



**Peer Assessment mission to Montenegro on
repression of Grand Corruption and fight against Organised Crime**

(Reference code: JHA IND/EXP 55954)

Mission timeframe: from 30th January to 3th February 2017

Disclaimer

The views articulated and expressed in this report are purely those of the author and may not in any circumstances be regarded as stating an official position of the European Commission or any of the EU-MSs and organizations.

Contents

1.	Background.....	Error! Bookmark not defined.
2.	Introduction.....	2
2.1.	Mission's Objective	2
2.2.	Methodology of the Evaluation	2
3.	Findings	2
3.1.	Legislative Framework	2
3.1.1.	Law on Special Prosecutor's Office (L-SPO);	2
3.1.2.	Law on Internal Affairs,	5
3.1.3.	Law on Prevention of Money Laundering and Terrorist Financing,	6
3.1.4.	Law on Seizure and Confiscation of Assets,	6
3.1.5.	Criminal Code	7
3.1.6.	Criminal Procedure Code (CPC).....	8
3.1.7.	Law on Salaries in Public Sector.....	8
3.2.	Specialised Bodies	9
3.2.1.	Special Prosecutor's Office (SPO).....	9
3.2.2.	Special Police Department (SPD)	10
3.3.	Police Division for combatting Organised Crime and Corruption (DOCC)	13
3.4.	Procedure to transfer case files in accordance to the defined Jurisdiction	14
3.5.	Financial Investigations	14
3.5.1.	Procedure for Financial investigations and Seizure and Confiscation of Criminal Assets	14
3.5.2.	Administration for the Prevention of Money Laundering and Terrorism Financing (APMLTF)	17
3.5.3.	Management of Confiscated Property	19
3.6.	Serious and Organised Crime Threat Assessment (SOCTA).....	20
3.7.	Intelligence-Led policing (ILP) - state of play.....	21
3.8.	Special Investigative Measures (SIMs).....	22
3.8.1.	Measures of Secret Surveillance (SIMs)	22
3.8.2.	Undercover Investigations.....	23
3.9.	Witness Protection	23
3.10.	Interagency Co-operation	24
3.11.	International co-operation.....	25
3.12.	Police Academy	26
3.13.	Internal Control and measures to fight corruption in the police.....	27
3.14.	Disciplinary Measures.....	27
4.	Conclusion	28
5.	Recommendations	29

1. Introduction

This report – *in which only the author's personal view is expressed* - serves to reflect the outcome of the mission to Montenegro in the areas of repression of corruption and suppression of organised crime with special emphasis on financial investigations, asset confiscation, anti-money laundering and capacity of the investigative bodies.

1.1. Mission's Objective

The mission's objectives have been accomplished in accordance to the ToR and related agenda. Nevertheless, due to lack of time and by considering the many topics some issues could not be deeply assessed.

1.2. Methodology of the Evaluation

The method used to conduct the assessment is based on outcomes of meetings and interviews conducted with a wide range of local representatives as well as on the basis of background documentations handed over either on the spot or e-mailed afterword by local interlocutors and previously provided by the EU Commission. Several operational cases outlined in the course of the meetings were also taken into account. Additionally, in order to have terms of comparison, the previous year's assessments reports have been considered for measuring progresses.

2. Findings

2.1. Legislative Framework

2.1.1. Law on Special Prosecutor's Office (L-SPO);

The Law on Special Prosecutor's Office (L-SPO), entered into force on March 2015.

The **article 2** defines the national jurisdiction of the Special Prosecutor's Office (SPO) and that actions shall be brought solely before the *Special Division of the High Court of Podgorica*.

The **article 3** outlines that the SPO jurisdiction is on Organised Crime (OC), Grand Corruption (GC), Money Laundering (ML), Terrorism and War Crime. The SPO jurisdiction was expanded further in August 2016 (*before the election in October*) for criminal offences related to election rights. **Such a Jurisdiction is by far considered too wide to be dealt with by 10 Special Prosecutors only.** It is noted that before the new L-SPO entered into force (*March 2015*), cases of money laundering were within the jurisdiction of the two High Prosecutor's Office and Courts of Podgorica and Bijelo Polje respectively. Since March 2015, **money laundering** follows exclusively within the jurisdiction of the SPO and of the *Special Division of the High Court of Podgorica* that today can count on 6 judges. At this stage 6 judges are trusted to be an adequate number. Nevertheless, it is believed that 6 judges may soon not be able to stand the expected increasing workload. **An early assessment may need to be planned. Montenegro, by centralising the jurisdiction for OC, ML and GC within the SPO has made a step ahead.**

Significant are the provisions stipulated in **articles 9** and **10** which refer to the organizational structure of the SPO to be based on Divisions and Services, and foresees that Divisions shall be organised to carry out tasks involving criminal prosecution, financial investigations, analytics and research and international cooperation. The article 10 refers to the following 4 Divisions:

- a. The Criminal Prosecution Divisions for conducting preliminary enquiries, investigation and cooperation with other authorities;

- b. The Division for Financial Investigation for collecting data to be analysed for establishing the exact value of proceeds of crime, to detect assets obtained by committing criminal offence and ensure that criminal asset is confiscated. **This shows focus on the importance of financial investigation** (together with the new Law on Confiscation), **though concerns remain due the inadequate number of Prosecutors that cannot even rely on a national platform granting interconnection to all relevant IT systems containing data serving the purpose of financial investigations;**
- c. The Division for Analytical and Research that shall create and maintain technical conditions for exchange of and access to data in the databases of other State Institutions, collect statistical data and monitoring of cases;
- d. The Division for international Cooperation, which other than facilitating international cooperation shall hold responsibility to appoint national members as part of international Joint Investigative Teams (JITs) for the purpose of criminal prosecution of criminal offences following within the jurisdiction of the SPO; **Relevant, particularly for international cooperation, is that a contact point for JITs is established.**

The law on SPO contains also significant provisions serving to improve cooperation with the Police, improve effectiveness of investigation and efficiency of the SPO. Namely:

- a. The **article 26** positively led to establish the *Special Police Department (SPD)*. The **paragraph 2, of article 26**, sets the minimum requirement for the position of the Head of Special Police Department. Whereas, **the paragraph 3¹, of article 26** stipulates that the Police Director appoints the head of the SPD subject to the consent of the Chief Special Prosecutor. **This procedure to appoint the head and also officers of the SPD, may need amendments to avoid useless and to some extend already verified obstructions and delays. The author believes that:**
 - **the proposal should be made by the Chief Special Prosecutor;**
 - **the consent should be given by the interested person, and**
 - **the appointment should remain in the power of the Police Director, but within a defined timeframe that, for instance, could be set to 15 or 20 days from the date of receiving the proposal from the Chief Special Prosecutor.**
- b. The **article 28** empowers the Special Prosecutor to delegate certain tasks to Tax Administration, to Custom, and to APMLTF-FIU, etc. To this degree the heads of the above-mentioned bodies - *upon a request of the Chief Special Prosecutor* - shall submit an *ex-ante* list of Public Officials who have relevant experience and technical knowledge pertinent for investigations following within the jurisdiction of the SPO. Once the Chief Special Prosecutor has the said list a proposal is submitted to the *State Prosecutor Office* who shall compile the list of investigators and submit it to the heads of the of Tax Administration, Custom and APMLTF-FIU. This means that the SPO can, in case needed, seek support from these Public Officials appointed as investigators. **This improvement that helps boosting investigations requiring specific knowledge in certain areas is already paying off some results.**

¹ The article 26, paragraph 3, reads “*The head of the Police Department shall be appointed by the director of the administrative authority responsible for police affairs (hereinafter referred to as: Police Directorate) subject to the consent of the Chief Special Prosecutor*”.

- c. The **article 30** provides authority to the *Chief Special Prosecutor* who, if necessary, for complex cases may form *Special Investigative Teams (SITs)* composed by special prosecutors, police officers employed at the SPD, police officers from the Police Department and civil servants from other competent authorities (*envisaged by the article 28, for instance, Tax Adm, Custom etc.*). **SITs are constantly being implemented and producing respectable results. In the course of 2016 17 SITs have been formed, out of which 2 specifically for financial investigations.**
- d. The **article 33** is also very important for the sake of effective financial investigation. It reinforces the authority of the SPO to acquire data from the bank during preliminary investigation. Whereas, the **article 34** correctly empowers Investigative Judge to issue binding orders to banks in order to monitor transactions and in case of failure pecuniary fines of up to 5.000 euro can be imposed to the responsible person of the Bank and fines up to 50.000 can be imposed to the Bank.
- e. The **article 35, paragraph 1²**, obliges all Montenegrin Authorities to submit - *at the request of the SPO* – data and records pertaining criminal offences falling within the jurisdiction of the SPO through the information system for electronic data exchange. **It is noted that such an info-ex electronic system is not yet in place. Consequently, effectiveness, efficiency and confidentiality of the investigation is weakened.**

The **article 35, paragraph 2**, specifies that the submission of the classified data and records by electronic means shall take place in a protected (*encrypted*) manner in accordance with the law governing data secrecy.

The **article 35, paragraph 3³**, states that information requested from and submitted to the SPO from the Montenegrin Authorities shall be accessible to the persons they refer to when an order of investigation is issued. **The author notes that this is an authentic incongruity of the law as the person shall not be entitled to access these data unless the official investigation is concluded or an indictment is raised. This provision need urgent amendments.**

The **article 36, paragraph 1**, states that the Special State Prosecutor`s Office must be granted “*access to the data in the databases of information systems of other state authorities and state administrative authorities*”. Whereas, paragraph 2, reverses the responsibility to the SPO to create technical conditions for IT protection of such data. **The author notes that at this stage, the SPO does not have direct access to any of the information systems of other Montenegrin State Authorities and State Administrative authorities. A technical analysis has not been made, a feasibility study does not exist and data to be accessed have not been defined.**

From a quick screening, it was noted that the Law on Special Prosecutor`s Office is missing fundamental provisions, which if included as suggested below, could definitely impact both on efficiency and effectiveness besides decreasing the risks of data leaking and increasing chances of success related to both conviction and confiscation.

To this degree in order to:

² The article 35, paragraph 1, reads “*The data from the records of state authorities and state administrative authorities that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law shall be submitted at the request of the Special State Prosecutor`s Office through the information system for electronic data exchange in accordance with the law governing electronic government*”.

³ The article 35, paragraph 3, reads “*Information about the requested and submitted data referred to in paras.1 and 2 of this Article shall be inaccessible to the persons they refer to until the investigation order is issued or until the direct indictment is brought or until the bill of indictment is submitted*”.

1. prevent unauthorised disclosure of sensitive investigative data (*it happened in Montenegro few weeks ago*), the Law on Special Prosecutor's Office, should include precise provisions - possibly via a stand-alone new article - aiming at specifying that:
 - a. data collected in the preliminary investigation should be disclosed only upon the consent given by the Chief Special Prosecutor or by the Special Prosecutor in charge of the investigation if the latter is authorised by the Chief Prosecutor;
 - b. data of the investigative procedure that were marked as "secret" by an order of the Special Prosecutor's Office, in accordance to the article 284 of the CPC, should be disclosed only upon the consent given by judge of investigation of the competent court;
 - c. unauthorised disclosure of the above mention data should be punishable as a criminal offence in accordance to article 391 (*Violation of Confidentiality of Procedure*) of the Criminal Code.
2. eliminate ambiguities on delegation, Special Prosecutors should be unequivocally allowed to delegate undertaking of certain evidentiary actions to State Prosecutors of both Basic and High Prosecutor's Office on whose territory actions should be undertaken. Thus, the Law on Special Prosecutor's Office should possibly include a stand-alone provision which could unambiguously state that the Special Prosecutors may delegate undertaking of certain evidentiary actions to State Prosecutors holding jurisdiction on the territory where actions should be undertaken. This proposed amendment would reinforce and certainly swipe-off useless interpretation of the article 227, paragraph 3, of the Criminal Procedure Code and article 133, paragraph 3 of the Law on State Prosecutor, both stipulating that delegation is conceivable with the go-ahead of the State Prosecutor.

2.1.2. Law on Internal Affairs,

The Law on Internal Affairs is in the process of being amended. The Ministry of Interior (Mol) established a WG which is entrusted to draft the amendments as a follow up to the reform of the Police Law (*adopted in January 2015*) as well as in consistency with the EU-Commission recommendations set in the progress report.

The main amendments were said to be related to a number of important issues impacting on the organization of the Police Directorate; Competence and duties of the Division for Police Work Supervision and second instance administrative procedure as well as on the Division for Disciplinary Proceedings; Education of police officers; Separation of ranks and positions so as to allow an officer to be promoted and stay within the same position; Merit-based promotion of police officers by defining transparent and effective criteria and exams so as to prove required skills and competences, impacting on both motivation and professionalisms. For instance, if there is a vacant managerial position, the amendments envisage that anyone meeting the set requirements can apply for the vacant position and in case shortlisted it will always follow a written and a verbal test so as to select the best and most competent candidate (*merit-based*). The testing process is expected to be conducted by a Commission composed of 3 persons.

The draft law predicts also to define the competence of the Mol in relation to the Police Administration, and it outlines the duties of police officers and civilian employees. It is also envisaged to have a new organigram.

Far relevant is also that via the envisioned amendments of the Law on Internal Affairs and via new bylaws, students attending the Police Academy **at the end of their studies will be directly employed within the police.** **Though the meeting with the interlocutor of the MoI lasted no longer than 10 minutes, the author notes that this expected amendment, as many others, have taken into account most of the best EU practices.**

It was reported that the draft Law on Internal Affairs may be undergoing public consultation in March 2017 (*lasts 40 days*). Next it will be sought foreign experts' support and then the draft Law will be submitted to the EU Commission for further remarks and suggestion. Lastly, it is planned to be submitted to the Montenegrin Parliament in June 2017, it was said.

The author of this report is strongly convinced that this draft law won't be converted into law before the end of 2017.

2.1.3. Law on Prevention of Money Laundering and Terrorist Financing,

In January 2017, upon the initiative of the Administration for the Prevention of Money Laundering and Terrorist Financing (AMLTF), the Ministry of Finance formed a Working Group for drafting amendments to the Law on Prevention of Money Laundering and Terrorism Financing (LPMLTF), so as to comply with the MONEYVAL recommendations⁴ (*formulated on the basis of the new 40 recommendations of Financial Action Task Force-FATF*) and with the 4th AML Directive.

The envisaged amendments of the LPMLTF include mostly technical changes, rewording and amendments of certain articles serving compliance with international standards.

After the adoption of the 4th Round MONEYVAL Mutual Evaluation Report of Montenegro at 47th MONEYVAL Plenary meeting, held in April 2015, Montenegro was placed in Step 1 of the "Enhancing Compliance Procedure". Accordingly, Montenegro provided two follow up reports at the 50th and 51st MONEYVAL Plenary meetings (*April and September 2016*) in order to underline progress aiming at removing shortcomings highlighted in the MONEYVAL Report. The main failing was referred to lack of implementation of the new FATF Recommendation 6 (*previous Special Recommendation III – Freezing of Terrorist Assets*) as per the *United Nations Security Council Resolution (UNSCR) 1373 and 1267*. This shortcoming which was supposed to be removed by December 2016, **remains, though planned to be removed shortly.**

At the 52nd MONEYVAL Plenary meeting, held in December 2016, Montenegro reported that the Government had adopted an Action Plan on the implementation of UNSCR 1373. **The adoption of this Action Plan was recognized as a positive development in addressing these particular deficiencies** and the Plenary decided to put Montenegro in Step 2 of the "Enhancing Compliance Procedure". In accordance to the procedure, at the **beginning of 2017**, the High-Level Mission will review the potential progress that has been made by Montenegro so as to check the implementation of the Action Plan and mainly the legal compliance permitting freezing of Terrorist Assets of those inserted in the sanction list developed by the UN Security Committee.

In accordance with the cited Action Plan amendments are to be made for the Law on PMLTF, the Law on International Restrictive Measures, the Law on the Bases Regulating Security Services in Montenegro, the Criminal Code Law on Misdemeanour.

2.1.4. Law on Seizure and Confiscation of Assets,

⁴ 4th Round MONEYVAL Mutual Evaluation Report (MER) of Montenegro.

A new law on confiscation was adopted on October 2015. **The law regulates comprehensively the procedure for financial investigation, procedure for temporary and final confiscation as well as procedure for asset management too.**

The **article 2** stipulate provisions allowing confiscation of property gains from the criminal perpetrator, extended confiscation, confiscation upon conviction, confiscation to suspect's family member and third parties, and value confiscation is stipulated too. The same article expanded the catalogue of criminal offence for which financial investigation and confiscation is permitted. Non-conviction-based confiscation is stipulated in the article 10 and it is only possible in case where the suspect died or when instituted proceedings cannot be continued due to existence of circumstances which permanently preclude prosecution (*for instance, in direction of fugitives*). Confiscation is possible upon Plea Bargaining agreements and it can always be extended against members of the target's family.

Temporary confiscation can take place during and after the preliminary investigations against suspects and after the indictment when the suspects turn into the accused. Whereas final confiscation is admitted only upon a final conviction, exception made in case of decease of the accused and when there are circumstances permanently precluding prosecution, in which case, non-conviction-based confiscation is possible too. The article 3 provides an above satisfactory definition of material benefit.

Nevertheless, while interlocutor was explained the practical procedure, it was discovered out that **the law has a minor but significant loophole that can have a negative impact on its implementation.** In short, when the court order is issued for either temporary or for final confiscation it is provided to the Asset Management Agency for its implementation. Nevertheless, the law - *at least for confiscation of monetary asset* - does not stipulate ad-hoc provisions aiming at notifying immediately the order to the financial institution so as to avoid that either by coincidence or by hint suspect withdraws the money a moment after the order has already been signed.

Additionally, the provisions stipulated in Article 11 of this law may also constitute an obstacle to pro-active investigation too as considered too stringent for meeting the set requirements serving to issue an order for financial investigation. Thus, an amendment of the article 11 is believed to be imperative.

2.1.5. Criminal Code

As planned, the Criminal Code is undergoing draft amendment process. Montenegro established a Working Group (WG) comprising of representatives of relevant and competent Montenegrin institutions as well as a foreign professor from the University of Belgrade.

The said WG while developing the *"DRAFT Law on Amendments and Changes to the Criminal Code of Montenegro"* has taken into account international standards and relevant international conventions, was reported. The said DRAFT Law was submitted for public consultation (*it lasts 40 days*) on 11 January 2017, and it was in the meantime sent to the EU Commission for comments and remarks.

It looks like that the *"DRAFT Law on Amendments and Changes to the Criminal Code of Montenegro"* may need a stand-alone assessment. Nevertheless, a quick screening revealed that the **Article 4 referring to article 37 of the CC (Parole) provides advantages for criminals. It eliminates the assessment to be made by the court aiming at ascertaining whether the sentenced person behaved well or not, while in prison as a condition to grant the parole.**

Even the article 29 replacing article 396a of CC, at first sight, seem to be unconstitutional as limiting freedom of speech.

2.1.6. Criminal Procedure Code (CPC)

The Criminal Procedure Code (CPC), previously amended in 2015, seems necessitating small but very significant amendments in relation to the juridical instrument of the “**Cooperative Witnesses**”, stipulated in the article 125 of the CPC. At the present, this instrument can be implemented only within the sphere of organised crime. **It CANNOT be implemented for Grand Corruption, Money Laundering and other serious offences.**

It is strongly believed that the instrument of the “**Cooperative Witnesses**” should be allowed at least for *Grand Corruption* and Money Laundering too and, if deemed necessary by the competent Montenegrin Authorities, for other offences to be defined by them. For instance, the article 125 could be amended to read: *“The State Prosecutor may put a motion to the court to hear as a witness a member of the criminal organization or criminal group, or a person for whom there is reasonable ground for suspicion that he committed, facilitated or acted in the capacity of intermediary in the area of grand corruption and money laundering, who consents to do so (hereinafter: cooperative witness) against whom criminal charges have been brought or criminal proceedings have been instituted for an organized crime offence referred to in Article 22 paragraph 8 of the present Code and Article 3 of the Law on Special Prosecutor’s Office, if it is certain that:”.*

The article 132 (*Probative Significance of the Statements of Cooperative Witnesses*) of the CPC **may also need to be amended as the application of the “Cooperative Witnesses” instrument may be undermined vanished by the provision stipulated in the article 132** which reads: *“The court may not find a person guilty solely on the grounds of evidence obtained by the testimony of a cooperative witness”.* It is clear that the word evidence is inappropriate, **as “Cooperative Witnesses” release statements/testimonies and not evidence while heard by the competent judicial authority. Thus, the article 132 should be amended by substituting the word “evidence” with “statement(s)”.** This amendment if made would also mirror the legal name of the article 132 which rightly refers to “statements” and not evidence.

2.1.7. Law on Salaries in Public Sector

On the 8th March 2016, a new Law on Salaries was adopted. The amendments literally led to unjustifiably half the salaries of the financial and legal experts/advisors employed within the Special Prosecutor’s Office⁵. **The salary of those experts was of about €1.500, whereas today is around €750.**

Namely:

1. The expert’s salary of the PPO, **before** the amendments of the Law on Salaries, comprised the following three voices:

Basic Wage	Special Bonus	Fee for SIT	TOTAL
€457	€480	€553	€1.490

2. The expert’s salary of the PPO, **after** the amendments of the Law on Salaries adopted on March 2016, comprise only 2 voices out of which one has been reduced of about 50%:

Basic Wage	Special Bonus	Fee for SIT	TOTAL
€521	€234 Reduced of about 50%	abolished	€755

⁵ The Special Prosecutor’s Office can count of 10 special prosecutors, 5 financial experts, 7 legal experts, a secretary as well as on several others employed in the capacity of administrative staff.

As per the article 22 of the Law on Salary, the salary is calculated on Groups defined by letters (from A to D), list of position and on a corresponding coefficient expressed in number. It is obvious that the coefficient allotted to the experts/advisors of the SPO (Group "D", number 5 corresponding to the coefficient 8) **is totally inadequate**. It is also considered an unjustified disparity if compared with the experts/advisors employed at the Supreme Prosecutor's Office and/or Court which, are set in Group "C", number 13 corresponding to the coefficients ranging from 12.5 to 22.

Since the coefficient, as per the provision stipulated in article 22, should be determined by taking into account "qualification, education, complexity of tasks, responsibility and other elements relevant for the valuation of specific jobs.....", **it is obvious that these parameters have been disregarded for typology of work expert/adviser of the SPO perform**. Reason why, the salary scheme for the SPO experts/advisors should be reset as it was before the amendments and certainly aligned with the coefficients of their colleagues employed in Supreme Prosecutor's Office and/or Court.

It is clear that if the salary of experts will not be reinstated as it was before, the SPO may soon face huge problems as the underpaid experts will soon resign for other better paid jobs.

The author notes that the outflow of experts may seriously cause huge problems to the 10 special prosecutors that rely very much on the 5 financial experts and on the 7 legal experts. It must be said that financial experts have indeed shown strong and unique competence to support Prosecutors understanding the complex schemes and the modus operandi targets apply, for instance, to launder criminal proceeds and to evade justice.

2.2. Specialised Bodies

2.2.1. Special Prosecutor's Office (SPO)

The Special Prosecutor's Office can count of 10 special prosecutors, 5 financial experts, 7 legal experts, a secretary as well as on several others employed in the capacity of administrative staff.

The SPO building is at Podgorica and it is believed to be too small and uncomfortable. As said, the jurisdiction of the SPO is defined by article 3 of the Law on SPO which, in the nutshell relates to organised crime, grand corruption, money laundering, terrorism, war crimes and, since August 2016, electoral rights related offences.

Interlocutors of the SPO (*prosecutors and experts*) met during the meetings and who presented several cases appeared to be highly professional and competent. The same can be said for the financial experts of the SPO that demonstrated deep accounting knowledge and understanding on financial schemes usually implemented by criminals. **The reduction of the Expert's salary is considered a huge concern as to the potential and expected outflows may impact very much negatively on the efficiency and efficacy of the SPO.**

In the course of 2016, the SPO:

3. Initiated the following investigations:
 - a. 10 for *grand* corruption against 42 natural persons and against 1 legal entity;
 - b. 2 for *grand* corruption committed in organised manner against 19 natural persons and 4 legal entities;
 - c. 4 for organised crime against 31 persons;
 - d. 1 for war crime against 1 person;
 - e. 1 for terrorism against 21 persons.
4. Raised 10 indictments and 8 bill of indictments against 56 persons;
5. Initiated 3 financial investigation which are still ongoing. Namely:
 - a. one against 74 persons for the criminal offence of "Abuse of office" (article 416 CC), committed in organised crime;

- b. one against 5 individuals for the criminal offence of “Creation of criminal organization” (*article 401-a CC*) in relation to the criminal offence of “Unauthorised production, possession and release into circulation of narcotics drugs” (*Article 300 CC*);
 - c. one against 2 targets for the criminal offence of “Misuse of position in business operations” (*Article 272 CC*)
- 6. Formed 15 Special Investigation Teams and 2 Financial Investigation Teams;
- 7. Submitted to the High Court of Podgorica proposals for 6 provisional measures - *in accordance to provision stipulated in article 19 of the Law on Confiscation* - to freeze immovable properties against several individuals and legal entities;
- 8. Concluded 36 Plea Bargaining Agreements, out of which 4 in 2015, **28 in 2016** and 4 in 2017;
- 9. Confiscated, on the basis of the Plea Bargaining property gain estimated to have:
 - a. a value of €19.810.047,38, from a legal entity (*T. case*);
 - b. a value of €385.185,20, from a natural person (*M. M. case*);
 - c. a value of €2.191.312,62, from a legal entity (*C. case*);
 - d. a value of €1.096.000,00, from a natural person (*M.S. case*);
- 10. has frozen (*temporary confiscation*), in the *Gugi case*, property gain from a legal entity in the amount of 3.842.766,69 and in a second case has frozen the property gain to the same legal entity in the amount of 2.254.585,24 Euro, which is soon expected to be confiscated, was said.
- 11. is dealing with 26 ongoing money laundering cases out of which 4 were transferred for competence from the Criminal Police. Out of the 26 cases, 22 were initiated upon the notification of 31 STRs and 4 have been finalised. Out of the 22 cases initiated upon the notification of STRs, 11 were related to Terrorism Financing against foreigners. The 4 cases, believed to be the finalised one, were initiated upon self-intelligence. From this given data, it turns clear that pro-activeness remains still a concern.

Despite the fact that provided statistics speak openly about the positive activities the SPO is conducting, convictions and confiscation (not based on Plea Bargaining) remain, at this stage, still intangible.

2.2.2. Special Police Department (SPD)

The Special Police Department (SPD) was established on the 2nd of March 2016 as per the provisions stipulated in the *Law of Special Prosecutor’s Office (L-SPO)*. The SPD is administratively framed within the Criminal Police Department of the Police. The SPD competence is clearly defined by the article 26⁶ of the L-SPO that recalls the jurisdiction of the SPO, in turn defined in the article 3 of the same Law.

Upon the agreement between the Police Director and the Chief Special Prosecutor and following the amendments of the *Rulebook on Internal Organization and Job Systematization of the Ministry of Interior of 28 April 2016*, the competence and the job-description of the SPD have been aligned to the provisions of the L-SPO and accordingly the number of posts from 10 was increased to 20. Today, the SPD is staffed with 20 police officers.

The Head of SPD was appointed on the 2nd March 2016 and the process of recruitment of SPD members was finalised on the 7th October 2016.

⁶ The article 26 of the Law of Special Prosecutor’s Office reads: “*Police tasks related to the criminal offences referred to in Article 3 of this Law shall be carried out by police officers employed in a special organisational unit of the administrative authority responsible for police work with the Special State Prosecutor’s Office (hereinafter referred to as: Police Department)*”.

Due to the expansion of the jurisdiction of the SPO and consequently of the SPD, there is an ongoing **positive initiative** to increase further the capacity of the SPD with an additional 10 officers out of which 5 with financial and 5 with IT background, it was reported. The SPO jurisdiction and consequently of the SPD was expanded in August 2016 (*before the election in October*) for criminal offences related to election rights.

Despite the tangible improvement, if considering the area of competence and the workload, as well as the complexity of case files SPD is dealing with, it is crystal clear that the SPD should be urgently staffed with at least another 30 officers out of which 5 should possess knowledgeable criminal and financial analysis skills and 10/15 officers should be experienced in implementing Special Investigative Measures. Whereas, the other 10/15 should be employed in the field.

Officers of the SPD may be called back from the Police Director at any time, although as per the article 26 and 27 of the SPO law the Chief Special Prosecutor must give his consensus. **To this degree, the appointment/assignment procedure (including for police officers at the SPD) defined in the article 86⁷ of the Law on Internal Affairs and in the article 64⁸ of the Rulebook on Systematization may need to be both changed.**

As a suitable solution, there should be an internal vacancies' call within the Police and applicants, interested in getting a position within SPD, after having passed a written exam and a verbal test with a panel composed by the Chief Special Prosecutor and the Head of the SPD should be directly appointed by the Head of the SPD in coordination with the Chief Special Prosecutor.

As per the reporting procedure, the head of the SPD was initially supposed to report to both Police Director and Special Prosecutor. Nevertheless, now the head of the SPD reports only to the Chief Special Prosecutor as per the positive initiative that led to amend the relevant *Rulebook on Internal Organization and Job Systematization* on 28 April 2016. This *Rulebook* was soon after the amendments adopted by the Government. **This new reporting procedure is an extremely tangible improvement.**

The cooperation between SPD and SPO is without hesitation outstanding. Interagency cooperation works well if *Special Investigative Teams* are formed as per the provisions stipulated in the article 30⁹ of the Law on Special Prosecutor's Office. **Whereas, the everyday interagency cooperation needs significant improvements.** To this extent, **Montenegro should urgently start to develop a National Integrated Criminal System** so as to assure interconnections of all relevant existing national systems, which inter-alias would automatically and significantly improve domestic cooperation. The SPD regional and international cooperation is close to outstanding and SPD, via the dedicated International Cooperation Division, is very active.

⁷ The article 86 of the law on internal Affairs in its paragraph 1, reads: "*Decision on employment and assignment of a police officer and other employee shall be made by the Director*".

⁸ The article 64 on *Rulebook on Systematization* says that there are posts that can be filled in without selection procedure and that the final decision to appoint/assign an officer on a certain position is solely within the Director of the Police.

⁹ The article 30, paragraph 1 of the the Law on Special Prosecutor's Office, reads: "*In particularly complex cases the chief special prosecutor may form a special investigative team which, besides special prosecutor, may also comprise police officers from the Police Department, investigators and civil servants from another competent authority*".

The 20 officers employed at the SPD have matured years of experienced in criminal investigation. **9 officers also have respectable experience in financial investigation.** They self-trained on the field and now, by staying day-to-day close to special prosecutors, their legal knowledge is constantly increasing too. These officers have also attended a wide range of training both at national and international level and have attended numerous operational international meetings which contributed to acquire international operative experience on transnational investigations.

As said, officers of the SPD appear to have all the required knowledge, **though additional ad-hoc long-term training on grand corruption, money laundering and mainly on financial investigation are still required, particularly for the new comers.**

Statistics¹⁰ reveal that the SPD, since its establishment in March 2016, has undertaken several investigations, registered 24 criminal offences and deprived the liberty of 56 individuals in compliance to the orders issued by the SPO. Relevant is that 30 individuals have been arrested for creating a criminal organization and 22 for misuse of position in business activity. **This shows that the SPD is quite active in tackling both organised crime and grand corruption. On the contrary, money laundering cases remain low in number and success is still to be registered.**

The SPD executed 196 orders and are in the process of completing further 50 orders all issued by the SPO (*mostly related to grand corruption and money laundering*). SPD is committed in carrying out 2 financial investigations against 76 individuals. In cooperation with the SPO investigative actions are being taken in 11 criminal investigations out of which 9 at domestic and 2 at international level. SPD has, in less than a year, established the identity of 268 previously unknown targets. They searched 56 individuals and 33 dwellings as well as other premises and vehicles. SPD summoned and collected necessary information from 129 citizens. **Nevertheless, it is believed that to these results specific units of the Police Administration also contributed.**

It goes without saying that the SPD, though recently established, is functioning well and the “direct” cooperation with the SPO is paying off. However, the author, is far convinced that further prodigious and needed achievement could be definitely recorded if Montenegro commits with the following four simple requirements:

- a. Increase the number of officers employed at the SPD from 20 to 50;

¹⁰ Statistics provided by the Special Police Department (SPD):

TITLE/ ARTICLE	LEGAL NAME OF CRIMINAL OFFENCE	Number of registered criminal offences and person deprived of liberty	
		TOTAL CRIMINAL OFFENCE	PERSONS DEPRIVED OF LIBERTY
XXII	Against property		
250-20	Attempted extortion	1	
252	Loan sharking	2	
XXIII	Against payment transactions and business operations		
268	Money laundering	1	
272	Misuse of position in business activity	4	22
XXIV	Against people’s health		
300	Unauthorized production, possession and release into circulation of narcotic drugs	1	
XXVI	Against general safety of people and property		
338	Grave offences against general safety	1	
XXXII	Criminal offences against public order and peace		
401-a	Creating a criminal organization	2	30
403	Unlawful possession of weapons and explosive substances	4	
XXXIV	Against official duty		
416	Misuse of office	3	1
424	Active bribery	2	
XXXV	Against humanity and other assets protected by international law		
447 - 20	Attempted terrorism	1	
449-b	Participation in foreign armed formations	2	2
428	War crime against civilian population		1
TOTAL		24	56

- b. Amend the relevant Rulebook to allow the SPU to implement SIMs autonomously without depending on others (*Special Check Unit*);
- c. Assure that a National Integrated Criminal System is established and that access is provided to the SPD;
- d. Provide a new larger building to the SPO in order to make sure that SPD sits in the same building with the SPO.

2.3. Police Division for combatting Organised Crime and Corruption (DOCC)

This DOCC, framed within the Criminal Department of the Police, can count on 17 officers out of 26 foreseen and it includes 6 Groups out of which the 5th and the 6th were established on the 1st August 2015¹¹. The DOCC, **clearly understaffed**, holds competence to tackle *petty* corruption, general crimes, terrorism, illegal migration & trafficking of Human Being, and cybercrime, as long as these criminal offences are not having elements of organised crime as per the provisions stipulated in 401 (*Establishment of Criminal Organization*) and 401a (*Establishment of Criminal Organization*) of the Criminal Code (CC).

The DOCC holds competency to investigate conspiracy stipulated in article 400 (*Conspiracy to Commit a Crime*) which reads: “*Anyone who conspires with another to commit a criminal offence punishable by.....*”, thus not implying organised crime.

The DOCC is also competent to conduct **financial investigation** for uncovering economic crimes in conjunction with the above mentioned criminal offences, as long as these criminal offences are not having elements of organised crime and do not fall within the jurisdiction of the Special Prosecutor’s Office (*article 3 Law of SPO*). By considering that money laundering falls within the sole jurisdiction of the Special Prosecutor’s Office, financial investigations to uncover money laundering are largely conducted by the Special Police Unit and **not** by the DOCC.

Nevertheless, the Special Prosecutor’s Office can, if necessary, request to the DOCC either to appoint a financial investigator as part of the *Special Investigative Team* in accordance to the article 30¹² of the Law on Special Prosecutor’s Office or delegate to the DOCC certain actions supporting financial investigations¹³ conducted primarily by the SPD. For instance, aiming at detecting money laundering or identifying property gain of targeted individuals.

The DOCC via its *Group for Financial Investigations* should conduct predominantly financial investigation upon the request of the Basic and Higher Prosecutor’s Office or on self-initiative¹⁴. **However, in 2016 the DOCC did not receive a single delegation for conducting Financial Investigation from neither the Basic or Higher Prosecutor’s Office.**

¹¹ Structure and officers composing the Division for combatting Organised Crime and Corruption (DOCC)

Denomination of the Groups	Systematization		
	Foreseen	Filled posts	Vacant posts
1. Group for combatting General Crime	4	3	1
2. Group for combatting Terrorism	4	3	1
3. Group for combatting Corruption	5	3	2
4. Group for combatting Illegal Migration & Trafficking	3	3	0
5. Group for combatting Cybercrime	3	1	2
6. Group for Financial Investigations	7	4	3
TOTAL	26	17	9

¹² The article 30, paragraph 1, of the Law on on Special Prosecutor’s Office reads: “*In particularly complex cases the chief special prosecutor may form a special investigative team which, besides special prosecutor, may also comprise police officers from the Police Department, investigators and civil servants from another competent authority*”.

¹³ For instance, in the course of 2016, the DOCC – *via its Group for conducting financial investigations* - upon orders of the SPO to collect data in relation to property ownership, executed 2 request for 34 persons.

¹⁴ The DOCC, via its Group for conducting financial investigations, **on its own initiative** suggested with a written report to:

- a. the High Prosecutor’s Office **to initiate financial investigation** against 3 persons;
- b. the Basic Prosecutor’s Office **to initiate financial investigation** against 1 persons.

Statistics¹⁵ prove that, the *Group for conducting financial investigations* is regularly undertaking huge number of financial investigative actions to collect data in relation to property ownership so as to comply with a wide range of requests addressed from international bodies (*ICPO, Europol, SELEC, Embassies, CARIN network*), from other Montenegrin Institutions (*for instance, the AMLTF*), as well as from either the Basic or the High Prosecutor's Office and, by the Special Prosecutor's Office too. The DOCC in 2016 received also a few requests from the Drug Department seeking support for financial investigations. **The DOCC seems to perform professionally and efficiently. However, it should be allowed to concentrate more on full financial investigations (from A to Z) other than predominantly providing only services or executing requests for financial investigative actions for others. To this degree, the Basic and the High Prosecutor's Office should trust more the DOCC and entrust them with delegation of full financial investigation.** Since the legal framework does not prevent the Special Prosecutor's Office to delegate also the execution of certain financial investigations to the DOCC, **in case the SPD is overburdened, the SPO should also consider to delegate minor financial investigations and not only execution of requests or actions to the DOCC.**

2.4. Procedure to transfer case files in accordance to the defined Jurisdiction

As per the switch of competence, in case DOCC officers while conducting investigation – *either on their own initiative or under the leadership of the prosecutor of the Basic or High Prosecutor's Office* - realise that the case they are investigating comprises element of organised crime, money laundering, or other offences following within the jurisdiction of the Special Prosecutor's Office (*well defined in the article 3 of the Law on Special Prosecutor's Office*) they are **legally obliged** to promptly inform either the *Special Police Department (SPD)* or the *Special Prosecutor's Office (SPO)* and also the prosecutor of Basic or High Prosecutor's Office leading the case in order to have the case file transferred for competence to the SPO¹⁶.

On the contrary, if a criminal or a financial investigation is initiated by either the SPD or by the SPO and it turns out not falling within their mandate (*article 3 of the Law on Special Prosecutor's Office*), the case file is transferred from either SPD to the Criminal Police or from the SPO to the Basic or High Prosecutor's Office. **The procedure seems to be consolidated and apart from sporadic cases it works well.**

2.5. Financial Investigations

2.5.1. Procedure for Financial investigations and Seizure and Confiscation of Criminal Assets

As said, the new Law on Confiscation, adopted on October 2015, regulates comprehensively the procedure for financial investigation, procedure for temporary and final confiscation and procedure for asset management too.

Financial investigation, can be initiated against the suspect (*preliminary investigation*) and against the accused (*Criminal Proceedings*) as well as after the juridical institution of Plea Bargaining and it can always be extended against members of the target's family. If during the preliminary investigation it is realised that the target owns legal entities and that the latter are linked to other legal entities the Financial investigation is extend to all legal entities and person close to the main target.

¹⁵ Statistics show that the DOCC in the course of 2016 – *via its Group for conducting financial investigations* – has undertaken a **huge number of financial investigative actions** to collect data in relation to property ownership so as to comply with:

- a. 2 requests from the Special Prosecutor's Office (SPO) for 34 individuals;
- b. 3 requests from High Prosecutor's Office for 27 natural and 9 legal persons;
- c. 9 requests from the Administration for preventing money laundering and terrorism financing (AMLTF) for 14 persons;
- d. 4 requests from CARIN network for 15 persons;
- e. 19 requests from NCB-Interpol, from Europol and from SELEC for a total of 152 natural and 1 legal persons;
- f. 1 request from an Embassy for 3 natural and 12 legal persons.

¹⁶ In 2016, the Criminal Police transferred for competence 4 initiated cases related to money laundering to the SPO.

Readers of this report may need to know that the preliminary investigation phase comprises the operational investigation carried out mainly by the police and the official investigation that materialises at the moment when the prosecutor issues an “*order for conducting financial investigation*”. The same applies for criminal investigation. In practice the practical procedure can be briefly explained as follows:

1. Based on suspicion, the Police can start either on its own initiative or on request of the prosecutor operational Financial and Criminal investigations. These so called operational activities consist in retrieving data, information and intelligence, in accordance to article 257 of the CPC. Collected data serve to strengthen ground for suspicion and to meet the binding requirements set in article 11 of the Law on Confiscation;
2. Once the police gathered convincing elements it informs the prosecutor with a well-structured report so as to illustrate what was gathered and to persuade the prosecutor to issue an “*order for conducting financial investigation*”. Obviously, the Prosecutor, who is the leader of the investigation, may before issuing the “*order for conducting financial investigation*” request the police to collect additional information;
To this point, it must be clear that due to the binding provision stipulated in article 11 of the Law on Confiscation the “*order for conducting financial investigation*” can be issued solely if the three elements listed in paragraph 1 of article 11 cumulatively exist. **This provision is representing a truly legal impediment to smoothly and efficiently initiate official financial investigations. This barrier has a direct negative impact on the efficiency and on the efficacy of financial investigation’s initiatives. It also exposes executors (police and prosecutor) to unfair public disapproval leading to lack of trust and prejudicial criticism from foreign experts and from international organizations which are led to believe that executors are incapable to effectively and proactively initiate official financial Investigations. Thus, an urgent amendment is required in order to allow the competent prosecutor to issue the “order for conducting financial investigation” based on one of the three elements listed under the paragraph 1, items 1,2 and 3 of article 11.**
3. In complex cases, independently of whether an *order for conducting financial investigation*” is issued or not, the Prosecutor leading the investigation, has the authority – *in accordance to the provisions stipulated in the article 15 of the Law on Confiscation* - to establish a **Financial Investigation Team**¹⁷ (SPO prosecutor, SPD officers, FIU official, Tax officer, etc.). As per the procedure¹⁸ to establish **Financial Investigation Teams** or **Special Investigation Teams**, the Special Prosecutor uses the list of the appointed “*investigators*”;
4. Based on the information collected by the Financial Investigation Team, a preliminary meeting is arranged so as to establish a plan;

¹⁷ The SPO in the course of 2016 has formed **2 Financial Investigative Teams** and **15 Special investigative Teams**.

¹⁸ The procedure to compile the “*list of investigators*” is regulated by the article 28 of the SPO Law. This article 28 empowers the Chief of SPO to entrust undertaking investigative actions to state officials employed in PA bodies. The Head of those bodies are obliged to appoint at the request of the SPO and submit at the beginning of the year a list of Public Officials who have enhanced experience. Then, the Supreme Prosecutor draws the final list which is then sent back to the heads of the Public Officials. The list is also sent to the Chief Special Prosecutor who may decide to interview the individuals listed to be appointed as investigators. The institute of the “*investigators*” is also regulated by the article 28 of SPO Law.

5. The components of the Financial Investigation Team check all available data in Montenegro both from public and non-public registers, whereas the Prosecutor enquires the internal system of the Special Prosecutor's Office to crosscheck if the investigated target has been subject to previous criminal investigations carried out by the SPO;
6. The outcome of these checks together with the operational data of police are collated and collated in order to be subsequently analysed (*The data collection includes, for instance, data on property, criminal record, if the target is a PEPs, the value of properties owned or possessed by the target, legal entity connected to the target and who represent it, if the target is a TAX payer, etc. as well as police information on the target's family recovered via the personal identification number (PIN) is also collected, police checks on whether the target appears to be either directly or indirectly connected to own intelligence, information and if has already been subject of attention in other cases*);
7. Based on the data collation a preliminary criminal analysis is done and a proposal to the Prosecutor is made. The proposal may contain recommendations for acquiring additional information to a number of other relevant Institutions owning certain information that may turn useful for the investigation;
8. A second step analysis is made, though difficulties are faced as the answers to formulated requests are provided in hard copies. **This represent a huge problem impacting on the workload, on the efficiency and speediness of the case, particularly for the massive documentation provided in hard copy from financial institutions.** The 2nd step analysis may reveal a wide range of additional **problems**. For instance, the data provided from the Real Estate Agency (RAA) are not always reliable as the RAA quite often runs the search based on temporarily personal identification number. **Nevertheless, this is a problem being solved by the RAA A Huge Problem** occurs when commercial bank documentation – *related from 2005 to 2009* – is analysed as the banks do not have records of Transactions (TRs) or if registered descriptions/purposes of the TRs are either inexistent or imprecise. The same applies for deposits and transfers for which the origin is not specified. **An additional relevant problem** arises when looking into the financial flow as it is very difficult to identify the final beneficiary of the final TRs, since the latter usually ends up in a bank account situated in an offshore jurisdiction. The author notes that if the AMLTF Law – *undergoing amendment* – would include the provisions of the 4th EU Directive on ML, this could be considered a problem solved for future cases.
9. Since data analysed are not complete due to the mentioned and many other problems, temporary confiscation may be requested by the Prosecutor in charge of the investigation and issued by the court even before the *order for financial investigation* is not yet issued. **In this case, the order for temporary confiscation cannot last more than 6 months, unless the "order for conducting Financial Investigation" is issued. Here comes once again the constraint of the article 11, that in case the three requirements are not met cumulatively, the "order for financial investigation" cannot be issued and as a consequence temporary confiscation expires (after 6 months)**;

10. When conducting Financial Investigations, it often turns out that suspects hold properties and bank accounts abroad. Thus, mutual legal assistance in criminal matter is crucially sought. The knowledge on foreign properties registered by suspects is quickly obtained via the CARIN network. Nevertheless, to use this information for evidence, **Rogatory letters** must be mandatory addressed to competent countries. In fact, for two cases, Rogatory letters were addressed to Serbia, Switzerland and to 2 EU Countries, but answers have not yet been provided. When such delays occur, enquiring bodies involve Liaison Networks. The future representative of Montenegro with Eurojust will also be involved to speed up answers, but for the time being the Montenegrin representative is not there appointed, although it is agreed that s/he will soon be at Eurojust for 2 weeks a month. The FIU network is usually not used because foreign FIUs only search STRs in active database, it was reported.
11. In case of provisional measures aiming at freezing assets – *stipulated in the article 19 of the Law on Confiscation* – the Prosecutor proposes it to the judge who, if agrees, issues the decision on temporary confiscation.
12. In case the court order for confiscation (*temporary or final*) is issued, it is addressed to the Asset Management Agency (AMA) which shall enforce it within maximum three days. In case the order refers to confiscation of cash capitals¹⁹ in Euro, money is deposited in a special account of the Asset Management Agency. Whereas, foreign currency and other typologies of funds are deposited in a special account of the Central Bank. **To this extent, it is noted that the law on confiscation in its article 26, paragraph 1, does not contain provision aiming at securing that relevant Bank is notified about the court order. Thus, the author is of the opinion that after article 26 paragraph 1, a new paragraph should be added stipulating provisions aiming at making sure that - when cash/funds should be confiscated - the order has to be immediately handed over to the bank where money to be confiscated is deposited. The article 26, paragraph 2, to be added could read as follows: “at the moment of issuing the order regarding temporary confiscation of cash or deposited funds, the judge shall immediately notify, by the most appropriate means, the responsible person of the financial institution where money to be seized or confiscated is deposited”.**

2.5.2. Administration for the Prevention of Money Laundering and Terrorism Financing (APMLTF)

The APMLTF functioning as the Montenegrin Financial Intelligence Unit (FIU), is well structured and it counts 32 officials, including the Director.

In accordance to the systematization there are still 6 vacant working positions. Among them there are several inspectors, which have superlative capacity to conduct inspections in direction of legal entities believed not to be complying with the obligations stipulated by the Law for the Prevention of Money Laundering and Terrorism Financing (LPMLTF).

The guideline²⁰ dictating the procedure to plan and carry out inspections is accurate.

Most of the inspections are carried out in direction of real estate agencies and construction companies. Inflows and outflows of accounts is inspected in order to check compliance with the LPMLTF.

¹⁹ In accordance to the statistics provided by the AMA, it turned out that the AMA is not managing cash. Thus – *it is believed* – that at least - *for the 2016* – **cash has never been traced, frozen and confiscated**.

²⁰ The guideline is based on risk analysis which takes into account turnover, business activity, geographical areas, international activities, open sources and the opacity of legal entities believed not to be complying with the obligations stipulated into the Law for the Prevention of Money Laundering and Terrorism Financing.

The outcome of the inspections may lead to implement misdemeanour orders and pecuniary fines imposed to the reporting entities for infringements of the Law on PMLTF. Pecuniary sanctions - depending on whether or not the inspected party agrees with the ascertained infringements - can be applied either by the inspectors or by the competent misdemeanour court. In case the inspections reveals, for instance, violation of criminal nature a written report is filed to the competent authorities (*Prosecutor's Office, Police, Tax Administration, etc.*).

As per the article 55 of the LPAMTF, the APMLTF is legally empowered to collect, keep, analyse and disseminate data, information and documents on suspicious transactions (STRs²¹) to the competent state authorities²² for preventing and detecting money laundering and terrorist financing. The APMLTF is also empowered – in accordance to the provisions stipulated in article 61 of the LPAMTF - to require, via a written order, the reporting entity to temporarily suspend transactions²³ for a maximum period of 78 hrs, upon suspicion of money laundering and terrorism financing.

Furthermore, the APMLTF – as per the provision stipulated in the article 63 – is empowered to request reporting entities to monitor accounts²⁴ whenever there are reasons for suspicion of money laundering or terrorist financing. Monitoring can last 3 months.

Cash Transactions (CTRs²⁵) above certain limit are also provided by the reporting entities to the APMLTF. Out of the CTRs the APMLTF, in the course of 2016, identified 19 STRs.

Compared to previous years' statistics, inspections have increased in number and quality. The same can be said for the number of STRs and CTRs as well as for reports submitted to competent authorities. However, the reporting trend is not improved as STRs are mostly provided from commercial banks. Real estates, lawyers and incredibly casinos have not reported a single STRs in the 2016, just like many other reporting entities. Apart from Custom Administration (3 for the 2014, 2 for the 2015 and 5 for 2016), Western Union and Banks, **the other reporting entities appear to be quite passive.** To this degree, competent Supervisory Bodies – defined in the article 94 of the LPAMTF – should categorically increase both the number and the quality of their inspections towards those passive reporting entities. **This remains a concern, which calls for urgent measures to correct this situation.**

²¹ Statistics on Suspicious Transactions (STRs) received from reporting entities in 2016

Total Nr. of STRs	Nr of STRs received from which Reporting Entities:			
231	Commercial Banks	206	Accountant	1
	Securities Registrars	0	Western Union	17
	Notaries	1	Car Dealers	0
	Currency Exchange	0	Real-Estate Agents	0
	Broker Companies	0	Games of Chance - Casinos	0
	Insurance Sector	1	Stock Exchange Market	0
	Registrars	0	Hotels	0
	Lawyers	0	Customs Administration	5

²² Nr. of STRs sent for further investigation to:

Prosecutor's Office:	31 (out of which 11 referred to Terrorism Financing)
Police Administration	7
National Security Agency	27
Tax Administration	9
TOTAL	74

²³ Number of TRs and Amount in Euro suspended in 2016 upon orders issued by the APMLTF:

Number of Suspended Transactions	Amount Suspended Transactions
7	Euro 8.033.925,00

²⁴ Statistics on monitored accounts in 2016:

Number of cases for which APMLTF issued orders to monitor accounts	Orders issued to monitor accounts of NATURAL persons		Orders issued to monitor accounts of LEGAL persons	
	Resident	Non-Resident	Resident	Non-Resident
10	1	8	1	3

²⁵ Statistics on Cash Transactions (CTRs) received from reporting entities in 2016

Total Nr. CTRs	Number of CTRs received from which Reporting Entities:			
36.988	Commercial Banks	32.440	Real Estate Agents	253
	Insurance Sector	0	Dealer in Precious Metals/Stones	0
	Security Sector	0	Lawyers	0
	Investment Firm	3	Notaries	3.724
	Post Office	462	Accountants	0
	Casinos	0	Auditors	0
	Organisers of game of chance	253	Car Dealers	124

As said, **the Montenegrin APMLTF seems to function well and its effort to implement the LPAMLTF is outstanding. It cannot be said the same for some Supervisory bodies that need significant improvement.**

2.5.3. Management of Confiscated Property

In Montenegro, the body in charge of managing and keeping records of suspect's assets either provisionally or permanently confiscated is the *Department for the Management of Provisionally and Permanent Confiscated Assets* (AMA). This Department is set under the Property Administration²⁶. The latter is no longer under the Ministry of Finance as per the Decree of the Government nr. 23 of September 2015, adopted in the 5th extraordinary session of the Government of Montenegro. The Decree was adopted on the basis of article 24 of the Law on State Administration to comply with the EU Commission recommendations.

The AMA can count on 15 employees, although as per the systematization there should be 18. Staff includes lawyer, economist and administrative staff.

The competence of the Property Administration is marked-out by the Law on State Administration, the Law on Property and the Law on Confiscation. Provisional Confiscation is also managed on the basis of the Law on Management of Temporary and Permanently Seized Property.

The AMA - *upon the delivery of a court order, with the aim to preserve the value of what was confiscated* - manages the assets or property gain acquired from criminal activities and from directly criminal offences. The AMA assess also the value of the assets. Storage of assets and sale are both regulated by the Law on Confiscation. They record the assets in an integrated register. The register contains reference of the court decision and criminal offence on the basis of which proceeds were acquired, the estimated value of assets, data about the person to whom the confiscated assets belong to and the person to whom the confiscated asset was returned, and data about objects used in criminal offence.

Currently, the registration takes place in a home-made excel register, though it was reported that a professional database to keep data on confiscation and to fully track assets being managed is being developed.

Guidelines were developed with the support of the EUROL Project. For instance, the procedure to manage temporary confiscation of immovable asset is the following:

- a. AMA upon a court order issues a prohibition to dispose with the property which is delivered to the Real Estate Administration;
- b. If the confiscation relates to money AMA issues an order to the Bank, so as to avoid that the suspect disposes with money;
- c. In case there are claims owned to suspects, the AMA issues a prohibition for disposal to make sure that the debit is paid to the AMA;
- d. For companies holding shares and interests subject to temporary confiscation's order, the AMA notifies the prohibition of disposal to the Central Depository Agency and the Central Bank, so as to prohibit suspect's disposal;

¹⁹ Prior to 2008 Montenegro had a body named Administration for Joint Affairs that was responsible to manage state properties. In 2008 the same body evolved in Property Administration and was given additional tasks among which the management of provisional and permanent asset confiscation.

- e. For companies, subject to temporary confiscation order, the AMA notifies the Government and the latter appoints upon the proposal of the AMA a temporary management committee formed of 3 persons (*functioning as a steering committee*) and a temporary administrator which will be empowered to administrate and run the company. The temporary administrator operates in the vest of a Chief Executive. The said committee and administrator report to AMA every three months.

Upon the explanation of the practical procedures it became clear that the **AMA has improved significantly**, particularly with regard to internal operational procedures and guidelines setting criteria to manage the various types of confiscated criminal assets (*moveable²⁷, immovable²⁸, perishable²⁹, cash³⁰, voluble objects and work arts, etc.*).

The author notes a highly likely dissonance between the statistics mailed after the meeting (resumed in footnotes 27, 28 and 29) with the statements of the interlocutors of AMA who at the meeting reported “in the course of 2016 received 6 court decisions out of which 3 for final confiscation and 3 for provisional confiscation of movable asset”. Among the many possible reasons, it may be that the provided statistics could probably refer to previous years too.

2.6. Serious and Organised Crime Threat Assessment (SOCTA)

A first public version SOCTA was issued in 2013. It addressed to 7 priorities for the **2013-2014** (*Organised criminal groups; Smuggling narcotic drugs; Illegal migrations and human trafficking; Smuggling excise goods – cigarettes; Loan sharking; High-level corruption and Robberies*). As a follow-up, a Mid-Term SOCTA Review was issued 2015 as a supplement to the SOCTA of Montenegro. The 2015 SOCTA recommended 6 priorities for **2015-2016** (*Terrorism and religious extremism; Smuggling narcotic drugs; Illegal migrations; Serious criminal offences arising from conflicts among organised criminal groups; Loan sharking and High-level corruption*). **Surprisingly money laundering was in none of the two SOCTAs (2013 and 2015 review) considered a priority.**

²⁷ Statistics **2016** provided by the AMA, showing the authorities who requested the sequestration and confiscation, the authorities who issued the order of sequestration and confiscation and the number of orders issued in relation to **MOVEABLE Asset for the 2016**

Sequestered Asset			Confiscated Asset		
Request made by:	Court Decision issued by:	N.	Request made by:	Court Decision issued by:	N.
Supreme State Prosecutor's Office	High Court	1	Basic State Prosecutor's Office	Basic Court	31
Basic State Prosecutor's Office	High Court	5			
Supreme State Prosecutor's Office	High Court	2			
Tourist Inspection	Administration for Inspection Affairs	3			
Supreme State Prosecutor's Office of Netherlands	High Court	1			
Basic State Prosecutor's Office	Basic Court	1			

To date, the AMA is currently managing 94 movable assets which are mostly vehicles and a luxury boat flying Dutch flag worth 380.000,00 euro.

²⁸ Statistics **2016** provided by the AMA, showing the authorities who requested the sequestration and confiscation, the authorities who issued the order of sequestration and confiscation and the number of orders issued in relation to **IMMOVEABLE Asset 2016**

Sequestered Asset			Confiscated Asset		
Request made by:	Court Decision issued by:	N.	Request made by:	Court Decision issued by:	N.
High State Prosecutor's Office	High Court	13	High State Prosecutor's Office	High Court	1
Basic State Prosecutor's Office	High Court	4			
Supreme State Prosecutor's Office	High Court	8			

To date, the AMA is currently managing 24 immovable assets which are mostly lands, flats, apartments and garages.

²⁹ Statistics **2016** provided by the AMA, showing the authorities who requested the sequestration and confiscation, the authorities who issued the order of sequestration and confiscation and the number of orders issued in relation to **PERISHABLE Asset 2016**

Sequestered Asset			Confiscated Asset		
Request made by:	Court Decision issued by:	N.	Request made by:	Court Decision issued by:	N.
		/	Border Police	Administration for Inspection Affairs	1

³⁰ At this stage the AMA is not managing cash. Thus – *it is believed* – that at least - for the 2016 – cash has never been traced, frozen and confiscated.

Montenegro together with Serbia and Macedonia, under the project - “*Enhancing Capacities for Strategic Analysis and Strategic Assessment in the Criminal Investigation Directorates of the Serbian, Montenegrin and the former Yugoslav Republic of Macedonia Ministries of Interior*” sponsored by Switzerland within the *Regional Police Cooperation Programme 2012-2016* and implemented by the *OSCE Mission to Serbia* – jointly developed a Regional SOCTA too. It mainly emphasises:

- a. further cooperation among law enforcement agencies (LEAs) in the region;
- b. intensive implementation of international legislative instruments;
- c. frequent implementation of Joint Investigative Teams for counteracting organised crime;
- d. development of police action based on intelligence data as a prerequisite for boosting proactive approach.

The priorities listed into the SOCTA of Montenegro have been turned into national priorities. Thus, Organised Crime and High-Level Corruption are set among national priorities and accordingly being implemented by the Special Prosecutor’s Office and mainly by the Special Police Department.

The new Public Version SOCTA is being developed and it is envisaged that it will be released by September 2017. The new SOCTA is going to be developed with a new approach in order to include information to be provided by a wide range of Montenegrin Institutions (*MoJ Prosecutor’s Office, Tax Administration, Custom, AMLTF Administration, Operational Team of Police Security, and others*). It will certainly include priorities on the basis of which national priorities are expected to be set and implemented. **It is hoped that money laundering is going to be set among priorities. Such a priority would certainly enhance further financial investigation and in turn the implementation of confiscation.**

2.7. Intelligence-Led policing (ILP) - state of play

The Intelligence-led policing (ILP) though up and running seems not paying off the expected result as it turned out that information collected at local level are often not automatically provided towards the central level. On the contrary, upon written requests from the central body the periphery provides requested intelligence. **This unconstructive approach vanishes the spirit and the essence of the ILP. Thus, the input to the ILP - to boost up proactive investigations - remains limited in its scope because investigators do not insert important information on live investigation.**

For instance, the interlocutor could not explain out of their reports how many investigations were effectively started and successfully finalised. The information flow, at this stage, seems to work unilaterally only, from the central unit, coordinating the ILP, to the periphery and not vice versa. **Improvements are indeed required.**

The four regional units and all local police units of Montenegro can count on officers tasked to deal with the ILP. These officers have undertaken several trainings on analysis, methodologies, mapping and on how to use I2 analysis software. Several trainings have also been organised jointly with foreign experts. In the course of 2016, it was reported that there have been 25697 intelligence inputs.

In terms of statistics, it was said that in the course of 2016 the outputs have been the following:

- 319 operational reports including intelligence on person’s profiles;
- 1 Organised Crime report to define connection or clashes among criminal groups;
- 1 report to define police and country priorities;
- 1 Report on grand corruption;
- Several strategic and tactical reports.

Although several reports have been issued, the qualitative impact of the ILP is not yet measurable for the reasons explained above.

2.8. Special Investigative Measures (SIMs)

2.8.1. Measures of Secret Surveillance (SIMs)

The **SIMs** are regulated within the Chapter 9 of the Criminal Procedure Code (CPC) and types of measures listed in *article 157, paragraph 1 and 2*, of the CPC are referred as “*Measures of Secret Surveillance*” (**MSSs**). SIMs were firstly admitted in 2004 and **since then due to other focussed amendments of the CPC lots of progress has been recorded.**

According to the *new CPC*, SIMs listed in the **first paragraph of the article 157** (*interception, photographing and video recording in private premises, supervision and technical recording of persons and objects*) must be authorized by the Investigative Judge upon the motion of the Prosecutor. Whereas, the SIMs listed in the **second paragraph of the article 157** (*simulated purchase, providing simulated business services or concluding simulated legal transactions, establishing fictitious companies, supervision of transportation and delivery, recording conversation with consent, employment of undercover and collaborators*) must be authorized by the Prosecutor upon the motion of the Police. **The author notes that with the last amendments of the CPC the measure to open fictitious business for investigative purposes was appropriately added.** In accordance to the *article 159, paragraph 5 of the CPC*, the timeframe to implement SIMs can range from 4 to maximum 18 months³¹. **This is also an important improvement as before the maximum length of SIMs was set to 7 months only.**

The **SIMs** all over Montenegro are implemented **exclusively** by the Special Checks Unit established within the Criminal Police Directorate, that is legally empowered to implement - *for the collection of evidence* – SIMs on the basis of the Prosecutor or Judge Court, depending on the type of measure. The Unit is staffed with 51 officers representing 85% of the systematization.

As per the selection procedure, the officers to be employed at this unit are proposed by the head of the Department and appointed by the Director of the Police. Currently, the unit is focussing on recruitment of staff for operation and on renovation of the premises.

Via the EUROL Project this Unit received support particularly in trainings. All officers of the Unit were trained on how to use SIMs in the field operations. Currently this unit can count on 3 certified trainers. Within the EUROL Project’s budget were also purchase equipment, vehicles and a special van into which installation of special equipment is taking place.

Currently, the Special Checks Unit has the operational capability to run maximum 3 field operation simultaneously, it was reported. **This limitation may be regarded as a concern.**

The unit has the availability of a budget to buy vehicles amounting to €100.000. In June 2016, the procurement for bid was published but it had to be repeated at the end of 2016 as no one presented offers. In May 2016, an agreement was signed for updating the telecom system for interception and now it is being integrated and implemented. **Although, this issue could not be explored further due lack of time, the author notes, that telephone interception are implemented exclusively by the Special Checks Unit which, based on the availability of specific apparatus mirroring telephone providers’ hubs, could technically undertake interception without court orders. Thus, abusing the system. It is suggested that the EU Commission organises a stand-alone assessment so as to verify compliance with the ETSI standards.**

³¹ Article 159, paragraph 5, states: “Based on the order of the investigating judge or State Prosecutor, the measures referred to in Article 157, paragraph 1 and paragraph 2, items 3 to 6 of the present Code may last up to **four months**. For justified reasons, these measures **may be extended** against the same person and for the same criminal offence **no longer than 18 months** from the adoption of the first order for imposing secret surveillance measures.....”. Whereas before the time frame was set to 4+3 months only.”.

2.8.2. Undercover Investigations

The undercover measure is well regulated by the provision stipulated in Article 157, paragraph 2, item 6 of the CPC. Far relevant is that the Article 157, paragraph 7, **records very positive improvement**. It allows to deploy UCOs to identify the position of a person for whom an international arrest warrant was issued, or against a third party for whom there are grounds for suspicion that he/she is in direct contact with the person for whom there is an international arrest warrant. As per the article 158, UCOs can be deployed when investigating cases for which a prison sentence of ten years or a more severe penalty may be imposed, having elements of organized crime, and for a long list of offences catalogued in article 158, item 3,4, and 5 of the CPC.

The undercover unit (UCU) is framed in the Criminal Department. It comprises 5 officers: the head, the handler and 3 undercover officers UCOs. The procedure to recruit 2 more UCO and 1 handler is on-going, it was said. The undercover unit can also count on 10 trained officers employed in different Police Units present in Montenegro that may be deployed when necessary. As per the provision stipulated in Article 160, paragraph 2³² of the Criminal Procedure Code (CPC), UCOs can be deployed all over Montenegro and abroad and it is possible to deploy also civilian and individuals holding the status of "Cooperative Witnesses". Foreigner UCOs can also be deployed. Actually, due to the small geographical size and population of the country, Montenegro – *via its UCU* - does rely very much on foreign partners. Memoranda of understanding (MoUs) have been signed with three countries. More MoUs are planned to be finalised soon and others are planned for the future. The countries with which MoUs were signed could not be revealed as secret. Montenegro, is also a member of the European Grouping of Territorial Cooperation (EGTC), it was reported.

The UCO appear to be lacking of UCO kits for collection of evidence, though planned to be purchased (*envisages in the AP-24 – Measure 6.2.31.4*). In accordance to the AP-24 the deadline to buy such kits was set to September 2015. The delay, seem to be justified as after an audit the procedure to purchase these kits was annulled and the relevant bylaw had to be amended. Now the procurement process has been re-launched, it was said.

2.9. Witness Protection

The Witnesses Protection programme is implemented via the Witnesses Protection Unit (WPU). The WPU can count on 8 officers out of the 9 envisaged by the systematization. An officer from another police department has been seconded to the WPU to support the daily workload. The equipment to hear testimonies via video-link has been purchased and made available to the WPU. The WPU upon the availability of allotted funds, in the 2016, initiated the procurement procedure to purchase armoured vehicles. Nevertheless, after an audit the procedure to purchase these vehicles was annulled and the relevant bylaw had to be amended. A new procurement process is envisaged to start very soon.

To date there is only one person under protection. In 2016 the WPU handled 2 witnesses for a long period and provided short time assistances to the regional counterparts. The WPU can count on a number of safety houses that could not be revealed due to their confidentiality.

³² Article 160, paragraph 2 of the CPC reads: "Undercover agent and collaborator may be an authorized police officer, employee in another public authority, authorized police officer of another state or, by way of exception, if the measure cannot be enforced in another manner, some other person"

The institution of Witness Protection (WP) in Montenegro appear to be well regulated by a set of legal instruments among which certainly relevant is the *Law on Witness Protection (adopted in 2004 and recently amended)*, the *Criminal Procedure Code (CPC)* – from articles 120 to 131 and the *Law on International Legal Assistance in Criminal Matters* as well as a number of bylaws and instructions defining the activities of the Witness Protection Unit (WPU). Quite pertinent are also the bilateral agreements in the area of WP that Montenegro has signed with several countries. The law defines to whom the status of witness protection can be granted upon certain legal requirements (*for instance, for crime punished with 5 or more years, crime against humanity, violation of international laws, constitutional offences and organised crime*). The category of cooperative witnesses was expanded and the imprisonment term was decreased from 10 to 5 years with the recent amendments, it was said. In accordance to the law, the decision whether to implement or not the protection program (*application, termination, cessation or extension*) is taken collegially by the *Commission for Application of the Witness Protection Programme*, composed of top managers occupying key positions in crucial Institutions such as judges of the Supreme Court, Deputy Supreme Public Prosecutor, the Head of the Witness Protection Unit, a Physiologist from Minister of Labour and Social Welfare and the Prison Director (*as per the recent amendments of the related Law, the last two managers have recently been included so as to expand the Commission*) .

The proposal to apply protection is handled by the Supreme Public Prosecutor who acts also on request of the witness, competent public prosecutor, judge competent for the proceeding, the Director of the Institute for Enforcement of Criminal Sanctions and the Head of the Criminal Investigation Police Sector. The protection, in accordance to the Law on Witness Protection, can be assured also to a person close to the witness upon the consent of the latter. The protection's measures can be combined of physical protection of person and property, relocation (*inside or outside Montenegro*), hiding identity/ownership and changing of identity.

Safe locations are identified, available and used when needed, it was reported. In accordance to the "*Instruction on the method of undertaking activities of the WPU and implementation of the protection programme*", for each witness two locations should always be made available.

The author notes that for the criminal offence of grand corruption the witness protection programme is not allowed. The author suggests to amend the WP Law so as to assure protection to cooperative witness of grand corruption.

2.10. Interagency Co-operation

Cooperation between the Special Prosecutor's Office (SPO) and the Special Police Department (SPD) is considered to be **outstanding**. The SPO has also established good cooperation with the Special Division of the High Court of Podgorica (*counting 6 judges*).

Both SPO and SPD - *via the Special Investigative Teams (SITs)* - can count on **exceptional** cooperation with Public Institutions, particularly if considering specific expertise provided by the different component of the SIT and for the data collection owned by the public Institution where components of SITs are employed. **Despite SITs are paying off good results, some concerns remain for the level of confidentiality an investigation should have, meaning that data collected manually may be often exposed to unwilling whispering due to the too many actors involved on requesting, providing and collecting information (leakage of info). This may highly likely happen, particularly if considering that Montenegro is a small country and that citizens know each other.**

On the contrary, interagency cooperation among the enquiring bodies and other public institution – *without the formation of SITs* - remains **far below satisfactory**.

Cooperation between SPO and the Forensic Unit is decent but, due to lack of staff and lack of specific expertise sometime required service is either slowed down or not provided. **Imperative improvement should be made.**

Cooperation between SPO and State Prosecutor's Office is considered **just satisfactory**. Cooperation between Basic/High Prosecutor's Office (B&HPO) and Criminal Police is considered **acceptable** too, **although concerns remain for the unwillingness of B&HPO to delegate or allow to initiate financial investigation to the Division for fighting Organised Crime and Corruption of the Criminal Police.**

The cooperation between the SPD and the Criminal Police including regional Police Unit seems to be **satisfactory**. **However, a certain degree of jealousy has been perceived, which in the long run may lead to serious problems.** Cooperation between SPO and Criminal Police seems to be **just adequate**. **However, it was perceived that SPO entrust the latter only with orders concerning minor undertakings or actions taking long time, which seems to be the reason why it looks like that police officers of the Criminal Police execute orders but, without particular enthusiasm. If the author's perception is right, the SPO should entrust more [cases to ?] the Criminal Police.**

Cooperation between SPO and National Security Agency (ANB) is **very active and believed to be superlative**. The ANB, holding competence to collect intelligence on Organised Crime and on Terrorism, provides advanced cooperation to both SPD and SPO as well as to the Administration for Preventing Money laundering and Terrorism Financing (AMLTF) functioning as the Financial Intelligence Unit (FIU). With the latter particular cooperation is set for the collection of data related to Terrorism Financing (TF). Interlocutor expressed concerns that provided data from ABN can be used for intelligence only and not for evidence. For this delicate issue, it is advised that the EU Commission organises a stand-alone assessment for supporting where possible the amendment of the Law on National Security Agency.

Cooperation between The Administration for Preventing Money Laundering and Terrorism Financing (AMLTF) and SPO is **satisfactory, though legal understandings and competences deriving from international standard (FATF recommendations) may need to be clarified between the two bodies**. In accordance to the new law of the SPO, the AMLTF submits Suspicious Transaction's (STRs) predominantly to the SPO. In the course of 2016, out of 226 STRs, 31 were submitted to the SPO of which some led to criminal investigations.

All the highlighted concerns may be solved only if Montenegro commits to establish a National Integrated Criminal System to be realised via a web platform, which would interconnect all public institutions systems (currently disconnected).

2.11. International co-operation

The Division for International Cooperation (DIC) is framed within the Criminal Police Department of the Police. It is also functioning as International Law Enforcement Cooperation Unit (**ILECU**) and ICPO-NCB. The contribution provided by the DIC to both national and international police is considered to be close to outstanding.

Statistics³³ indicates that Montenegro is very active in providing and requesting International police cooperation, via Interpol (ICPO), EUROPOL³⁴, SELEC (Southeast European Law Enforcement Center) and via Liaison Officers³⁵. The DIC is also used to address rogatory letters (*judicial cooperation*) as this is rendered possible due to the National Law on Mutual Legal Assistance on Criminal Matters (MLA)³⁶. Consequently, judicial cooperation is to some level also facilitated actively by the Division for International Cooperation. In 2016 the DIC has functioned as an in-between for addressing 7 Rogatory letters to several countries³⁷ and it received 35 Rogatory letters from a wide range of countries³⁸.

Far positive is also that Montenegro on 5th October 2016 entered the European Network on Fugitive Active Search Teams (ENFAST).

2.12. Police Academy

Trainings are implemented mostly by the Police Academy which, surprisingly, is framed within Ministry of Education. **As per the best practice of most of the EU Countries, the Police Academy should be part of the Police and it should focus only on training police officers.**

The Academy can count on 80 employs out of which 15 are lectures, certified as trainers. The Academy's core business is to train 200/300 people to become basic police officers. The course lasts 2 years. As a side activity, the academy at the beginning of each year asks Police Departments, including SPD, for their training needs, upon which a training plan and curricula for requested trainings are developed and addressed. In case the police academy does not have the capacity, national and/or foreign experts are sought among the network partners in cooperation with police. Nevertheless, trainings are paid by the police (*or by other institutions asking for training*) and not by the Academy as they **do not have dedicated budget**.

The Police Academy is budgeted from the national budget (71%) and from own income sources deriving from trainings organized for private sectors (29%).

The Academy provides the logistic, organization, accommodation and food, whereas extra costs, for instance, to remunerate foreign trainee/experts, must be afforded by the police or by the institution that is requesting the training.

The police academy also organises specialist training for other agencies, including prosecutors, custom, prison system, security services, private securities, etc..

Several trainings have already been delivered and many others are planned for the 2017. **However, the author notes that most of the trainings – usually lasting 2/3 days – are mostly seminars of informative nature. The author is induced to state that most of these trainings have and will not payoff expected results.**

³³ Statistics on international COOPERATION (period: 2016):

INFORMATION EXCHANGE via INTERPOL		
TOTAL	communication on international searches and extraditions	communications on international operational cooperation
20566	9574	10641
INFORMATION EXCHANGE via EUROPOL		
TOTAL	Communication on international searches and extraditions	communications on international operational cooperation
2453	181	2210
INFORMATION EXCHANGE via the SELEC		
TOTAL	communication on international searches and extraditions	communications on international operational cooperation
332	6	292

³⁴ The Operational Agreement with Europol was ratified by the Parliament of Montenegro on 3rd March 2015 and a Montenegrin Liaison Officer started to work at the Europol premises on 1st November 2015

³⁵ Montenegro hosts two Italian and one Slovakian liaison officers to enhance direct police cooperation with Italy and Slovakia respectively.

³⁶ In the **article 4, paragraph 5**, of the **Law on Mutual Legal Assistance in Criminal Matters** it is stated: "*In urgent cases, provided that there is reciprocity, letter Rogatory for international legal assistance may be delivered and received through the National Central Bureau of the Interpol*".

³⁷ Rogatory letters addressed to Serbia (2), Germany (1), Austria (1), Luxemburg (1) and Italy (1).

³⁸ Rogatory letters received from Russia (1), Switzerland (2), Sweden (2), Kosovo (3), Albania (1), Bosnia (4), Germany (4), USA (1), Hungary (2), Uruguay (1), Serbia (10), the Netherlands (3) and Italy (1).

To this degree Montenegro should consider to have longer and focused trainings by making sure that international experts/trainees have a good sound knowledge of the Montenegrin legislative framework. **It is strongly recommended that practical trainings lasting not less than 4/5 days are organised by using a real closed complex case, inviting at least those who have worked with the case (police officers, prosecutors and judges) so as to have a true international confrontation with 3 international trainers holding practical experience on police, prosecution and judging topics.**

2.13. Internal Control and measures to fight corruption in the police

The internal control of all staff of the Ministry of Interior (Mol), the Police and Security Agency is performed by the Internal Control Department which is a separate Department of the Mol. At the moment, the ICD can count only on 9 employed in the HQ and 7 in the Police Territorial Units. Nevertheless, the systematization foresees 22 officers out of which 15 in the HQ and 7 in the Police Territorial Units. **It is obvious that the ICD is lacking of staff.** The ICD, as per the amendment of the Law on Police and of the Criminal Procedure Code, has been empowered to initiate and implement Special Investigative Measures. Nevertheless, due to lack of capacity and equipment the ICD, in practice, must always rely on the Special Check Unit as the latter is the only Unit that has direct link to the three telephone operators for intercepting individuals. As a consequence, it would be impossible for the ICD to implement, for instance, telephone interception against an officer employed at the Special Check Unit! **To these degree, improvement is required.**

2.14. Disciplinary Measures

Disciplinary measures are regulated by the Law on Civil Service and Law on Internal Affairs as well as by a number of bylaws. Whereas, the Law on Administrative Proceedings defines procedure for the implementation of disciplinary measures.

The unit dealing with disciplinary measures is the Disciplinary Measures Division (DMD). It employs only 4 persons and it is competent to apply the disciplinary proceedings for the entire Police Administration. **Lack of staff is a concern.**

In 2016 the DMD received 117 proposals to initiate proceedings submitted by several departments including Internal Control Department (ICD). The DMD was said to have power to collect material evidence. The range of disciplinary measures includes, depending on the gravity, the reduction of the salary for a duration ranging from 1 to 6 months; reallocation of the sanctioned person in a lower position for a period that can vary from 2 to 4 years; impossibility to be promoted from 2 to 4 years; suspension and termination.

The above-mentioned measures can be imposed singularly or cumulatively by the Disciplinary Commission. The most frequent violation is violation of the code of ethics.

The Disciplinary Commission includes 10 members and it is appointed by the Minister of Interior at the beginning of each year. The procedure of appeal and other related issues could not be discussed due to shortage of time.

3. Conclusion

In conclusion, taking into account the overall outcome of the assessment, it can be stated that:

- a. The operational capacity of the Special Police Department (SPD), the Special Prosecutor's Office (SPO) and of the Special Division of the High Court of Podgorica - *holding jurisdiction on organised Crime, grand corruption, money laundering, terrorism, war crimes and electoral rights offences* - is **satisfactory**. **Nevertheless, the operational capacity and its effectiveness could improve a lot if the place of work of the SPO would be more comfortable and if it could host in it the SPD, if there would be more staff and if some identified and highlighted legal and technical obstacles could be removed.**
- b. The relation between SPO and SPD is excellent and the leading role of the special prosecutor is **advanced**. Whereas the cooperation between SPO and Criminal Police **may still need some improvements**. Police should act more on self-initiative and prosecutor should delegate more undertakings and actions to police and entrust them with more financial investigations.
- c. Investigation upon hints (*confidential sources, media, NGOs, and other public administration or agencies*) are usually initiated by the competent enquiring bodies, though often dismissed as ungrounded due to lack of available ground of suspicious. Pro-active investigations that should regularly start upon the intelligence led policing and analysis outcome remain **insufficient**. The Police should act more on self-initiative and prosecutor should delegate more undertakings and actions to police and entrust them with more full financial investigations.
- d. Evidence gathering is **advanced** via the formation of the Special Investigative Teams (SITs). On the contrary without the formation of the SITs it is functioning **just at an acceptable level**. **Systems possessed/owned by Public Agencies and Administrations remain disconnected** with the detriment of professional high quality investigation and exposure to leaking of information. **Gathering of forensic evidence is sometime problematic** due to lack of specific competences and specialised staff capable to provide certain specific service. **Special investigative measures implemented to gather evidence are considered advanced, though these could be boosted up** if the implementation of some of such special measures could be implemented by the SPD directly without relying on the Special Check Unit of the Criminal Police. **Gathering of evidence via telephone interception is advanced but, the mechanism in place may easily expose to potential abuse of interception which could be executed without court orders (illegal interception)**. This issue, however, require an ad-hoc assessment.
- e. With the new Law on Confiscation, **financial investigations are logically regulated, though some legal restrictions need to be removed**. In practice, **financial investigations are conducted in a satisfactory manner** and a great contribution is provided by both the financial experts employed at the SPO and by the *Financial Investigation Teams*, when formed. **Nevertheless, the lack of prompt access to certain information slows down its effectiveness**. Provisional measures (*temporary confiscation or prohibition to dispose properties*) are regularly proposed by prosecutors, ordered by judges and managed by the Asset Management Agency. However, it looks like that most of the confiscation measures are result as plea bargaining agreements. Additionally, **cash criminal proceeds are highly unlikely traced, frozen and confiscated**.

4. Recommendations

In view of the findings outlined in this report, the author suggests the Montenegrin Authorities to consider the following recommendations that shall be taken into account only after having deeply assessed the overall national context and legal framework.

1. As per the *Law on Special State Prosecutor's Office (L.SPO)*, the author **RECOMMENDS**:

- a. To amend the **article 26, paragraph 3**, (*appointment procedure of the head of the Special Police Department*), in order to make sure that both for the head and officers of SPD:
 - the proposal is made by the Chief Special Prosecutor;
 - the consent is given by the interested person, and
 - the appointment is formalised by the Police Director, but within a defined timeframe 15/20 days from the date of receiving the proposal from the Chief Special Prosecutor.
- b. To accelerate the establishment of an encrypted information system for electronic data exchange in compliance with the provisions stipulated in the **article 35, paragraph 1**.
- c. To urgently undertake the required technical and legal steps in order to develop a feasibility study and a specific law aiming at granting SPO access to the data in the databases of information systems of other Montenegrin State Authorities and Administrations in compliance with the provisions stipulated in the **article 36, paragraph 1 and 2**.
Montenegro should consider establishing a web-platform capable to interconnect all relevant national systems; establish the level of encryption; define the set of data to be accessible in accordance with each institution's mandate; define the level of access and who is going to be the administrator. These and other issues require to be laid down in a dedicated legal framework.
- d. To amend the **article 35, paragraph 3**, in order to make sure that requested and submitted data referred to in paragraphs 1 and 2 of this Article remain always inaccessible to the persons they refer to, unless the investigation is concluded or an indictment is raised. The article could be **rewritten** as follows:
 - *“Information about the requested and submitted data referred to in paragraphs 1 and 2 of this Article shall be inaccessible to the persons they refer to until the **official investigation order is issued is concluded** ~~or until the direct indictment is brought~~ or until the bill of indictment is submitted”.*
- e. To fill the legislative loopholes for preventing unauthorised disclosure of sensitive investigative data by possibly **adding a stand-alone article** which could read as follow:
 - *data collected in the preliminary investigation should be disclosed only upon the consent given by the Chief Special Prosecutor or by the Special Prosecutor in charge of the investigation if the latter is authorised by the Chief Prosecutor;*
 - *data of the investigative procedure that were marked as “secret” by an order of the Special Prosecutor's Office, in accordance to the article 284 of the CPC, should be disclosed only upon the consent given by judge of investigation of the competent court;*
 - *unauthorised disclosure of the above mention data should be punishable as a criminal offence in accordance to article 391 (Violation of Confidentiality of Procedure) of the Criminal Code.*

- f. To eliminate ambiguities on delegation so as to unequivocally permit the Special Prosecutors to delegate undertaking of certain evidentiary actions to State Prosecutors of both Basic and High Prosecutor's Office on whose territory actions should be undertaken. This could be achieved by possibly **adding a stand-alone provision** which should unambiguously read: *"Special Prosecutors may delegate undertaking of certain evidentiary actions to State Prosecutors holding jurisdiction on the territory where actions should be undertaken"*. This proposed amendment would reinforce and certainly swipe-off useless interpretations of the article 227, paragraph 3, of the Criminal Procedure Code and article 133, paragraph 3 of the Law on State Prosecutor, both stipulating that delegation is conceivable with the go-ahead of the State Prosecutor.

2. With reference to the *Draft Law on Internal Affairs*, the author **RECOMMENDS** to speed up the amendment process in order to have it converted into Law as planned;

3. With reference to the *Law on prevention of money laundering and terrorism financing (LPMLTF)*, the author **RECOMMENDS** to speed up the amendment process in order to comply with the new FATF recommendation n.6, allowing freezing of terrorist asset of those inserted in the sanction list developed by the UN Security Committee;

4. With reference to the *Law on Confiscation*, the author **RECOMMENDS**:

- a. To urgently amend the article 11, paragraph 1, in order to allow the competent prosecutor to issue the *"order for conducting financial investigation"* based on one of the three elements listed under the paragraph 1, items 1,2 and 3 of article 11. Thus, the article could be amended to read:
- *"Financial investigations may be instituted under an order of the state prosecutor, provided one of the following exists"*:
 - 1) grounds for suspicion that the property of the holder is manifestly disproportionate to his lawful income;
 - 2) reasonable suspicion that material benefit was derived from criminal activities; and
 - 3) grounds for suspicion that the criminal offence referred to in Article 2 para.1 of this Law has been committed.
- b. Refill the legislative loophole to assure, in case of confiscation of monetary asset, that the court order is immediately notified by the Court to the competent Financial Institution. This could be fixed by **adding after the article 26, paragraph 1, an additional new paragraph 2** which could read as follows: *"at the moment of issuing the order regarding temporary confiscation of cash or deposited funds, the judge shall immediately notify, by the most appropriate means, the responsible person of the financial institution where money to be seized or confiscated is deposited"*.

5. With reference to the *DRAFT Law on Amendments and Changes to the Criminal Code*, the author **RECOMMENDS**:

- a. To request expert's support for a full review of the Criminal Code and of the draft law in question;
- b. To review the provision stipulated in **Article 4** referring to article 37 of the CC (*Parole*) in order to reinstate the assessment - *stipulated in article 37 of the current code* - to be made by the court aiming to ascertain whether the sentenced person behaved well or not while in prison as a condition to grant the parole;
- c. To carefully assess the provisions stipulated in **article 29**, replacing article 396a of CC, as at first sight, seem to be unconstitutional as limiting freedom of expression.

6. With reference to the *Criminal Procedure Code*, the author **RECOMMENDS**:

- a. To extend the juridical instrument of the “*Cooperative Witnesses*” to Grand Corruption, Money Laundering and, if deemed necessary, to other offences to be defined by the Montenegrin, via the **amendment of the article 125** of the CPC, which could read:
 - “*The State Prosecutor may put a motion to the court to examine as a witness a member of the criminal organization, ~~i.e.~~ or criminal group or a person for whom there are reasonable grounds for suspicion he committed, facilitated or acted in the capacity of intermediary in the area of grand corruption and money laundering, who consents to do so (hereinafter: cooperative witness) against whom criminal charges have been brought or criminal proceedings have been instituted for an organized crime offence referred to in Article 22 paragraph 8 of the present Code and referred to Article 3 of the Law on Special Prosecutor’s Office if it is certain that:”;*
- b. To amend the article 132 of the CPC by substituting the word “*evidence*” with “*statements*” in conformity with its legal name (*Probative Significance of the **Statements** of Cooperative Witnesses*) and in order to avoid vanishing the essence of the “*Cooperative Witnesses*” instrument during the judgment process. The amendment could read as follows:
 - “*The court may not find a person guilty solely on the grounds of **evidence statements** obtained by the testimony of a cooperative witness”;*

7. With reference to the *Law on Salary in Public Sector*, adopted on March 2008, the author **RECOMMENDS** to urgently amend the article 22 of the said law, in order to place experts/advisors/associates of the Special Prosecutor’s Office in the same salary scale of their colleagues employed at the Supreme Prosecutor’s Office and/or Court which, are set in Group “C”, number 13 corresponding to the coefficients ranging from 12.5 to 22. **This recommendation is vital as the potential and expected outflows of experts may impact very much negatively the efficiency and efficacy of the SPO.**

8. As per the *Special Prosecutor’s Office (SPO)*, the author **RECOMMENDS**:

- a. To take all necessary steps to guarantee that the SPO will soon be provided with new comfortable premises and larger working environment capable of hosting in it also the *Special Police Department*;
- b. To consider increasing the number of special prosecutors which - *as per the defined and recently expanded jurisdiction* - should be no less than 15/20;
- c. To assure that both the SPO and the *Special Police Department* are - *as soon as possible* - granted direct access to the relevant national IT systems with the aim of automatically retrieve information serving the purposefulness of both criminal and financial investigations. **This is vital to boost investigations and improve interagency cooperation;**

9. As per the *Special Police Department (SPD)*, the author **RECOMMENDS**:

- a. To train further officers of the SPD with advanced ad-hoc practical/on the job-training on grand corruption, money laundering and on financial investigations, particularly for new comers;
- b. To reinforce further the functional dependency of the officers employed at the SPD towards the Chief Special Prosecutor by amending the article 86 of the Law on Internal Affairs and the article 64 of the rulebook on systematization;
- c. To increase the number of officers employed at the SPD from 20 to 50;

- d. To amend the relevant rulebook in order to allow the SPD to implement SIMs autonomously without necessary relying on the Special Check Unit;
- e. To ensure direct access to the National System, if ever established;
- f. To take all necessary steps to assure that the SPD will soon sit in the same building with the SPO;

10. As per the *Police Division for Combatting Organised Crime and Corruption (DOCC)*, the author **RECOMMENDS**:

- a. To improve staff capacity by recruiting 9 additional officers in accordance with systematization;
- b. To make sure that Basic and High Prosecutor's Office entrust more this Division with full Financial Investigations;
- c. To ensure that the Special Prosecutor's Office engages officers of this Division not only for the execution of stand-alone actions but, also, for minor full financial investigations, particularly when the SPD is overburdened;

11. As per the *Intelligence lead policing (ILP)*, the author **RECOMMENDS** to undertake measures aiming at improving the spirit and the essence of the ILP by assuring that investigators insert information/intelligence on a regular basis and on live investigation too.

12. As per the *Undercover Unit (UCO)*, the author **RECOMMENDS** to speed up the purchase of kits for the collection of evidence.