



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 16 May 2014
(OR. en)**

9915/14

LIMITE

ELARG 61

NOTE

From: General Secretariat of the Council
To: Working Party on Enlargement and Countries Negotiating Accession to the EU
Subject: Accession negotiations with Montenegro
- Chapter 31: Foreign, security and defence policy

Delegations will find attached a draft Common Position on the above-mentioned chapter, submitted by the External Action Service¹.

¹ This document has been transmitted to the Council in English only.

DRAFT COMMON POSITION

CHAPTER 31: FOREIGN, SECURITY AND DEFENCE POLICY

I. INTRODUCTION

Position of Montenegro

In its negotiating position (CONF-ME 2/14) Montenegro accepts the *acquis* under chapter 31 as in force on 27 June 2013 and states that it will be ready to implement it from the day of accession. Montenegro does not request any special arrangements, derogations or transitional periods under this chapter.

Overall evaluation

Taking into account the *acquis* in this chapter, and on the basis of the available information, including that provided by Montenegro during the bilateral screening meeting and in its negotiating position (document CONF-ME 2/14), the High Representative - in agreement with the Commission - notes that, overall, Montenegro has reached a good level of alignment with the *acquis* in the fields covered by this chapter at this point of time.

Furthermore, Montenegro has an appropriate institutional framework in place in order to implement the *acquis* of chapter 31 but needs to enhance the administrative capacities.

In order to prepare for full application of the *acquis*, Montenegro has presented an overview of its current and future activities related to legal alignment and strengthening of its administrative capacities.

In view of the present state of Montenegro's preparations, the High Representative - in agreement with the Commission - considers that the following benchmark needs to be met for the provisional closure of the chapter on foreign, security and defence policy:

- Montenegro - as a signatory of the Rome Statute establishing the International Criminal Court (ICC) - fully aligns its position with the Council Decision 2011/168/CFSP of 21 March 2011 and the EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the ICC and the United States regarding the Conditions to Surrender of Persons to the Court, annexed to the Council Conclusions of 30 September 2002 on the International Criminal Court.

II. DRAFT COMMON POSITION

This position of the European Union is based on its general position for the Accession Conference with Montenegro (CONF-ME 2/12) and is subject to the negotiating principles endorsed therein, in particular:

- Any view expressed by either party on a particular chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- Agreements - even partial agreements - reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been reached;
- As well as to the requirements set out in points 24, 28, 29 and 44 of the Negotiating Framework.

The EU encourages Montenegro to continue the process of alignment with the *acquis* and its effective implementation and enforcement. The EU also encourages Montenegro to develop, already before accession, policies and instruments as close as possible to those of the EU.

The EU notes that Montenegro, in its negotiating position CONF-ME 2/14, accepts the *acquis* under chapter 31 as in force on 27 June 2013, and that Montenegro declares that it will be ready to implement it by the date of its accession to the European Union.

CFSP – political dialogue

The EU notes that Montenegro will continue to actively participate in the existing forms of political dialogue with the EU and consultations in the area of CFSP/CSDP.

The EU takes note of Montenegro's declaration that it will have no difficulties in implementing decisions and positions taken in the CFSP framework. The EU also notes that, since January 2012, Montenegro has consistently aligned with CFSP positions, when invited to do so.

Recalling point 5 of the Negotiating Framework, the EU notes Montenegro's commitment to good neighbourly relations, which the country regards as one of its leading foreign policy goals. The EU also notes Montenegro's commitment to resolving any border disputes with the neighbouring countries in conformity with the principle of peaceful settlement of disputes. In this respect, the EU recalls the need for Montenegro to make every effort to find mutually acceptable, definitive solutions to all pending bilateral issues, including on borders.

The EU also takes note of Montenegro's statement that it fully supports the perspective of EU membership of the countries included in the Stabilisation and Association Process. In this regard, the EU welcomes Montenegro's efforts to promote the region's progress towards EU membership and the country's readiness to share its experience acquired through the accession process with the other countries of the region and to assist them in carrying out the necessary reforms on their EU integration path.

As regards the countries of the European Neighbourhood Policy, the EU takes note of Montenegro's commitment to fully adhere to the EU objectives.

The EU notes that Montenegro has an appropriate institutional framework in place, including a diplomatic network reflecting the size of the country and its population, for the implementation of the *acquis* and the participation in the CFSP. Therefore, there is no need to establish new institutions or bodies. At the same time, the EU notes Montenegro's commitment to continue to adjust and strengthen the administrative capacities of the existing structures. The EU furthermore notes that, before accession, the internal organisation of the Ministry of Foreign Affairs and European Integration is planned to be modified in order to define more precisely the competence and role of the Political Director and the European Correspondent. The EU notes that all the technical preconditions, including the strengthened IT infrastructure, necessary for the connection of Montenegro to the relevant EU communication systems, will be put in place by the time of accession.

CFSP and CSDP – political strategy

The EU notes that Montenegro will continue to align its foreign policy with EU positions and actions taken regarding issues of global and regional significance. The EU furthermore notes that Montenegro intends to continue to actively contribute to regional security and stability, including through various regional initiatives.

Restrictive measures

The EU takes note of Montenegro's commitment to effective implementation of restrictive measures as an important contribution to peace and security in accordance with the UN Charter and the CFSP of the EU. It is committed, by the date of accession, to the implementation of all restrictive measures in accordance with the *acquis*.

The EU takes note of Montenegro's commitment to align its legal framework with the *acquis* through the adoption of a new Law on International Restrictive Measures, so as to ensure full and effective implementation and enforcement of all EU sanctions and restrictive measures.

Conflict prevention

The EU takes note of Montenegro's commitment to actively support and participate in the measures and actions implemented by the EU with the aim of conflict prevention. The EU furthermore notes that Montenegro contributes to this area by participating in the mechanisms of the UN, OSCE, Council of Europe and other regional organisations, initiatives and processes. The EU looks forward to Montenegro's continued contribution to the EU's external efforts to prevent conflicts and build peace through its own experiences, especially with regard to reconciliation.

Non-proliferation and WMD/SALW strategy

The EU notes that Montenegro supports the EU objectives on disarmament, arms control and non-proliferation of Weapons of Mass Destruction and is ready to adopt and implement the related *acquis*.

Weapons of mass destruction (WMD)

The EU notes that Montenegro is not a member of any of the major international export control arrangements. Montenegro participates in some but not all instruments concerning the proliferation of weapons of mass destruction. The EU invites Montenegro to continue its efforts to join all relevant export control arrangements and notes Montenegro's intention to do so in the future. The EU also notes Montenegro's commitment to further strengthening its administrative capacity in this field.

The EU takes also note of Montenegro's plan to consolidate its strategic and institutional framework in this field by adopting a National Strategy related to weapons of mass destruction and by establishing a national body responsible for coordinating activities related to the implementation of international commitments taken in this field. The EU also notes Montenegro's intention to strengthen its administrative capacities for the effective implementation of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

The EU notes Montenegro's ongoing efforts to ratify the International Convention for the Suppression of Acts of Nuclear Terrorism. The Convention was initially signed by the State Union of Serbia and Montenegro, but has not yet been ratified by Montenegro following its independence.

Small arms and light weapons (SALW)

The EU notes that in order to align with the *acquis* Montenegro is preparing a new Law on Weapons.

The EU also notes that Montenegro adopted the Strategy for the control and reduction of small arms and light weapons (SALW) on 4 July 2013, together with the Action Plan for its implementation for the period 2013-2018. A working group for the implementation of this strategy was established on 12 September 2013. The EU invites Montenegro to swiftly implement the Action Plan. The EU furthermore notes the steps taken by the Ministry of Interior to provide training for its staff in this field as well as the activities to strengthen the database on small arms and light weapons.

The EU takes note of Montenegro's commitment to fostering peace and security as evidenced by its signature on 3 June 2013 of the Arms Trade Treaty. The EU encourages Montenegro to deliver on its commitment by ratifying the Treaty as soon as possible.

Co-operation with international organisations

The EU notes that Montenegro, as a signatory of the Rome Statute establishing the International Criminal Court (ICC), signed a bilateral immunity agreement with the United States in 2007, which grants exemptions for US government officials and employees including military personnel and contractors from the jurisdiction of the Court. This agreement is in contradiction with the Council Decision 2011/168/CFSP and the EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the ICC and the United States regarding the Conditions to Surrender of Persons to the Court, annexed to the Council Conclusions of 30 September 2002 on the International Criminal Court. Montenegro needs to ensure full compliance with the EU position. The EU takes note of Montenegro's commitment that it will fully align with the EU *acquis* at the latest by the date of accession to the European Union.

The EU takes note of Montenegro's commitment to continue aligning itself with EU statements and positions within the framework of international organisations.

Security measures (classified information)

The EU notes that a security agreement between the EU and Montenegro has been in force since December 2010 and security arrangements for the protection of classified information since February 2011, which allow for an exchange of classified information. The EU also notes that Montenegro established the Directorate for Protection of Classified Information in 2008, which coordinates and implements EU security policy in the country and also acts as the country's national security authority responsible for security clearance and access to classified documentation and electronic communications. The EU furthermore notes that EU security regulations continue to be developed further and that Montenegro will need to align itself to these rules until accession.

CSDP – contributing capacities

Civil and military crisis management

The EU takes note of Montenegro's readiness for and interest in participation in further military and civilian missions in the framework of the CSDP. An agreement establishing a framework for the participation of Montenegro in the EU crisis management was signed in 2011. The EU notes that Montenegro participates in the military operation EU NAVFOR Atalanta with up to 3 members to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast and in the Gulf of Aden. The EU furthermore notes Montenegro's current considerations to participate in the EU training mission in Mali (EUTM Mali) and in the EU military operation in the Central African Republic (EUFOR RCA).

The EU notes that the number of Montenegrin armed forces personnel in international peacekeeping missions is currently about 50; most of them participate in the three NATO or UN peacekeeping missions (ISAF in Afghanistan, UNMIL in Liberia and UNFICYP in Cyprus). The EU also takes note of Montenegro's commitment to gradually increase its capacities until 2019 for future participation in international peacekeeping missions and operations. The EU notes of the additional information provided by Montenegro to increase its total capacities by around 150 personnel that can be deployed as of 2015 and by another 150 personnel as of 2019.

The EU notes that an appropriate legislative and institutional framework is largely in place for the implementation of all activities in the CSDP area. As regards administrative capacity, Montenegro acknowledges the need to increase its resources in order to be in a position to effectively implement the *acquis* in the field of CSDP. The EU takes note of Montenegro's commitment to strengthen administrative capacity by increasing the number of employees dealing with CSDP in the state administration and in the Mission of Montenegro to the EU and to NATO.

* * *

In the light of the present state of preparations, the EU notes that - on the understanding that Montenegro has to continue to make progress in the alignment with and implementation of the *acquis* covered by the chapter on Foreign, security and defence policy - this chapter may only be provisionally closed once it is agreed by the EU that the following benchmark is met:

- Montenegro - as a signatory of the Rome Statute establishing the International Criminal Court (ICC) - fully aligns its position with the Council Decision 2011/168/CFSP of 21 March 2011 and the EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the ICC and the United States regarding the Conditions to Surrender of Persons to the Court, annexed to the Council Conclusions of 30 September 2002 on the International Criminal Court.

Monitoring of progress in the alignment with, and implementation of, the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above, including with a view to ensuring Montenegro's administrative capacity and its capacity to complete the alignment in all areas under this chapter. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. A final assessment of the conformity of Montenegro's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Montenegro to provide regularly detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In the light of the above considerations, the EU will have to return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 27 June 2013 and the conclusion of the negotiations.
