and understanding of the national threat picture it is recommended that application is made via the EU to request the production of a Te-Sat report to achieve an enhanced and complete nationwide assessment of threat and risk.

The second part of the report explains the legal framework on counter terrorism, in particular the Criminal Code, the Criminal Procedure Code, the Law on Courts, the Law on Special Public Prosecutor's Office, the Law on the National Security Agency, the Law on Witness Protection Program and the Cooperative Witness and Mutual Legal Assistance in Criminal Matters. The Panel concludes that the Montenegrin legal framework and institutional set-up related to CT/CVE is largely in line with European and international standards, in particular with the 2017 EU Directive on combatting terrorism.

Furthermore, the Panel sees that the impact of the Constitutional Court's ruling on the special investigative measures creates an issue that legislation should resolve as soon as possible. Important to mention is the fact that the Special Prosecutor seems to benefit from the police restructuring in terms of the number of experienced police officers at his disposal. It remains necessary to have additional specialized staff, in particular in the field of forensics and financial criminal investigations. Professional multidisciplinary training, on national and international level, has to be encouraged and supported.

Specifically on CVE, cross sectoral cooperation, and interaction with civil society both on the strategic level as well as on the level of the multidisciplinary approach, the Panel acknowledges the high political commitment and the realised work. Montenegro is aware of the importance to

fight radicalisation and the national CVE coordinator (The State Secretary of the Ministry of Interior) wants to play the leading role in the region. To further improve the work the next years, the Panel recommends to increase the support to strengthen economic empowerment of young people, especially in vulnerable areas with a high rate of youth unemployment.

The Panel welcomes the efforts to put a referral mechanism (the so called Assistance and Protection Team) in place to deal with Foreign Terrorist Fighters (FTF) coming back from the battlefield (returnees) or to provide counselling services to deal with people at risk of radicalisation. However, the Panel didn't see any concrete individual case, addressed within these mechanisms. The prison system in Montenegro has not been overly affected by the phenomenon of FTF. Montenegro does not have any terrorist convicted detainee in prison. However, disengagement, rehabilitation and reintegration programmes are already in place.

Montenegro is aware that financing terrorism is an important aspect when addressing organised crime and terrorism. The new Financial Intelligence Unit (FIU), now an independent division within the Police Directorate with corresponding powers gives a new impetus in the combat against money laundering and terrorist financing. The Panel recommends renewing the membership of the Egmont Group, lost because of the change of status, as soon as possible. Currently, Montenegrin FIU, is cut off from data sharing with the FIU's of 63 countries, which has a negative impact on its efficiency. Furthermore, article 11 of the Law on Seizure and Confiscation should be amended and Montenegro might consider the appointment of prosecutors and judges, specialized in financial criminal investigations. The Panel concludes from two cases that the investigation demonstrated the country's capacity to deal with high complex criminal investigations.

Representatives, responsible for the implementation of the law on designation and protection of critical infrastructures, showed a very good understanding of the state of play and the way forward. The draft law is ready and expected to be approved by the end of 2019. Additional efforts can be made to assist Montenegro authorities in further assistance in terms of completion of the legislative framework and drafting of procedures, emergency plans, in defining the criteria and measures in accordance to threat level systems. Possible envisaged activities such as study visits and training programmes (on crisis management and communication) seems to be necessary.

The Panel recommends Montenegrin authorities to continue to consider hybrid and cyber threats as a top priority and as such follow the latest international developments on CT and CVE to develop a normative framework translated into adjusted action plans to tackle new forms of radicalisation, extremism and terrorism. Finally, on weapons and explosives the Panel suggests the appointment of a national contact point.

III. STRATEGIC FRAMEWORK

Key Findings

The Panel met and engaged with key leaders and officials of Montenegro during the Peer Review Mission in order to better understand the National approach to Countering Terrorism (CT) and Countering Violent Extremism (CVE) and to examine the development and implementation of the overall National Strategy for Counter Terrorism.

Within Montenegro this approach consists of two specific strategies each addressing the two defined areas of CT and CVE:

1. The National Strategy (to 2018) for the Prevention and Suppression of Terrorism, Money Laundering and Terrorism Financing (draft strategy 2020 – 2024).
2. The recently drafted Counter Terrorism Strategy relates to the areas of investigation and enforcement.

Throughout the peer review the Panel had access to several meetings with the National Coordinator for CVE and his team to facilitate and inform their understanding of the work undertaken to date, together with the intended direction and development contained within the newly drafted strategy which has recently been offered for public consultation to positive effect. Furthermore, the Panel were provided with the developed Action Plan intended to lead the operational delivering of the overall CVE strategy across the range of partner agencies and services.

The National Strategy for the Prevention and Suppression of Terrorism, Money Laundering and Terrorism Financing (2015-2018) has expired at the end of 2018, and has not yet been replaced by a new Strategy.

In relation to CVE it is apparent that under the former Strategy numerous initiatives aimed at preventing and countering violent extremism were developed and implemented, such as the creation of a National Platform for the prevention of violent extremism and radicalisation which is a positive multi agency approach to this complex challenge.

The overall goal in the new draft CVE strategy is to **increase the resilience of the society**, propose a better response of institutions and a stronger international position of Montenegro in the fight against radicalism and violent extremism. Within these strategic objectives, three operational objectives were defined:

- Increasing the resilience of Montenegrin society to radicalism and violent extremism
- Strengthening the capacity of Montenegrin institutions and other entities to fight radicalism and violent extremism and strengthening the mechanism of their cooperation and coordination

- Improving mechanism for international cooperation in the fight against radicalism and violent extremism

The public consultations of the draft strategy are finished and the new strategy is expected to be adopted and applicable in the beginning of 2020.

In addition, Montenegro has embraced the EU model of Radicalisation Awareness Networks (RAN) to create working groups of first line practitioners to support and enhance community engagement and raise awareness within all communities. The Panel were reassured that there is meaningful and active cooperation focused on the prevention of radicalisation by numerous collaborative initiatives with non-State actors and including religious communities.

The Strategy clearly recognises the valuable contribution and support that NGOs bring to this approach and that these groups and individuals are valued as key partners along with the supporting activities aimed at wider community involvement in local programmes.

There is a clear emphasis of the importance of early preventative activity focused at recognising and countering potential radicalisation towards Violent Extremism. Positive initiatives have been energetically led at the National level particularly around the creation of the National Helpline and Website intended to offer support and guidance to vulnerable people at risk from potential radicalisation. This focus is widely promoted throughout the Strategy to be a core responsibility in order to contribute to the collective efforts to combat the complex challenge of Terrorism, particularly surrounding the vulnerability of individuals becoming radicalised and involved or supporting Violent Extremism in Montenegro or abroad.

There is evidence of a reporting mechanism to collate concerns which further supports this direction and strengthens the collaborative approach by all partners. Nevertheless, the programme is in an early stage of development which subsequently does not yet allow referral cases to be further scrutinised at this time for meaningful evaluation and ongoing development.

A review of the Strategy and related Action Plan shows a positive and comprehensive approach. However, the collective observation of the Panel is that it requires further development and increased operational detail to enhance this important aspect of a strategic multiagency document - this is subject to specific recommendation.

Overall, the strategy is a comprehensive and inclusive approach to CVE. There is clear evidence of a commitment in securing senior support and operational delivery across all of the relevant government departments and agencies, which is essential in achieving the effective delivery of collaborative efforts that the programme will require.

The inclusion within this strategy of the elements of money laundering and Terrorism Financing, were questioned at length by the Panel. Overall, the Panel assessed that the approach to financial investigations relating to CT should be mainstreamed to also include the broader threat posed by organised crime. This is subject to further, specific, recommendation in the Legal Frame Chapter.

The Panel experienced a strong sense of commitment and leadership from the National Coordinator for CVE to the ongoing development, collaboration and delivery of the work streams contained within the Action Plan.

The Panel did not have access to the new draft CT Strategy or related Action Plan. Additionally, the Panel was unable to meet with the CT National Co-ordinator and whilst discussions took place with representatives the detail of the strategy and that of the related action plan was unable to be made clear to the Panel.

Reporting and Governance

The separation of CT and CVE work streams and the subsequent creation of two defined strategies is understandable however, the Panel recognises that this presents a series of strategic and operational challenges in relation to the coordination and oversight of the two activities.

The Panel believes that this continued approach would benefit from periodic review to ensure that silo working does not develop to a negative effect in isolation within each portfolio in that activities are duplicated or key areas missed between the two strategies, being the main risks of this approach. Experience from across Europe indicates that the single approach to coordinating both aspects of CT and CVE lead to improved oversight, communication and operational delivery.

Improved synergy between the two areas is critical to the effective coordination of a meaningful and holistic approach of both strategies in keeping Montenegro and its citizens safe.

The Panel was reassured by the work invested to date to shape and create both the Strategy and resultant Action Plan at senior level. However, it is evident that in terms of cross agency activity leading to the delivery at operational level, this has yet to fully develop from a strategic agreement into the required mainstream delivery. Experience from across Europe indicates that this will take some time to develop the sustained organisational and cultural change among all agencies to effect real change at every level of every organisation particularly at the public facing operational delivery.

The Panel assessed that numerous entries potentially reflected the existing core business delivery of key agencies rather than placing a focus upon specific and targeted work required to deliver the overall strategy. Consequently, recommendations are made in support of this aspect.

Recommendations

- **1.1. Adopt, as a matter of priority, a new National Strategy for the Prevention and Suppression of Terrorism, Money Laundering and Terrorism Financing and Action Plan**
- **1.2 Review and improve the existing Coordination and Oversight process of both CT and CVE Strategies.**

Recommendation is made to further develop the coordination and governance of both strategies in order to improve the oversight and direction of complex and developing activities currently taking place. This is intended to avoid the potential risks of silo working and the duplication of effort thereby providing greater transparency between CT activity and related CVE initiatives and build greater synergy between the two areas.

Furthermore, the Panel recognises that the progress and ongoing direction within the CVE Strategy and the high level of leadership provided by the National Coordinator to sustain this. However, the Panel observes that this development appears to be in contrast with the CT Strategy which requires further development to compliment and provide the parity of approach to this complex area of threat, harm and risk.

Improved coordination and oversight processes would lead to a more equitable and holistic scrutiny of the strategy deliverables and direction, to ensure that progress is maintained across both areas.

Longer term, recommendation is also made to consider a future merge of both strategies ultimately to create a National Strategy embracing all areas of activity into a combined strategic direction whilst maintaining a clear and appropriate divide of CT enforcement and CVE activity at an operational delivery level to maintain public engagement, trust and confidence.

- **1.2. Review the methodology of the Action Plan using SMARTER methodology**

Recommendation is made to objectively review the methodology and content of both Action Plans.

This review should aim to prioritise specific activities to enable a greater understanding of the sequencing of delivery which, in turn, would support improved synergy between the two work streams.

This approach would identify more specific deliverables, timescales and deadlines for activity and following the prioritisation process, lead to promoting greater clarity for all responsible leaders and practitioners and ultimately improved governance at both individual agency and government levels.

Furthermore, recommendation is made to consider at this early stage the development of measurement and evaluation methodology in order for the subsequent assessment and evaluation of the activity based upon the impact and value of each work stream and activity in the short, medium and long-term.

The Action Plan would benefit by the addition of an objective review to enhance the programme delivery by adopting the SMARTER methodology:

S - Specific

M - Measurable

A - Achievable

R - Realistic

T - Time-bonded

E - Evaluation

R - Review

➤ **1.3. Review and Prioritise the Action Plan based on assessed National threat, harm, vulnerability and risk**

The Panel recognises the scale of ambition to deliver this far-reaching work across numerous government agencies. The Panel experienced a degree of uncertainty among some leaders and practitioners regarding the main threats and risks faced by Montenegro. The Panels assessment is that greater clarity is needed in the National Threat Assessment so that the identified Strategic Risks directly inform and prioritise the areas of risk to be addressed.

Recommendation is made for a collective review of the Action Plan to prioritise each element to determine a planned sequence of delivery in line with National threat, harm and risk.

A system of Red, Amber, Green (RAG) status should be adopted to provide additional clarity. This will allow the implementation to follow a defensible approach of prioritised deliver in line with national threats and furthermore support the ongoing governance and strategic oversight of national delivery ultimately overseen by the Minister of Interior.

➤ **1.4. National Threat Assessment**

The Panel experienced uncertainty and varying answers in seeking explanation and clarification of how the current process to assess and specify the National Threat Level within Country takes place. In addition, there was also uncertainty on how individual

agencies would respond in light of emerging changes. The Panel acknowledges that there are strong professional relationships and excellent cooperation between agencies in existence however the importance of formalising this approach with clear structure should not be overlooked.

It was clear that the activities contained within the Action Plans are led by risk assessments taking into account intelligence from a number of Government departments and agencies. The Panel is concerned that this has the potential risk of a somewhat fragmented approach which the Panel believes should be improved upon.

Furthermore, the scheduling of action plan risk assessment is both potentially narrow and untimely. By adopting the direction of the National Threat Assessment will result in a timely and relevant assessment of current and emerging threat and risk facing Montenegro.

The Panel supports a process of an independent and centralised approach to formulating a collective understanding of the risks and threats to ensure a holistic threat picture. Following the presentations provided by representatives of the OSCE relating to ongoing collaboration taking place to develop such a model the Panel believes that this work should continue in creating a framework to support a National understanding of risks.

Nevertheless, the Panel found that there was a lack of awareness among some practitioners and managers concerning the existence and purpose of this recent work, which would benefit from further engagement and communication across all areas to raise awareness and further support.

➤ **1.5. To develop a structured approach of independent Joint Assessment and Analysis**

The Panel recommends that the National Security Council should commission and resource a National Threat Assessment. Consequently the Ministry of Interior via the Bureau for Operational Coordination could then be responsible to ensure that strategy and action plan serve current and emerging National Threats and Risks.

The Panel believes that the EUROPOL - Terrorism Situational and Trend Report (TeSAT) continues to provide further analytical support and understanding in helping to inform countries of the nature of the terrorism and violent extremism threat, which subsequently, allow competent authorities to take appropriate measures to protect the citizens. The intent behind TeSAT is to provide an authorised and authoritative Government view on terrorism and violent extremism that informs both Government and society of the objective assessment of National and regional threat.

➤ **1.6. Establishment of a Joint Intelligence Centre (JIC) – the development of a Joint National Threat Level Grading System.**

The development of an independent JIC providing an objective and coordinated National Threat Assessment will also support development of a National Threat Level Grading System.

The Panel believes that this would significantly improve the understanding of the National threat picture and also promote greater understanding of agencies roles and responsibilities in light of emerging change.

Recommendation is made to develop a clear grading system intended to enhance a wider understanding of the National Threat Level and clarify the planned responses of all agencies to emerging and changing risks linked to the safety and protection of the Critical National Infrastructure.

This grading system could also promote an open, public facing Threat Level Communication informing all agencies including the public of changes to the National Threat Status and furthermore engender enhanced public vigilance at key and iconic sites, public buildings and transport hubs within the Critical National Infrastructure.

➤ **1.7. Request for a Te-Sat Assessment**

To support the development and understanding of the National Threat picture it is recommended that application is made via the EU to request the production of a Te-Sat Report to achieve an enhanced and complete nationwide assessment of threat and risk.

IV. THE JUDICIAL RESPONSE

Key Findings

The Criminal Code

The provisions in the Criminal Code of Montenegro related to this assessment are:

- Art. 447 (1) providing the full range of acts considered to be terrorist acts in view of the intent of perpetrators, in case the intention to coerce or intimidate in order to comply with demands or to seriously endanger or violate the basic constitutional, political, economic or social structures of Montenegro, a foreign state or an international organization. This is the usual legislative technique according to international standards seen the fact that a universally accepted definition for ‘terrorism’ has not been accepted so far.
- Art. 447a to 449b criminalizing the acts of
 1. Public call for the commission of terrorist acts (447a).

2. Recruitment and training (447b).
3. Use of lethal device (447c).
4. Destruction or damage of nuclear facility (447d).
5. Endangering persons under international protection (448).
6. Terrorism financing (449).
7. Terrorist association (449a).
8. *Participation in foreign armed formations (449b).*

Art. 449b is new and certainly innovative since it does not only cover the participation in a foreign armed formation, terrorist (ex. IS) or other (ex. Ukraine fighters) but also the departure to join such formation (art. 449b.2), as such criminalizing travel for terrorist purpose.

In conclusion the Panel ascertains that the terrorism related provisions of the Montenegro C.C. are now fully aligned with international standards, in particular with the 2017 EU Directive on combatting terrorism.

The Criminal Procedure Code

The State Prosecutor is obviously the magistrate in charge of the criminal investigation. According to art. 44.3 of the CPC the State Prosecutor orders the investigation to be conducted, conducts the investigation and performs urgent evidentiary actions during the preliminary investigation.

Like in the other Western Balkan States, the role of the ‘investigative judge’ is narrowed to that of the authority who is to assure the respect of procedural rights and as such, for example, authorizing or rejecting the Prosecutor’s motions on certain special investigative measures. In fact the use of the terminology ‘pre-trial judge’ or ‘preliminary judge’ would have been more accurate in view of this magistrate’s competence.

According to art. 159 CPC the measures referred to in art. 157 par.1, requested by motion of the State Prosecutor, will require a written approval of the investigative judge before they can be executed.

These measures include:

- Secret surveillance and recording of communications (157.1.1).
- Interception, collection and recording of computer data (157.1.2).
- Entry into premises for the purpose of secret photographing and video and audio recording in premises (157.1.3).
- Secret following and video and audio recording of persons and objects (157.1).

However on April 27th 2018 the Constitutional Court passed on a ruling canceling the provisions displayed in art. 159, par.1 regarding the competence of the Prosecutor to order special investigative measures set out in art. 157, par.2. Following special investigative measures are, at least for the time being, to be considered unconstitutional:

- Simulated purchase and simulated bribes (art. 157.2.1).

- Simulated business services or simulated legal transactions (art. 157.2.2).
- Establishing fictitious companies (art. 157.2.3).
- Controlled delivery (art. 157.2.4).
- Recording conversations with consent of one of the interlocutors (art. 157.2.5).
- Hiring undercover investigators and collaborators (art. 157.2.6).

By its ruling, the Constitutional Court wiped out a complete set of SIM measures. The panel deems that this decision seriously hampers the ability of law enforcement and prosecution to carry out pro-active research in large scale criminal investigations dealing with terrorism and organized crime (which are often interconnected).

The Law on Courts

The Law on Courts has established the following court system:

- *5 basic courts* (art. 15): to judge at first instance, criminal offences for which a fine or imprisonment up to 10 years is prescribed by the law as the principal punishment and those criminal offences which are by special legislation prescribed to be within the jurisdiction of basic courts (art.16).
- *2 High Courts*, one in Bijelo Polje and one in Podgorica (art.17): to judge in criminal proceedings for criminal offences for which imprisonment in excess of 10 years is prescribed by the law as the principal punishment and in a number of specified serious criminal offences (art. 18).
- *2 Commercial Courts*, one in Bijelo Polje and one in Podgorica (art. 19)
- *1 Appellate Court* with seat in Podgorica (art. 21): to decide against appeals of the High Court's rulings in first instance (art. 22).
- *1 Administrative Court* with seat in Podgorica (art. 23)
- *1 Supreme Court* with seat in Podgorica (art. 25): in essence rulings on principal legal opinion and conflicts of jurisdiction (art. 26).

However, terrorism and terrorism related offences, as well as organized crime and money laundering, will be solely dealt with by the Special Division of the High Court in Podgorica (*see infra- the Law on Special Public Prosecutor's Office*).

The Law on the State Prosecutor of Montenegro

According to art. 4, the Chief State Prosecutor, High State prosecutor and Basic State Prosecutor exercise the State Prosecutor 's Office. The Special Prosecutor (*hereinafter SPO*) shall exercise certain duties from the realm of the State prosecutor, in accordance with the law.

The Law on Special Public Prosecutor's Office

The SPO, an organizational department of the State Prosecutor's Office with seat in Podgorica, has nationwide territorial jurisdiction. The SPO takes all the actions falling within its jurisdiction before *the Special Division of the High Court in Podgorica*. Montenegro counts thirteen Special Public Prosecutors dealing with (art. 3):

- Organized crime, regardless of the duration of the prescribed punishment.
- High level corruption.
- Money laundering.
- Terrorism.
- War crimes.

The SPO's Office is internally organized in 4 divisions (art.10):

- The Division for Criminal Prosecution Tasks dealing with preliminary inquiry, investigation and cooperation with other authorities.
- The Division for Financial Investigations dealing with establishing the value of proceeds of crime and asset recovery.
- The Division for Analytics and Research in charge of the creation of technical conditions allowing exchange of and access to data in the databases of other state authorities, and of statistical reporting and monitoring of cases.
- The Division for International Cooperation, tasked with enabling cooperation with competent authorities and bodies, on national and international level and with the appointment of members of the joint investigative team set up on the basis of an international treaty for the purpose of criminal prosecution for the offences that fall within the jurisdiction of the SPO.

Obviously the SPO is by definition the prosecution department that has to deal with the most complex investigations. However, due to the Constitutional Court's ruling (see supra), the necessary tools to run such investigations are, at least partially and for the time being, no longer available.

The Police Administration of Montenegro used to operate under the jurisdiction of the Ministry of the Interior, but became a fully independent government body in 2019. The role of the Minister of the Interior is now only supervisory. He has no operational authority over police officers. All units of the Police Administration report to the Police Director. The police restructuring led to the establishment of 8 Directorates, each under supervision of a police deputy director. Art. 26 of the SPO Law already established a special police division to carry out the police tasks of the investigations listed up in art. 3 (*see supra*). As a result of the recent police organizational reform, a *Special Police Unit (hereinafter SPU)*, holding competence for tackling serious and organized crime and high-level corruption is now incorporated in the Directorate on Fighting Organized Crime and Corruption. Apart from the SPU, the Directorate on Fighting Organized Crime has four other units: the Unit for Suppression of Serious Crime, the Unit for Fighting against Drug

Smuggling, the Witness Protection Unit and the Unit for Special Operative support. One of the major objectives of this Directorate is to focus on and to support the investigations led by the SPO (and the High State Prosecutor's Office).

From the side of the SPO the cooperation with the police investigators was reported to be very close and successful. However, there are still some issues to be dealt with. In particular the understaffing of the forensic unit and the ongoing need for training of staff, especially in the field of financial criminal investigations, seemed to give rise to some concern, as these flaws may lead to considerable delays in the execution of criminal investigations that are limited in time when a suspect is in detention (six months according to art. 177 C.P.C.).

Although premature to judge the effects of the whole restructuring operation and even taking in account the remarks mentioned above, the fact that the SPO can now rely on a complete police directorate staffed with approximately 80 experienced police officers certainly has to be considered as a major step forward in the efficient managing of complex criminal investigations.

The Law on the National Security Agency

The NSA (NSA) is an independent security-intelligence agency that forms an integral part of the security system in Montenegro (art. 1). The agency collects data and information, through the use of special methods and means determined by law, on potential threats, plans or intentions of organizations, groups and individuals that are directed against the territorial integrity, security and the national legal order determined by the Constitution, and draws attention to the potential challenges, risks and threats to security.

As such the agency collects, keeps records, analyses, assesses, uses, shares, stores and protects data that are relevant, amongst others, for the prevention of terrorism and other forms of organized violence (art. 6.2) and for the prevention of organized crime (art. 6.3).

The agency reports in general to the President of Montenegro, the Prime Minister of Montenegro and Parliament, and occasionally, if the independence, sovereignty, territorial integrity, defense, security and legal order is at risk, it informs other state authorities as well.

Art. 9 with heading 'covert data collection' lists up the special methods and means that the agency may use according to the law. These methods include:

- Surveillance and monitoring in the open space and in the public place, using technical devices (art. 9.2)
- Purchasing documents and objects (art. 9.3)
- Surveillance of electronic communication and postal parcels (art. 9.4.a – d)
- Surveillance of a facility's interior, closed spaces and objects, with the use of technical means (art. 9.5).

The Law on the NSA prescribes that the decision to purchase documents and items is taken by the NSA director, and the approval is for a one-off purchase, on a case-by-case basis.

The methods referred to in art. 9.2 – 4 require the approval of the Chief Justice of the Supreme Court (exception made for art. 9.4.c collection of ‘data on the electronic communication user’s location’, in which case the approval of the Agency Director suffices). The surveillance method referred to in art. 9.5 needs to be approved by the Panel of Judges of the Supreme Court.

Seen the fact that the SPO is not in any way implicated in the execution of the special intelligence means mentioned above, it is unlikely that the Constitutional Court’s ruling concerning SIM (see supra) will affect the means that may be deployed by the NSA. However, the Panel can’t be 100 % sure, since a copy of the Court’s ruling was asked for but so far not received. It was therefore not possible to examine the reasoning of the Court.

The Law on the Prevention of Money Laundering and Terrorist Financing (see *infra* – fourth chapter)

The Law on Seizure and Confiscation of Material Benefit derived from Criminal Activity (see *infra* – fourth chapter)

The Law on Witness Protection Program and the Cooperative Witness

According to art. 5 of the law the protection program shall be applied only if the criminal offence cannot not be proved without the testimony of the witness or if the proving thereof in another way would be made significantly more difficult, when the following criminal offences are being proven:

- 1) Criminal offences against the constitutional order or security of the Republic of Montenegro,
- 2) Criminal offences against humanity and other values protected by international law,
- 3) Criminal offences committed in an organised manner,
- 4) Criminal offences carrying a legally prescribed punishment of 10 or more years of imprisonment. (*e.g. terrorism*).

The measures by which the protection of witness or person close to him or her is provided shall be as follows (art. 27).

1. physical protection of person and property,
2. relocation,
3. concealing identity and information about ownership,
4. Change of identity.

The police witness protection unit will carry out the protection measures.

Apart from the witness protection program, the CPC (art. 121) prescribes procedural ways of participating and hearing witnesses to avoid threatening and intimidation.

Art. 125 C.P.C. prescribes special rules regarding the cooperative witness, which is a member of a criminal organization willing to testify and expose the organization. However, and rather odd, the status of cooperative witness can't be given to the leader or organizer of a criminal organization (art. 125.3).

Furthermore, if a suspect enjoys the status of cooperative witness, he can't be prosecuted for the criminal offence of organized crime for which the proceedings are conducted (art. 129.1).

In conclusion, Montenegro disposes of the necessary framework to shield important witnesses. On the other hand one might question art. 125.3 since the leaders of criminal investigations are precisely those who are able to expose the complete structure of such an organization. Finally and in connection with this observation, it might be wise to reconsider the immunity granted to the cooperative witness and instead go for a considerable reduction of sentence.

Mutual Legal Assistance in Criminal Matters

Montenegro is a signatory to several multilateral conventions in the field of MLA in criminal matters, amongst those

- The European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols.
- The European Convention on Extradition and its two Additional Protocols.
- The European Convention on the Transfer of Proceedings in Criminal Matters.

Membership of and cooperation with international bodies, in particular with those of the European Union, is high, e.g.:

- Montenegro concluded an agreement on Cooperation between Eurojust and Montenegro.
- Montenegro is an Interpol member.
- Montenegro signed an operational and strategic cooperation agreement with Europol, adopted by the European Parliament in 2016. At present and in accordance with art. 5 of said agreement, Montenegro seconded a liaison prosecutor to Eurojust.

Montenegro signed a number of bilateral treaties with the countries of the region, in particular to fight against organized crime and high-level corruption (e.g. with Serbia, Bosnia and Herzegovina, Croatia and North Macedonia).

If no treaty, multilateral or bilateral, is available, international legal issues have to be resolved in accordance with national laws, the most important ones being:

- The Law on Mutual Legal Assistance in Criminal Matters, which is a general law dealing with extradition, transfer of criminal proceedings and recognition and enforcement of court decisions.
- The Law on SPO (*the division of international cooperation – in supra*).

- The Law on Prevention of Money Laundering and Financing of terrorism (*chapter VI-International Cooperation*).
- The Law on Seizure and Confiscation of Material Benefit derived from Criminal Activity (*chapter VIII-International Cooperation*).
- The Law on the NSA (*art. 15a – International Cooperation of the Agency*).

Observation: International cooperation within the meaning of the Law on Seizure and Confiscation shall include identification, tracking and tracing material benefit, imposing provisional measures to secure assets, seizing movable property, confiscating material benefit and managing the seized and confiscated material benefit (art 79).

The Police Directorate has a *Division for International Police Cooperation*.

Recommendations

The Montenegro legal framework and institutional set-up related to CT/CVE is largely in line with European and international standards. The panel makes following recommendations:

- 2.1. Restore the special investigative measures (art. 159 par.1 and 157 par. 2) C.P.C.) that were cancelled, in full respect of constitutional order.

The impact of the Constitutional Court's ruling on the special investigative measures (art. 159 par.1 and 157 par. 2) C.P.C.) is an issue that legislation should resolve as soon as possible. The ruling has wiped out a complete set of SIM, thus undermining, at least partially and temporary, the conduct of complex criminal investigations.

- 2.2. Increase the number of staff within the SPO and SPU, in particular in the field of forensics and financial criminal investigations, and organize trainings.

Notwithstanding the fact that the SPO seems to benefit from the police restructuring in terms of the number of experienced police officers at his disposal, the need to have additional specialized staff, within the SPU as well as within the SPO, in particular in the field of forensics and financial criminal investigations, remains a necessity. Professional multidisciplinary training, on national and international level, is to be encouraged and supported.

- 2.3. Art. 125 and 129 C.P.C. concerning the cooperative witness should be amended on two counts:
 - The leader of an organized crime organization should also be able to get the status of cooperative witness (art. 125.3)
 - Instead of complete penal immunity, a considerable reduction of the sentence could be considered (art. 129.1).

The recommendations under sub 2 and sub 3 should be dealt with as medium-term priority goals. Their achievement equally falls under the competence of the Ministry of the Justice who has to transmit a draft bill (sub 2) to amend art. 125 and 129 C.P.C. and, if need be, has to find funding for additional recruitment and training (sub 3).

V. EFFECTIVE PREVENTION AND COUNTERING VIOLENT EXTREMISM

Key Findings

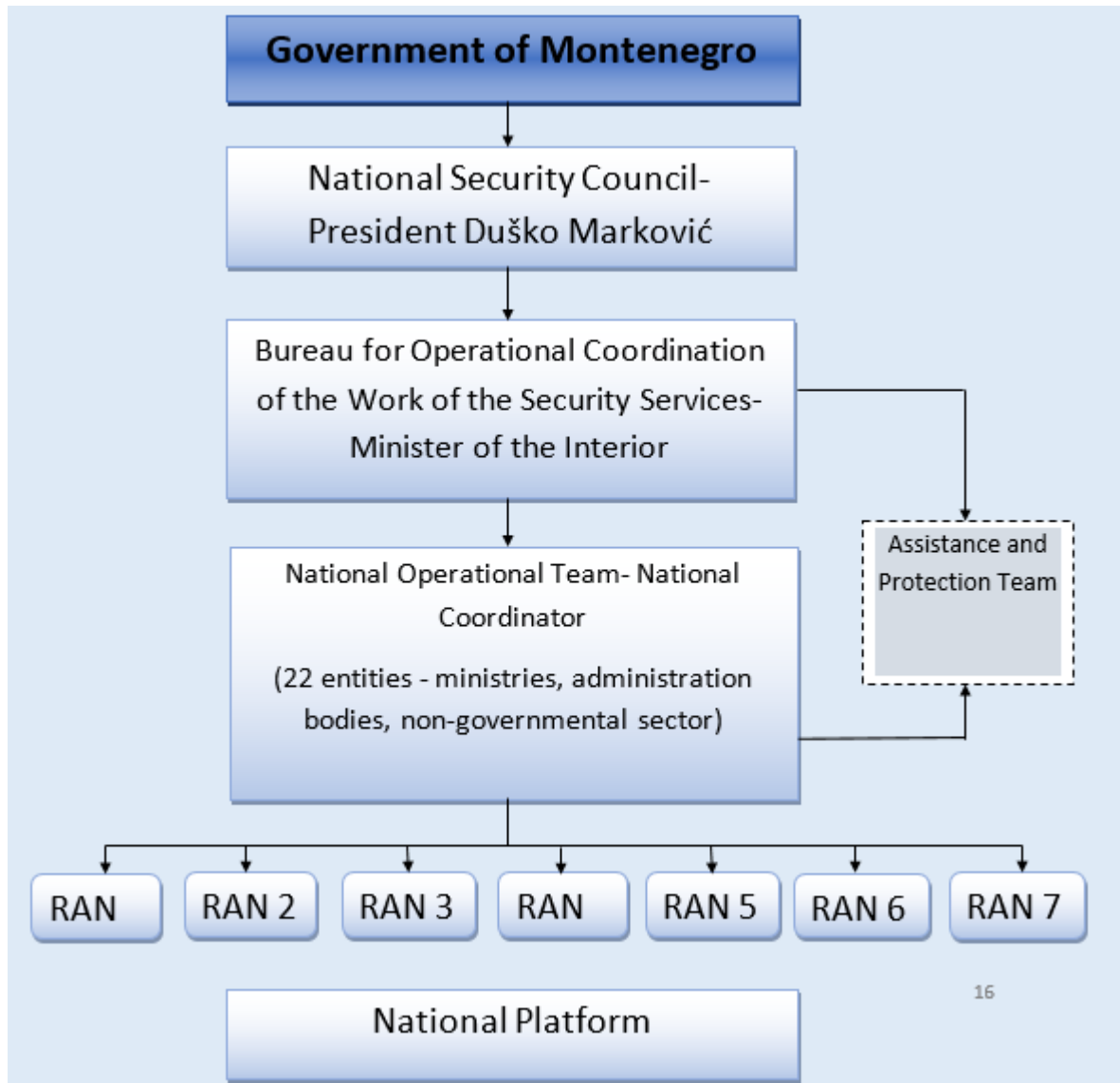
1. The Panel recognizes that Countering Violent Extremism has been high on the political agenda of the Government. Even if the threat is low, the authorities have taken several steps to help mitigate the risks associated with the phenomenon of violent extremism.

The coordination of the work of these authorities in fulfilling the defined goals of this Action Plan has been carried out by the Bureau of Operational Coordination. In March 2018, the Bureau established the **National Inter Agency Operational Team (after NOT)** for the Implementation of the Action Plan for the implementation of the Strategy for Countering Violent Extremism coordinated by the **National Coordinator**.

The Panel draws attention to the importance the NOT aim to fight the phenomena by bringing together all relevant partners around the table therefore creates a multi-agency approach. The NOT is divided in several **RAN groups**: RAN 1 for Communication and Narratives; RAN 2 for Education and Youth; RAN 3 for Local Communities; RAN 4 for Health Care and Social Care; RAN 5 for the Police and other Law Enforcement Agencies; RAN 6 for Prisons and Probation; RAN 7 for Exit Strategies. In addition, a **National Platform** for Countering Violent Extremism and Radicalisation Leading to Terrorism (after National Platform) was launched, bringing together representatives of relevant state institutions, local governments, media, political parties, non-governmental organisations, religious communities and academia. Finally, also an **Assistance and Protection Team** (see infra) was created within the NOT.

Here below the organisational CVE structure¹ of the country:

¹ Strategy on countering violent extremism for the period 2020-2024 with the action plan for 2020, July 2019.



2. In January 2019, the Bureau for Operational Coordination released a report on the implementation of the Action Plan for the implementation of the strategy 2016-2018 for Countering Violent Extremism. The report concluded that significant results have been achieved in the implementation of the strategic and operational objectives of the CVE Strategy. The NOT proposed the preparation and adoption of a new **strategy and Action Plan for Countering Violent Extremism for the period 2020-2024**.

3. The Panel welcomes the initiative of the creation the “**Assistance and Protection Team**” to detect the early signs of radicalisation (case management). The team has a multi-agency composition (ministry of Health, Social Welfare, Education, police, local authorities), includes also NGOs and works under the leadership of the State Secretary from the Ministry of Labour and Social Welfare.

The Assistance and Protection Team did not work on a concrete case so far. However, it can be seen as a good practice and an important achievement to deal with returnees or individuals in a (future) process of radicalisation. The next steps to put in place is to develop protocols and identify

focal points at the local level to provide counselling services to deal with people at risk of radicalisation.

Another good practice is the membership of five Montenegrin municipalities (Ulcinj, Bar, Berane, Gusinje and Rozaje) into the Global Strong Cities Network², whose task is to build social cohesion and resilience in the fight against violent extremism in all its forms.

Nevertheless, the Panel was not able to speak with someone of the local authorities to find out how the national CVE strategy is translated towards local level and how they are involved in the Assistance and Protection Team.

4. The Panel acknowledge the efforts by the **international and civil society organisations** in CVE. A consortium of six CSOs from the Western Balkans led by Forum MNE simultaneously conducted In December 2018 a mapping of the range of stakeholders relevant for implementing CVE actions. The publication³ contains research findings on the civil society working in the prevention field and provides understanding of quality and potentials of their relations with key local, national and regional stakeholders from public, civic and business sector.

The Organisation for Security and Cooperation in Europe (OSCE) is also quite active in CVE in Montenegro. OSCE supported Montenegro actively in the creation of its CVE strategy and it published the document “Together against Violent Extremism” of the National Platform. Further, OSCE organises roundtables, debates and trainings for implementing CVE activities.

It is not always easy to keep an overview of all the projects that are financed by different partners. In this sense it’s important to mention that the national CVE coordinator is bringing civil society, NGO’s and donors together to better coordinate the work that they are doing. Nevertheless, the National Strategy and the donor agendas do not address well enough those concerns in the specific communities, but adopt rather a one-size fits all approach.

The Panel recognize the professional work of the Montenegrin **Youth Center** and was able to assist a meeting with youth workers, youth activists, youth researchers, school representatives and youth policy officers. The Youth Center can be seen as a strong instrument for young people and non-governmental organizations to implement programs for young people to gain new skills and to contribute to improvement of the community they live in by ideas and solution they create. The work of the Youth Center is particularly important to help young people to master the social and emotional skills, or the ability of employment, which helps them to strengthen their democratic capacities.

The Panel participated together with youngsters from all over the country in 3 workings groups. The outcome of those 3 working groups was that the Government need to invest more in **non-formal education** to overcome the stereotypes that still exist between different communities spread over the country. Secondly, more activities has to be organised with **social and classic media** to show the diversity of human diversity, the wealth of languages, ideas. Thirdly, **youth empowerment** should be seen as major component of youth engagement. When youngsters are

² <https://strongcitiesnetwork.org/>

³ Civil Society in Preventing and Countering Violent Extremism in Montenegro – CSO Mapping report

'empowered', they have the skills, critical awareness and opportunities to positively impact their own lives as well as the lives of other individuals, organisations and communities. Finally, the government needs to make a priority of **travel camps** in the country and the region. Travelling is the best recipe to share values of different cultures and to know each other better.

5. From all the countries in the region, Montenegro has the **lowest numbers of FTFs**. Since 2012 and until today, 26 citizens (18 men, 5 women and 3 children) left for conflict zones in the Middle East, mostly as FTFs. 10 citizens have returned (8 men, 1 woman, 1 child), 6 died, 9 remained in theatre (3 men, 4 women and 2 children), and one citizen is in Turkey.⁴

Due to these low numbers, the **prison system** in Montenegro has not been affected by the phenomenon of FTF. Montenegro does not have any terrorist convicted detainee in prison. However, the prison administration is aware of the risk of radicalisation and recruitment in prison and took several preventive measures during the last years:

- Established disengagement and reintegration programs;
- Trained prison staff to enable them to prevent violent extremism in prison;
- Drafted a risk assessment tool in order to identify prisoners that are radicalised or at risk of radicalisation, while the guidelines for dealing with this category have been taken over by colleagues from Bavaria;
- Created the possibility for religious counselling for prisoners.

The prison administration is involved in the NOT and in RAN 6 working group for Prisons and Probation.

6. All terrorist and violent extremist groups rely heavily on communication in all its forms. Online platforms have been used extensively as propaganda aimed at engaging and convincing different individuals. Civil society identified polarised media and Russian influence as the main challenges. The Montenegrin authorities are aware that the utilisation of social media to recruit youngsters or as propaganda will only increase in the future, and that **capacity building in strategic communications** is essential. The CVE coordinator is in contact with the internet services providers to avoid radical publications online and to communicate directly with the Montenegrin media. A good example in this sense is the publication of the new draft CVE strategy in the newspaper "Pobjeda".

7. Police services are responsible for maintaining public order and safety. The practice of **community policing** puts emphasis on partnership-based, collaborative efforts between the police and the community to more effectively and efficiently identify, prevent and solve problems of crime, the fear of crime, issues of physical safety and security, social disorder and neighbourhood decay in order to improve the quality of life for everyone. The Panel underlines that the Montenegrin Police is aware of the importance of such partnerships to intervene earlier in the cycle of terrorist radicalization, lower threats to public safety and foster communities that are less resilient. The Montenegrin Police targets specific areas in the country with a higher risk of radicalisation and recruits officers within the minority Muslim population.

⁴According to official statistics received from the NSA

Recommendations

- 3.1. **Further preventative activities against radicalisation** are necessary and needed, continuing to involve and strengthen civil society, local authorities and the educational system. The new CVE strategy is an important step in this direction. However progress can be made on the **implementation of the strategy at the local level**.
- 3.2. The high number of young people leaving the country to find a better future stays significant. More efforts are necessary in **economic empowerment of young people**, especially in vulnerable areas with a high rate of youth unemployment. It's more than essential to invest in socio-economic projects and, in the long term, create a partnership with the private sector in neighbourhoods which are vulnerable for radicalisation. Encouraging entrepreneurship allows young people to flourish and reduces the seduction of radical groups.
- 3.3. Assess the existing CVE programmes and tailor them to the community, which they target to address local challenges. Programmes should respond more to the needs voiced by the local community and give a sense of **ownership to the local community**.
- 3.4. Bring all the projects from European and international donors, inter-governmental organisations and NGO's together in a **database** to reinforce the national strategy and to avoid overlaps.
- 3.5. More **strategic communication initiatives** and trainings for journalists should be put in place in the next years to counter online radicalisation.

VI. BUILD CAPACITY TO COMBAT MONEY LAUNDERING AND TERRORIST FINANCING

Key Findings

The Law on the Prevention of Money Laundering and Terrorist Financing

Published in July 2018, this law (*hereinafter AML/TF*) aims money laundering as such and 'terrorist financing in the context of this law' (art. 3). Is to be considered as terrorist financing:

- 1) providing or collecting or an attempt of providing or collecting funds or property, in any way, directly or indirectly, with the intention or with the knowledge that they may be used, in their entirety or in part:
 - For preparing or committing terrorist act;
 - By terrorists;
 - By terrorist organisations.

- 2) Encouraging or assisting in providing or collecting the funds or property from Item 1 of this Article.

The Financial Intelligence Unit (*hereinafter FIU*) is, since the police restructuring, no longer an 'administration' as written down in the AML/TF, but has currently been moved to the police as a new department (*Prevention of Money laundering and Financing Terrorism*). The switch from being an administrative body to a police department has, at least for the time being, one negative side-effect. FIU Montenegro has lost, be it temporarily, Egmont Group membership. The loss of this membership – the Egmont Group is an international data sharing network of FIU's from 64 countries- puts Montenegro in a disadvantaged position when financial data from abroad are needed. On the other hand, the fact that the FIU has now the ability to access data bases of other police systems is to be regarded as a major step forward in the managing of financial criminal investigations.

The AML/TF law is very extensive and imposes a diversity of surveillance and reporting obligations upon so called obliged entities. The Panel was told by the Head of the Sector for Prevention of Money Laundering and Terrorism Financing at the Police Directorate, that some obliged entities (e.g. notary public) are not very cooperative and refuse to supply certain data, hiding behind their professional secret.

The FIU makes extensive national risk assessments in the field of financial crime, the next one, together with an action plan, to be published in 2020.

The head of FIU applauded the good cooperation with the SPO which, in his view, was constantly improving. FIU and SPO communicate on a daily basis. There is prior consultation with the SPO before initiating an investigation, thus avoiding that ongoing investigations have to be stopped because of flaws in the chain of trial admissible evidence. However, the head of FIU expressed the need of having prosecutors and judges, specialized in financial investigations.

The head of FIU explained that the loss of the Egmont Group membership has to be considered as a temporarily set back. Whether FIU is a financial administration agency or a police department – as is now the case in Montenegro - is not an issue of concern for the Egmont Group. What counts is the operational autonomy and this seems to be the case since FIU Montenegro has an independent budget, a database that they only have access to, operates without any interference with their cases and is headed by a Deputy Police Director appointed by Government and Parliament. The necessary amendments to the AML/TF and Internal Affairs Law have been made and are ready to be adopted. Seen the complexity of the administrative route to renew the Egmont Group membership, the head of FIU expressed the hope that this Panel would take the opportunity to call upon the EU to support Montenegro in these proceedings as to ensure renewal of membership next year at the latest. Meanwhile FIU will fill in the gaps by signing bilateral agreements (Balkan States, UK, Cyprus) and by using the Europol channel (on basis of the EU Directive 2019/1153).

The Law on Seizure and Confiscation of Material Benefit derived from Criminal Activity

The Law of Seizure and Confiscation of criminal proceeds applies to material benefits where well-founded suspicion exists that such material benefit has been derived from criminal activities, whereby the perpetrator fails to make plausible the legal origin of such material benefit (*extended confiscation*) and if the perpetrator was convicted by a final judgment for certain crimes laid down in the Criminal Code of Montenegro (cfr. Art. 2), including money laundering (art. 268 C.C.).

It was reported to the Panel that judges apply a ‘narrow interpretation’ on the issue of extended confiscation, but this statement proved to be unjustified. The courts do not require a direct association with a specified predicative offence, as was being suggested, but they do require the mere existence of at least one final conviction for a specified previous predicative offence in order to impose confiscation, which is by the way explicitly required by law (art. 2).

Unexplained wealth solely combined with the civil standard of proof -probable cause- will not suffice to meet the court’s standards to allow confiscation.

Moreover, art. 11 of the law requires a well-founded suspicion that the material benefit was derived from criminal activity, together with the reasonable suspicion that a criminal offence referred to in Article 2 par.1 of the Law has been committed in order to *start a financial investigation*.

The Law on Seizure and Confiscation makes a form of extended confiscation possible. As such, Montenegro follows the evolution of the legislation of the other Western Balkan States. On the other hand, it has to be noted that the requirements in order to start a financial investigation are hampering the timely initiation of financial investigations.

Recommendations

The new FIU, now an independent division within the Police Directorate with corresponding powers gives a new impetus in the combat against money laundering and terrorist financing. The Panel makes the following recommendations:

- 4.1. The membership of the Egmont Group, lost as a result of the change of status, should be renewed as soon as possible. Currently, FIU Montenegro, is cut off from data sharing with the FIU’s of 63 countries, which has a negative impact on its efficiency.
- 4.2. Art. 11 of the Law on Seizure and Confiscation should be amended. The requirements to initiate a financial investigation are far too stringent.
- 4.3. Montenegro might consider the appointment of prosecutors and judges, specialized in financial criminal investigations.

Restore the membership in the Egmont group in order to regain access to international intelligence on suspicious transactions towards/from Montenegro should be a top priority on short term.

However, the procedure to regain membership seems to be rather time consuming (more than 1 year). Montenegro FIU has already started the procedure.

The recommendations under sub 2 and 3 are medium-term goals, to be initiated by the Ministry of Justice who has to transmit a draft bill to amend art. 11 of the Law on Seizure and Confiscation. The appointment of magistrates specialized in financial criminal investigations is a matter of recruitment and training, falling within the competence of both the Judicial and the Prosecutor's Council (e.g. art. 23.5 Law on Judicial Council stating that the Judicial Council shall provide for the training for holders of judicial office in cooperation with the Prosecutor's Council).

Case study

The case load related to this assessment is low, terrorism currently not being a major concern in Montenegro. Prior to the meetings the Panel received the summaries of two cases:

- Kt-S No. 239/16: the defendant travels with his wife and underage daughter to Turkey and from there to the territory controlled by IS where he participated in military formations. He was charged and found guilty (art. 449b.par.2 C.C.) as charged. A financial investigation was carried out but didn't expose any benefits derived from criminal activity. After a plea bargain the High Court of Podgorica sentenced the defendant to six months of imprisonment.
- Kt.br. 124/16: the case of an Ukraine fighter who joined the paramilitary formation of the self-proclaimed Donetsk People's Republic and was equally charged with art. 449b par. 2 C.C. Seen the fact that the defendant had a prior conviction for attempted murder, the High Court of Podgorica sentenced the defendant, who entered a guilty plea, to a single sentence of three years and five months of imprisonment, for criminal offense "participation in foreign armed formations" to a sentence of six months imprisonment, and the other three years for criminal offense "attempted murder".

In both cases a plea bargain (*art. 300 C.P.C. – agreement on admission of guilt*) was introduced. A full-scale investigation was therefore unnecessary.

During the meeting with the SPO, the Special prosecutor showed the Panel a power point presentation of the 2016 'coup d'état case':

- A criminal association intended to take over parliament on Election Day on October 16th 2016 and assassinate then-Prime Minister Milo Djukanovic in order to set up a pro – Russian anti-NATO front (*Montenegro joined the NATO in 2017*).
- Charged with art. 447a)b) tot art. 449a)b) (*acts of terrorism and criminal association*), on May 19th 2019, the High Court of Podgorica sentenced 14 people, including 2 Montenegrin

opposition leaders and the former commander of the Gendarmerie to sentences ranging from 5 to 15 years imprisonment.

The investigation included:

- intensive use of mutual legal assistance and international police cooperation (INTERPOL) channels with letters rogatory directly communicated between Montenegrin and external judicial authorities; 14 letters rogatory were sent (to U.S, U.K., Bulgaria, Serbia and Russia) to obtain information and evidence.
- Intensive use of special investigative measures (e.g. electronic surveillance measures) and exposed the complete structure of the criminal association.

The investigation demonstrated Montenegro's capacity to deal with highly complex criminal investigations. Seen the recent ruling of the Constitutional Court (in supra) regarding the use of certain special investigative measures it remains to be seen whether the verdict will be confirmed or reversed in appeal.

VII. CRITICAL INFRASTRUCTURE, HYBRID THREATS, WEAPONS AND EXPLOSIVES AND COOPERATION AND COORDINATION

1. Critical Infrastructure

On October 28 a meeting took place with the CVE coordinator and representatives of the Ministry of Interior with regard to the current situation on Critical Infrastructures (CI) and more specifically on the implementation of objective 5 of the Joint Action Plan (JAP) on Counter-Terrorism for the Western Balkan (WB) to strengthen the protection of citizens and infrastructure.

There should be alignment with the specifications of Directive 2008/114/EC on the identification and designation of European critical infrastructures and chapter 24 provisions.

Key findings:

Representatives, responsible for the implementation of the law on designation and protection of critical infrastructures, showed a very good understanding of the state of play and the way forward.

The draft law is ready and expected to be approved by the end of 2019.

In the absence of this new law, Montenegro relies on different existing legal provisions in the event of incidents at 'critical' infrastructures or incidents taking place at crowded places. The current legal acts are the law on protection and rescue, the law on protection of property/building, the defence law, the law on public events or NSA (National Security Agency) law.

Once approved further coordination, to meet the deadlines, will take place with the different Montenegrin authorities, identified in the Joint Action Plan.

Risk assessments, procedures and emergency plans are still to be developed taking into account the possible upgrade of national threat level (5) and subsequently increase of protective measures.

It became clear to the peer review team that there is strategic vision on the different steps to implement action plans and clear willingness to coordinate on the national and international level.

Montenegro benefits support from the Region as member of the Western Balkan platform as well as from NATO in terms of training (eg. Darknet training).

Due to the aforementioned commitment, the participation at different platforms where best practices are exchanged and the ongoing Western Balkan regional efforts in these matters, the review team is not expecting great challenges with regard to the adoption of by-laws, implementation of objectives such as the defining of critical infrastructures, the identification of criteria and appointment of persons in charge.

Recommendations

- 5.1. In order to speed-up the implementation of objective 5 of the Joint Action Plan on Counter-Terrorism for the Western Balkans, the Montenegro authorities need to complete the legislative framework and drafting of procedures, emergency plans, in defining the criteria and measures in accordance to threat level systems. Activities such as study visits and training programmes (on crisis management and communication) are necessary.

2. Hybrid threats

Although not suffering from the same threats as some Western European countries, Montenegrin counterparts showed during the different meetings, as a result of their presence at several international platforms as Europol a profound understanding on the current and future threats, new modus operandi, used means (Chemical Biological Radiological Nuclear, drones...) and possible misuse of new technologies that can represent a threat to the country. Adversely, some CT related partners are lacking to a certain extent, legislation, procedures and operational implementation.

Worth to mention, Montenegro suffered last year from the highest number of cyber-attacks per capita in the Western Balkans region.

Latest reports from the European Commission, Europol, Interpol (eg. on new technologies and threats such as the Darknet, 5G, drones, fake news...) are discussed and taken into account by the different platforms and partners to act accordingly in the protection of events, concerts, Christmas events, summer season,...

The CVE representatives mentioned amongst others the use of Closed-circuit television (CCTV) and drones to protect premises, infrastructures and citizens.

An interdepartmental group is established with 5 teams and meets on a weekly basis to discuss the approach to adopt. The teams are dealing with critical infrastructures, strategic communication, analytical issues, crisis management and cyber security.

Work of these teams will result in a draft strategy on hybrid threats by the end of 2019, a drafting of crisis management regulations in early 2020 and completion of the legislative framework.

Recommendations:

- 5.2. It is recommended Montenegrin authorities continue to consider hybrid and cyber threats as a top priority and as such follow the latest international developments on CT and CVE to develop a normative framework translated into adjusted action plans to tackle new forms of radicalisation, extremism and terrorism. EU member states can assist in the further implementation of these regulations.

3. Weapons and explosives

Montenegro, as other Western Balkan countries, is lacking regulations on tightening the rules to stop terrorists from using homemade explosives and purchase precursors to explosives. There is no complete list today nor proper information or procedures with regard to suspicious transactions.

A working group with representatives of different ministries will be set-up to deal with tracking and control issues and the appointment of national contact points in accordance with the regional roadmap.

Montenegro is partner of the Regional Committee on Firearms and will appoint the latest in March 2020 a contact point to the South Eastern Europe Clearinghouse for the Control of Small arms and Light weapons (SEESAC) regional platform.

Due to the absence of participants from police weapons department and representatives to elaborate on the CT strategy, facts and figures on seizures, criminal investigations, court convictions and the eventual crime terror nexus, remained unanswered.

Recommendations:

- 5.3. Design regulations and procedures, strengthen the capacity of the national contact point, organise awareness raising campaigns, improve the investigation process in the event of purchase of precursors with terrorist intentions and related Chemical Biological Radiological Nuclear training.

4. On cooperation and coordination

According to some interviewed partners, there seems to be clear evidence of transparency in the exchange of information on different levels (strategic, tactical and operational) as well as on a local, regional and international level.

The National Security Agency reports of very good inter-agency cooperation, good professional relationships and timely exchange on a 'need to know' basis with Law enforcement (police) and military intelligence.

Relevant information and analysis is exchanged with Interpol, Eurojust and Europol, to contribute amongst others to the Europol Te-sat report and different databases and workfiles (eg. FTF). Montenegrin liaison officer at Eurojust is of added value in facilitating this international coordination.

Information on Montenegrin Foreign Terrorist Fighters is integrated into Europol systems via Czech police based on a HIT/NO HIT system. At the time of writing Montenegrin police was not alerted by Czech police on Montenegrin citizens.

Police as well as intelligence are involved in the Federal Bureau of Investigation (US) collection of evidence from the battlefield in Syria and Iraq, named 'collected enemy material'. There is today national discussion on the legal basis for the use of these data and evidence in criminal proceedings.

The recent swift to integrate the FIU (Financial Intelligence Unit) within the police structure, is another good example to increase cooperation. The head of the FIU, confirmed cooperation and exchange of information has improved since then.

It remains however unclear to what extent transversal communication is taking place between both coordinators, CT and CVE, in order to streamline strategies and avoid duplication of efforts.

The comprehensive CVE strategy – published to obtain buy-in from the citizens- and other initiatives such as regular meetings with local communities and religious leaders, a hotline to report concerns and a specific website are evidence of this innovative leadership.

During the different interviews and meetings held it is clear Montenegro – in an effort to increase coordination and cooperation- is working with working groups, representatives of institutions and communities, case managers and contact points.

Montenegro is also very familiar with the EU Radicalisation Awareness Network inspired WB network (Regional RAN) and its different working groups.

Montenegrin National Security Council bodies showed preparedness to deal with returnee Foreign Terrorist Fighters. The special team in place and the 'hot-spot' procedures with a 3-step referral mechanism are involving Law Enforcement Agencies, Intelligence, the prison department and socio-preventive local actors.

Recommendations:

- Although numerous examples of cooperation, coordination and proper communication were exchanged, it is unclear to what extent the local level of law enforcement and other first line practitioners are involved in this change and consolidating new regulations, procedures, and received trainings into their daily work. Field visits and subsequently assessments have to bring tailor-made responses in the identified areas for improvement such as the local multi-agency monitoring of returning Foreign Terrorist Fighters or radicalised individuals, the coordination between prison systems, local actors and law

enforcement with regard to released convicts and the response of the local level in the event of a crisis.

VIII. Overview of the recommendations

Recommendation	Level of priority	Concerned stakeholder	Practical steps
1. Strategic Framework			
1.1.. Adopt, as a matter of priority, a new National Strategy for the Prevention and Suppression of Terrorism, Money Laundering and Terrorism Financing and Action Plan	Short Term High Priority	CT Coordinators	Finalise the draft Strategy and launch the consultation and adoption procedures
1.2. Review and improve the existing Coordination and Oversight process of both CT and CVE Strategies	Short Term High Priority	CVE/CT Coordinators	Create a single CT CVE Strategy with a single Governance and Reporting Framework. Apply Recommendation 2 to support prioritisation of activity based on threat, harm and risk
1.3. Review the methodology of the Action Plan using SMARTER methodology	Long Term – Low Priority	CVE/CT Coordinators	Establish a working group to prioritise planned activities. Adopt the recommended SMARTER methodology:

1.3. Review and Prioritise the Action Plan based on assessed National threat, harm, vulnerability and risk	Long Term – Low Priority	CVE/CT Coordinators	<p>Establish a working group to review the Action Plan to prioritise each element in line with National threat, harm and risk.</p> <p>Adopt system of Red, Amber, Green (RAG) status to support clear governance and review by Coordinators.</p>
1.4.To develop a structured approach of independent Joint Assessment and Analysis	Short Term High Priority	<p>National Security Council.</p> <p>Ministry of Interior via the Bureau for Operational Coordination.</p> <p>CVE/CT Coordinators</p>	<p>Develop an independent and centralised team to formulate a collective approach to a single and shared understanding of the risks and threats.</p> <p>Ensure all relevant intelligence and enforcement agencies collaborate.</p>
1.5.Establishment of a Joint Intelligence Centre (JIC)	Short Term High Priority	<p>National Security Council.</p> <p>Ministry of Interior via the Bureau for Operational Coordination.</p> <p>CVE/CT Coordinators</p>	<p>Create an independent JIC providing an objective and coordinated National Threat Assessment.</p> <p>Develop a recognised National Threat Level Grading System.</p>
1.6.Request for a Te-Sat Assessment	Long Term – Low Priority	CVE/CT Coordinators	Submit a formal request to EU via Regional CVE/CT Coordinator.
2. The Judicial Response			

2.1. Restore the special investigative measures (art. 159 par.1 and 157 par. 2 C.P.C.) that were cancelled, in full respect of constitutional order.	Short-term priority	The legislator	The Ministry of Justice should transmit a draft bill without delay
2.2 Increase the number of staff within the SPO and SPU, in particular in the field of forensics and financial criminal investigations, and organize trainings.	Medium-term	The legislator	The Ministry of the Justice has to transmit a draft bill
2.3. Art. 125 and 129 C.P.C. concerning the cooperative witness should be amended	Medium-term	The legislator	The Ministry of the Justice has to transmit a draft bill
3. Effective Prevention			
3.1. Organise and implement further preventative activities against radicalisation and implementation of the CVE strategy on the local level	Short-term priority	CVE Coordinator and State Secretary from the Ministry of Labour and Social Welfare.	Bring Health, Social Welfare, Education, police and local authorities together and start up local preventive cells. The Major of the municipality can be appointed to take the lead in those cells.
3.2. Foster economic empowerment of young people	Medium-term	CVE Coordinator Ministry of Economy and Labour	Create a partnership with the private sector in neighbourhoods which are vulnerable for radicalisation

3.3. Promote ownership of CVE programmes within local communities	Medium-term	CVE Coordinator and the Ministry of Local Affairs	Change the CVE strategy from a top down to a more bottom up approach
3.4. Create a database with projects from European and international donors	Medium-term	CVE and CT Coordinator	Bring CVE/CT projects together to avoid overlapping and duplication
3.5 Put in place strategic communication initiatives	Medium-term	CVE Coordinator	Create capacity within RAN 1 on positive/alternative messaging towards vulnerable groups
4. Built capacity to combat terrorist financing			
4.1 Restore the membership of the Egmont Group	Short term.	FIU (Police Directorate)	The procedure to regain membership seems to be rather time consuming (more than 1 year). Montenegrin FIU has already started the procedure.
4.2. Amend art. 11 of the Law on Seizure and Confiscation	Medium-term	Ministry of Justice	Draft bill to amend art. 11 of the Law on Seizure and Confiscation.
4.3. Consider the appointment of additional prosecutors and judges, specialized in financial criminal investigations	Medium-term	Ministry of Justice	The appointment of magistrates specialized in financial criminal investigations is a matter of recruitment and training, falling within the competence of both the Judicial and the Prosecutor's Council (e.g. art. 23.5 Law on Judicial Council stating that the Judicial Council shall provide for the

			training for holders of judicial office in cooperation with the Prosecutor's Council).
5. Critical Infrastructure, hybrid threats, weapons and explosives and cooperation and coordination			
5.1 On critical infrastructures, complete the legislative framework and drafting of procedures, emergency plans, in defining the criteria and measures in accordance to threat level systems.	Short term	MoI – CVE Coordinator Interdepartmental platform	study visits in EU Member States and training programmes on crisis management and communication
5.2 On hybrid threats, develop and implement a normative framework and action plans to tackle new forms of radicalisation, extremism and terrorism.	Short-mid-long term	MoI – CVE Coordinator Interdepartmental platform	Consolidation of partnership with Europol (liaison officer) Study visits and exchange programs (Taix)
➤ 5.3 On weapons and explosives, Design regulations and procedures, strengthen the capacity of the national contact point, organise awareness raising campaigns, improve the investigation process in the event of purchase of precursors	Short-mid term	Legislator National contact point	

with terrorist intentions and related Chemical Biological Radiological Nuclear training.			
5.4 Multi-agency monitoring of the 'whole of society approach' towards Terrorist Fighters, radicalised individuals, terrorist convicts	Short term	Office of the CVE/CT Coordinators Prison system, law enforcement, local actors	Peer reviews with field visits (Taiex) Regional/local multi-agency workshops