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Subject: Non-paper on the state of play regarding Chapters 23 and 24 for Montenegro

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# **Non-paper on the state of play regarding chapters 23 and 24 for Montenegro**

**November 2018**

## **1. Introduction and summary**

This non-paper focuses on developments relating to chapters 23 and 24 of the accession negotiations for Montenegro. Its purpose is to provide for an overview of progress and remaining challenges in the area of rule of law, further to the European Commission's 2018 report on Montenegro.

The non-paper is based on Montenegro's reports on the implementation of the Action Plans for the first semester of 2018, complemented by the information provided at the sub-committee meeting on Justice, Freedom, and Security, held in September 2018. In addition, a range of other sources were used including peer review missions, expert reports from EU-funded projects, and monitoring reports from international organisations and civil society.

Generally, a nuanced picture is emerging, with continuous progress in legislative reform and institution building, an initial track record in the fight against high-level corruption and organised crime, money laundering and temporary seizures of assets, but limited results in some other areas.

The fight against organised crime is showing better results than in precedent years, partly due to strengthened police cooperation with EU Member States. The Montenegrin police participated in a number of high-profile international police operations that led to the arrest of crime groups' members and very substantial drugs seizures. The legal framework on migration continued to be strengthened and aligned with the EU *acquis*. Capacity building on judicial cooperation continued.

The judicial reform process has yielded some results, such as the organisation of national competitions and regular assessment of prosecutors and judges, but challenges remain, particularly related to efficiency, rationalisation, implementation of the ICT strategy, and enforcement of disciplinary and ethical standards for judges and prosecutors.

Furthermore, media freedom, investigations into cases of attacks against journalists, anti-corruption, prevention policy in the field of drugs, trafficking in human beings and final confiscation of assets can be singled out as areas where results are insufficient.

For the coming period, it will be crucial for Montenegro to deliver convincing results, in particular in the areas of concern. This requires engagement of all the relevant institutions and actors involved in this process.

## **2. Presentation of outstanding issues and key challenges**

### **2.1 Chapter 23 – Judiciary and Fundamental Rights**

#### **Judiciary**

With regard to the strategic and legal framework, implementation of the 2014-2018 Judicial Reform Strategy and its implementing action plan has continued. Preparations for the adoption of a new Judicial Reform Strategy have started, where constructive engagement with all concerned stakeholders, including CSOs, will be needed. In June 2018, amendments to the Law on the Judicial Council were adopted in line with the Venice Commission's opinion, providing for an anti-deadlock mechanism to ensure the continuous functioning of the Judicial Council in the context of the inability of Parliament to elect new lay members to the Council, by prolonging the mandate of the lay members until new ones have been elected. This new mechanism is temporary, and the parliament needs to elect new lay members.

With regard to *independence and impartiality* the government adopted the analysis of the legislative framework and its impact on independence of judiciary in March 2018. Montenegro is now organising single nationwide competitions for judges and prosecutors. Initial training for the first group of judges and prosecutors recruited under the nationwide system was completed in the first half of 2018. Procedures are ongoing for the selection of four judges and two prosecutors for the High Courts and State Prosecutors' Offices in Bijelo Polje and Podgorica. Both Councils now conduct regular assessment of judges and prosecutors under the new system of regular professional assessment. So far in 2018, 41 judges and 12 prosecutors have been evaluated. Both Councils need to conduct regular professional assessment thoroughly, in line with the assessment criteria revised in 2017.

Although there are still vacancies to be filled in the secretariats of both the Judicial and the Prosecutorial Councils, (the Judicial Council employs 42 out of 53 planned staff members, and Prosecutorial Council 16 out of 29), their operational capacity has improved. Further strengthening of the administrative capacity of the Judicial and the Prosecutorial Councils and improvement of professional capacities of its members is nevertheless needed. The two Councils are not yet performing their functions of budgetary and financial management; neither at central or at courts levels. Concerns still remain with regard to time and commitment devoted by members of both Councils to their functions. Transparency of the work of both Councils still needs to improve.

On *accountability*, the track records on disciplinary and ethical standards for judges and prosecutors are still very limited, in part due to the fact that the new Code of Ethics Commission for the Prosecutorial Council in its new composition was appointed only in July 2018. Within the first six months of 2018, no new disciplinary proceedings were launched against judges, while four new ones were launched against prosecutors. For procedures regarding violations of the code of ethics, four cases were reported against prosecutors; three are still pending, with no violation established in one case. Six cases were reported against judges; five are still pending, with no violation established in one case. Relevant decisions by the Judicial and Prosecutorial Councils are insufficiently motivated and case law remains to be developed. It remains important that all cases that give grounds for disciplinary liability are being followed up. Both Commissions for monitoring the implementation of the Codes of Ethics have an inconsistent approach to handling cases, and a legal remedy against their

decisions remains to be provided for by the law. Existing complaints' mechanisms would benefit from efforts to raise public awareness.

Following the introduction of additional eligibility criteria for bailiffs, aimed at raising professional and ethical standards, seven bailiffs who failed to pass the required exams were dismissed from their functions in April 2018.

On *efficiency and professionalism*, the implementation of the action plan of the 2016 ICT Strategy for the judiciary has continued with some delays. The tender for procuring new software for the judicial ICT system is planned for late autumn 2018. In order to improve coordination and address delays in implementation, a separate directorate-general for ICT and data security was established within the Ministry of Justice. Stable and sufficient funding for planned reforms is still missing. Issues remain with regard to reliability and availability of statistical data for the judiciary. The European Commission for the Efficiency of Justice (CEPEJ) guidelines are not yet fully implemented. Montenegro requested assistance from CEPEJ to improve the quality of its judicial statistics.

According to the mid-term strategy for the rationalisation of the courts network for the period 2016-2019, specific rationalisation measures are postponed until after 2019. Amendments to the Law on courts which would lay down the minimum number of judges per court in accordance with Judicial Council decision of 2017 have not yet been prepared.

The data for 2017 and early 2018 suggest that the backlog, as well as the number of cases older than three years, have increased, although measures are being implemented to reduce the number of the latter group of cases.

The impact of alternative dispute resolution remains low, but a positive trend could be observed in the first half of 2018 as a result of awareness-raising and promotion campaigns. Over 500 cases have been referred for mediation during the first six months of 2018 and 110 cases have been resolved through mediation. During the period of 1 January - 30 September 2018, 2960 cases were submitted to the Agency for Peaceful Settlement of Labour Disputes, and 2840 cases were resolved, compared to 1388 submitted and 424 resolved cases during the same period in 2017.

As a consequence of the introduction of the bailiff system, the total number of enforcement cases before the courts continues to decrease. At the same time, there was an increase in pending appeals lodged before the courts in cases processed by bailiffs from 688 on 1 January 2018 to 917 on 30 June. The centralised case management system for bailiffs is now operational.

The Judicial Training Centre secretariat has filled 14 out of the 19 positions planned for within the rulebook. Autonomous and self-sustainable functioning of the Centre remains to be guaranteed; and its expert, managerial, strategic planning and administrative capacities need to further improve, as well as cooperation with the Judicial and Prosecutorial Councils. Montenegro expressed its interest in the activities offered by the European Judicial Training Network (EJTN).

On *domestic handling of war crimes*, no new cases have been opened since 2016, while four cases are currently in the preliminary phase of investigation by the Special Prosecutor's Office for the fight against corruption, organised crime, war crimes, terrorism and money laundering

(SPO). In one case court proceedings have started against the person who was charged in February 2017 for crimes against civilian population, and six hearings have been held to date. In all cases under preliminary investigation, the SPO had to rely on letters rogatory to the UN International Residual Mechanism for International Criminal Tribunals (MICT) and on requests for international legal assistance to the prosecution services of the neighbouring countries. A more proactive approach is needed to effectively investigate, prosecute, try and punish war crimes in line with international standards and to prioritise such cases. By the end of 2017 all decisions on claims for compensation had become final. No new claims were received in 2018.

## **Anti-corruption**

Following the publication of the European Commission's 2018 Montenegro Report, the ACA has prepared and has been implementing an action plan to address concrete recommendations of the Report. The Agency currently employs 54 out of 60 planned members of staff. Capacity-building activities continued, and further improvements were made on the IT system. In 2018, the ACA has also for the first time started using its power to directly issue misdemeanour orders and impose misdemeanour fines. So far 4 such orders have been issued.

Despite some overall improvement, including on communication and outreach, the Agency, is, however, still not perceived as sufficiently independent and proactive by the general public, and allegations of it being instrumentalised for political purposes persist. In order to strengthen public confidence, the Agency and its staff must ensure maximum transparency, integrity, impartiality and independence.

### *Prevention of corruption*

By the end of September, the Anti-Corruption Agency (ACA) had issued 118 opinions on request by public officials and bodies; 26 decisions on incompatibility of functions and conflict of interest. In 2017 there were 127 opinions and 58 decisions. Based on the Agency's opinions and decisions, 53 public officials resigned from their office or function, as compared to 37 in 2017. These areas continue to show significant weakness when it comes to ACA's opinions and decisions, establishment of facts, application of the law, and quality of reasoning, as well as with regard to procedural safeguards afforded to individuals affected by these decisions.

For the period 2017/2018, 95% of public officials submitted asset declarations within the prescribed time-limit, as opposed to 96% for the period 2016/2017. By the end of September, the ACA had started checking the 416 asset declarations submitted by public officials, which represents 50% of the quota in the annual plan based on a priority and random samples order. The percentage of public officials who gave consent for access to their bank account has decreased from 70% to 60%. Among those are still only 10 members of the government. In the first half of 2018, the Agency initiated 15 enquiries into inexplicable wealth and so far closed proceedings 12 cases finding no irregularities. In 2017, 24 such enquiries were initiated. The Agency still needs to do more in-depth checks on random samples of officials, including searching for illicit enrichments, changes and movements of assets, and identifying origins of assets.

In line with its mandate, the Agency carried out a number of control and oversight activities related to financing of political parties and electoral campaigns for the presidential and local elections that took place in the first half of 2018. By the end of June 2018 it had initiated 17

misdemeanour proceedings against political subjects and responsible persons. Fines continued to be imposed by misdemeanour courts. However, the ACA has still not detected any abuse of public resources for party and electoral campaigns purposes, despite reports that such abuse exists, and accordingly has not forwarded any case to prosecution. The shortcomings identified in the existing legal framework still need to be addressed.

As regards whistle-blowers, by September 2018 the ACA had received 75 reports on threats to public interest and no request for whistle-blower protection. During the same period in 2017 69 reports and two requests were filed. By September 2018, the ACA forwarded five cases to the prosecution. The ACA further initiated nine ex officio proceedings for determining the existence of a threat to public interest and established such a threat in eight cases initiated ex officio and in three reported cases.

As regards the implementation of the Law on lobbying, 14 lobbying certificates have been issued and six lobbyists had registered with the Agency by the end of September 2018, compared to one by the end of 2017. Despite this improvement, the low numbers still suggest that lobbying activities are being carried out outside the legal framework. A more pro-active policy remains to be implemented for detecting, following-up and sanctioning breaches of the law, as no report of illicit lobbying has yet been submitted to ACA.

Integrity plans have so far been adopted by 694 out of 701 public bodies and 693 bodies have appointed integrity managers. However, the concrete impact of these plans for the prevention of corruption remains to be assessed. In August 2018 a new IT application was launched allowing for the electronic submission of integrity plans and reports on their implementation. This can facilitate their easier processing and analysis.

Apart from seven cases related to the police and two related to the customs administration, there were no further cases demonstrating the effective implementation of codes of ethics for members of the legislative and executive authorities. According to the 2018 GRECO compliance report, out of 11 recommendations on the ethics and integrity of members of the parliament, prosecutors and judges, five are considered implemented, three partially implemented and three not yet implemented. Progress is in particular lacking on recommendations on ethics and integrity of members of the parliament.

On public administration, the Law on civil servants and state employees came into force in July 2018, and seven main pieces of implementing legislation two months later. The new legislation represents a positive step towards the recruitment, promotion and nomination of public officials on the basis of clear and transparent criteria, focusing on merits and proven skills. Implementation of the new legislation still remains to be assessed over time.

The impact of anti-corruption measures in particularly vulnerable areas (local self-government, spatial planning, public procurement, privatisation, healthcare and education) still remains to be demonstrated by tangible results on the prevention and repression side, and by a decrease in the perceived levels of corruption.

The implementation of the Law on free access to information has not contributed to ensuring more transparency and accountability of public service, as the authorities continue declaring requested information as classified, including on subject-matters sensitive to corruption, thus excluding it from the scope of application of this Law. A thorough revision of the legal framework in accordance with international standards is needed.

### Repression of corruption

An initial track record of investigations, prosecutions and final convictions in cases of high-level corruption has been established, but now needs to be further consolidated. By end of September 2018, new criminal investigations were launched into eight cases of high-level corruption against 100 individuals and 49 legal entities, and in the same period 28 individuals and two legal entities were indicted for corruption and abuse of office related offences through which a total of over 26 million euros of damage incurred to the public budget. Trials are currently ongoing in other high profile cases processed in 2017. Between January and September 2018 there were no new convictions for high-level corruption.

The temporary measure of prohibiting the use and disposal of assets was imposed in one case. Proceedings for the permanent confiscation of assets are currently pending before the court against the former President of the State Union of Serbia and Montenegro who was earlier convicted for high-level corruption. Despite being convicted in 2016, he has not yet started serving his prison sentence.

New financial investigations were launched in three high-level corruption cases that are under criminal investigation. The Montenegrin authorities report that financial investigations are now being launched in earlier stages of criminal investigations than before, but that they are still not launched systematically in all corruption cases.

### **Fundamental rights**

Cooperation with the European Court of Human Rights (ECtHR) remains good, and the overall awareness of the institutions and judiciary of the rights protected by the ECHR is improving. The government continues to demonstrate its willingness to conclude friendly settlements in cases concerning the length of proceedings, as well as cases of non-enforcement of domestic decisions. So far this year, 12 judgements in cases against Montenegro were issued by the ECtHR. Most cases concerned Article 6 ECHR (right to a fair trial), and Article 13 (effective remedy), while two concerned Article 1 of Protocol 1 (right to property). Violations were found in nine of these cases.

The two main institutions in charge of the promotion and enforcement of human rights - the Ministry of Human Rights and Minorities (MHRM) and the Ombudsman's Office - continued to receive EU and international assistance with a view to reinforce their capacities. The capacities of the MHRM in particular remain limited. It has started to address these shortcomings and has recruited three additional staff, but strategic planning and a training needs assessment of staff are issues that remain to be addressed.

The Ombudsman Office's capacity to handle complaints, the quality of decisions, and the visibility of its work has improved. Two additional staff have been recruited in 2018. The growing number of cases reported to the Ombudsman could indicate rising public trust in the institution. Although cooperation with CSOs remains positive, a more systematic and planned approach remains to be adopted. The capacities and budgets of the departments dealing with human rights and anti-discrimination are currently insufficient to enable them to efficiently deal with lodged complaints.

Montenegro has continued to work towards fully implementing all the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT). The capacities of the National Preventive Mechanism have been strengthened, and the

results of its work demonstrate its increasing independence. Ongoing delays in investigating and prosecuting cases of alleged violence by law-enforcement officers show the difficulties of eradicating ill-treatment and establishing a record of deterrent sanctions. The same applies to cases of violence in prisons.

Concerning the *prison system*, material conditions continue to improve through small refurbishments of facilities, but they remain poor overall. The same applies for medical support and for the working conditions of the staff, of which 30 were recruited last year. Challenges also remain in the area of rehabilitation and resocialisation. Amendments to the Law on enforcement of suspended sentence and community service sentence and to the Law on enforcement of prison sentence, fines and security measures are expected to be adopted by the end of 2018.

On *personal data protection*, capacity-building activities to reinforce the Agency for Personal Data Protection and Free Access to Information have continued. Six regular and 49 irregular inspections were carried out from the beginning of 2018 until the end of September. 117 complaints were received last year, which could indicate that awareness is increasing.

In the field of *freedom of expression*, concerns remain regarding the overall situation of media freedom. Draft laws on media and on the public broadcaster (RTCG) are in preparation. The amendments to the Law on state symbols triggered a discussion on conditions conducive to the effective exercise of freedom of expression. In the first half of 2018 four attacks on journalists were reported, the most serious one being the shooting of investigative journalist Olivera Lakić, whose perpetrators remain unidentified. The ad hoc Commission for monitoring cases of violence against media was recently given access to documents with names not being blacked out. The Commission has so far published five reports since its establishment. Still, its difficulties to obtain timely and complete information from relevant authorities persist. There remains a lack of progress in addressing both recent and old cases with regard to identifying material perpetrators and those behind the attacks, but also the shortcomings and delays which hampered investigations.

The lack of professional and ethical standards for media, as well as of effective self-regulation mechanisms, still creates a climate where freedom of expression could be abused. There was a series of dismissals of the members of the RTCG Council in late 2017 and early 2018 and the Council in its new composition dismissed the RTCG management in late spring. The editorial independence and professional standards of the RTCG need to be ensured, and the RTCG Council shielded from undue influence and political pressure.

For *non-discrimination*, court cases remain rare despite last years' amendments to the Law on prohibition of discrimination. The work of the Ombudsman office in this area has improved, but its capacities, notably on gathering of statistics, are hampered by a lack of unified approach to data collection and classification of such cases by the reporting institutions.

On *equality between women and men*, 67% of measures in the 2017 – 2021 action plan planned for 2018 were reported as fully implemented, but concerns remain regarding their impact. Implementation efforts are currently suffering from a lack of human, technical and financial resources.

On *domestic and gender-based violence*, 218 criminal complaints on gender-based violence were lodged so far in 2018. This is significantly higher than in previous years and could signal

an increased confidence among victims to report this type of offence. However the capacities of existing institutions in this area, including the judiciary and police, are underdeveloped. Measures to counter stereotypes and discriminatory practices, sex-selective abortions, as well as trafficking and exploitation of prostitution are needed to create and enable a suitable environment for women's political participation, education and economic empowerment.

Regarding *rights of the child*, the Ombudsman office continued with its awareness-raising activities, but the overall institutional response remains reactive. Challenges remain in coordinating policies concerning children. Tangible results of these changes remain to be registered. Child-begging as well as forced marriages continue to be reported by CSOs. Violence against children also remains a concern, as well as high societal tolerance to the physical punishment of children, and treatment of juveniles in prisons.

The alignment of national legislation implementing the rights of *persons with disabilities* with international standards is progressing slowly. There is no budget clearly allocated for implementing the strategic and legal framework. Work on the amendments to the Law on professional rehabilitation has been delayed and the adoption, initially planned in 2016, is now envisaged in 2018. The issue of deprivation of legal capacity is not yet adequately regulated. Issues related to the fund for professional rehabilitation and adequate spending also remains to be addressed. Existing consultation mechanisms for people with disabilities currently do not operate efficiently. Comprehensive strategies on de-institutionalisation and accessibility are not available. The adaptation of public buildings, including polling stations, is ongoing but remains at an early stage.

The authorities continued to show overall openness towards promoting the *rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons*. The preparation of the Law on civic partnership is at an advanced stage and adoption is expected by the end of this year. The 2018 national pride parade is scheduled to take place on 17 November in Podgorica. The number of reported cases of hate speech towards LGBTI persons is increasing, which could indicate an increased willingness to report such cases. The situation in general remains difficult at the local level, and within society itself, where acceptance of sexual diversity is advancing at a slower pace. Cooperation between the LGBTI community and the police has improved, but prosecution of hate speech is still uncommon.

In the field of *procedural rights*, substantial efforts remain to be made to ensure full alignment with the EU acquis and European standards, notably on rights for suspects and accused persons in criminal proceedings (including the right to information and the right of access to a lawyer), as well as on victims' rights. Insufficient budgetary allocations to enforce such rights remain an issue. Dissemination of information on free legal aid has begun, but deficiencies remain. Concerns still persist on the proper application of ECtHR case-law in cases of prolonged pre-trial detention.

On *minority rights*, amendments to the decision on the Establishment of the Fund for the Protection and Realisation of Minority Rights were adopted in July 2018. The fund is placed under the Ministry of Culture and contains safeguards to eliminate the risk of a conflict of interest in the process of attribution of funds to minorities and brings the overall framework in line with the Venice Commission's recommendations.

Despite some progress as regards *Roma and Egyptians* in the area of education and housing of internally displaced Roma in Podgorica, Roma remain the most vulnerable and discriminated

community in various areas of life. The Progress on education is linked with the significant improvement in pre-primary education. Enrolment in primary education has increased and children are supplied with the necessary school books. The segregated school in Konik has been closed and the children distributed to mainstream schools in Podgorica. The number of Roma mediators increased from 10 last year to 20. Two calls for applications for Roma education mediators were issued in June and in September; so far with limited results due to high entry requirements. The coordination role of the MHMR should be reinforced. The June 2018 Roma Seminar Conclusions remain to be finalised. The worst performing area is labour market, with access to economic opportunity having deteriorated and most unemployed Roma lacking vocational education. The issue of Roma women being detained at hospitals after birth giving because of inability to cover hospitalization expenses has been solved through a decree to health facilities. Isolated cases may still be possible and should be reported to the Ministry of Health in order to be solved. However, the general health coverage has deteriorated.

As regards *internally displaced persons*, 396 applications for obtaining the status of a “foreigner with a permanent status” are still pending, up from 379 in March 2017. The lack of identification documents, especially for children, remains a matter of concern. Two regional Housing Program projects have been completed and four other are ongoing. Montenegro reports that the finalisation of the final stage of construction in Konik in late October will lead to the full cessation of activities in the Konik camp.

Following last year’s introduction of a separate procedure for determining statelessness, a rulebook on determining statelessness has been prepared.

In the field of citizenship rights, Montenegro confirmed its intention to develop and implement an investors' citizenship scheme. As a candidate country Montenegro should use its prerogatives to award nationality in a spirit of sincere cooperation and refrain from any measure which could jeopardise the attainment of the Union's objectives.

## **2.2 Chapter 24 – Justice, Freedom and Security**

### **Migration**

The legal framework on legal and irregular migration is largely in place since the entry into force in March 2018 of the new Law on foreigners. It contains provisions on the entry, exit, movement, residence, rights and work of foreigners in Montenegro, but also on irregular stays, returns (including voluntary returns) and entry bans - thus aiming to align the legal framework with the EU acquis on both legal and irregular migration. Seven out of the 16 rulebooks (or secondary legislation), that are necessary for its implementation, were adopted during the reporting period.

Since autumn 2017, Montenegro has been increasingly affected by migration along the so-called "coastal route" (Albania-Montenegro-Bosnia and Herzegovina). The Montenegrin authorities apprehended 3519 migrants between January and September 2018 (a 415% increase compared to the whole year 2017). The country is planning to increase its reception capacities, with the financial support of the EU, by creating a "transit centre" in Božaj, close to the Albanian border, to accommodate first-entry migrants and migrants willing to lodge an asylum request in Montenegro. As a temporary solution, the establishment of a container settlement is planned on the same site. In both cases, the legal status of the facility still needs

to be clarified, as different standards will need to be applied depending on whether the centre is a closed facility for the reception of irregular migrants or an open centre for registered asylum seekers. Setting up an electronic finger-print registration system at the border would substantially improve collection, management and sharing of migration data.

According to the Montenegrin authorities, the Readmission Agreements with neighbouring countries continued to be implemented satisfactorily, except with Albania. Despite the fact that irregular migrants enter Montenegro mainly through the Albanian-Montenegrin border, Montenegro reports that Albania's acceptance rate for readmission requests from Montenegro is very low: in the period January-September 2018 Montenegro reported that only 14 people were readmitted by Albania, out of 159 requests (under both the regular and the accelerated procedures). This creates an additional challenge for Montenegro's reception capacity, as, on the outward side of the migration route, the country smoothly fulfils its readmission obligations vis-à-vis Bosnia and Herzegovina. Montenegro accepted 471 migrants from neighbouring countries during the reporting period, including 455 from Bosnia and Herzegovina.

The Readmission Agreement with the EU, and its Implementing Protocols with 13 EU Member States, continued to be implemented smoothly, with a return rate for Montenegrin nationals higher than 100% in 2016 and 2017<sup>1</sup> and relatively low absolute numbers (730 return decisions issued towards Montenegrin nationals in 2017). According to Montenegrin national statistics, all readmission requests sent by EU Member States between January and June 2018 concerning Montenegrin citizens (230 cases) were accepted. 92% of these requests came from Germany. As regards EU readmission requests for third-country nationals, refused requests mostly concern citizens from the Roma community with an invalid passport from the former Yugoslavia, for which the evidence of stay in Montenegro prior to their departure to an EU Member State is not recognised by Montenegro.

## Asylum

The Law on asylum entered into force on 1 January 2018, aiming to align the asylum legal framework with the EU *acquis*. All six rulebooks (or secondary legislation) that are necessary for its implementation, were adopted. The Ministry of Education is preparing a Montenegrin language and culture course module for refugees. An information document for asylum seekers in Montenegro has been developed, with EU and UNHCR support, and translated into seven languages. The brochure on "rights and obligations of beneficiaries of international protection" is yet to be published.

Despite the adoption of the law on asylum and its rulebooks, the standards and procedures as set up by the law have not been fully translated yet into administrative procedures or measures taken by relevant public bodies. The main stakeholders, including the Border Police, the Asylum Directorate, the Ministries of Education, Health and Labour and the Administrative Court, still have to assess the changes that need to be introduced into their practices to match the new legal standards on registration, status determination, integration policy and appeal procedures. There is still a need for capacity building and training of staff for these public bodies, to build a sense of ownership of the law amongst the practitioners.

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<sup>1</sup> For the calculation of the return rate, the amount of returnees in a given year is compared to the amount of return orders in that same year. A return rate higher than 100% indicates that the country is effectively catching up on a backlog from previous years.

As the majority of detected irregular migrants requested asylum, the upward trend in arrivals of irregular migrants was reflected in a proportional increase in asylum requests, with 2,605 asylum requests lodged between January and September 2018 – a 300% increase compared to the whole year 2017. Requests from Syrians, Pakistanis, Algerians, Iraqis and Moroccans together made up 85% of all requests. In 99,5% of the processed cases, the applicant subsequently absconded. Out of the remaining applicants (10 people), four were granted international protection (or 40% of applicants). This brings the total number of people under international protection in Montenegro to 36. The Administrative Court, which is now in charge of the asylum appeal procedure under the new asylum law, processed 13 appeals against negative decisions of the Asylum Office. However, in seven cases, the applicants also absconded before the end of the appeal procedure.

The reception capacity of the centre for asylum seekers in Spuz will be increased from 80 to 104 beds by establishing a container settlement in the courtyard of the centre. The alternative reception facility in Konik is still in use (200 beds). Between January and September 2018, 3153 people were accommodated in these facilities (including 180 women and 263 children), but in most cases only for a couple of days, considering the high number of absconding migrants.

## **Visa**

Montenegro added Georgia to the list of countries benefiting from visa free regime in Montenegro. There are now 23 countries on the list of countries benefiting from short-stay visa-free regime with the Schengen area for which short-term stay visa requirements are equally cancelled by Montenegro.

In addition, Montenegro exempts nationals from Russia, Armenia, Kazakhstan, Azerbaijan, Belarus, Cuba, Ecuador, Kuwait and Turkey from visa requirements for short-term stays – in some cases only on a seasonal basis, mainly for tourism purposes, despite the fact that seasonal visa exemption measures are not in line with the EU *acquis*. All of these countries are on the EU list of countries whose citizens require a visa for the EU.

There are now 24 consular missions of Montenegro connected to the national visa information system. Montenegro continued to implement relevant measures to prevent the abuse of the visa-free regime with the EU, in the framework of the post-visa-liberalisation process, and reported on it on a monthly basis.

## **External Borders and Schengen**

Montenegro continued to strengthen its capacity in border management via numerous training activities, TAIEX support, purchase of equipment and vehicles. The mobile unit is now operational. The capacity to detect forged documents and smuggled drugs has improved, which is reflected in a stronger track record. The installation of cameras at border crossing points, a corruption preventive measure, is ongoing. 234 illegal border crossings were prevented from January to June 2018.

The material and human resources in the border police remain nevertheless insufficient to cope with the challenges. Montenegro's temporary response in August 2018 was to deploy military personnel in support to the border police for patrolling on the Montenegrin-Albanian border, the main entry point for irregular migration.

The land and sea border surveillance remains a matter of concern. The Adriatic Sea is a high-risk zone for cross-border crime, in particular drug and cigarette smuggling. There is a need for Montenegro to enhance its cooperation with other Adriatic Sea countries in an institutionalised way. A National Coordination Centre (NCC), a key measure to improve the overall situational awareness and reaction capability, can only be formally set up after the adoption of the Law on internal affairs, which is currently on hold. However in the meantime technical and materiel preparation for the NCC are already ongoing.

Between January and May 2018, Montenegro continued to conduct joint patrols with all neighbouring countries, except Croatia. The cooperation with the neighbouring countries on joint local border traffic continued to progress smoothly, with a new joint border crossing point opened with Albania in July (Ckla-Zogai), various protocols and agreements being signed and others being in preparation. Border cooperation with Serbia progressed significantly with the signature, in August, of nine bilateral agreements, concerning several international border crossing points and joint border crossing points. There is no progress, however, on the demolition of the 87 cross-border alternative roads with Serbia.

As regards the Status Agreement with the EU on European Border and Coast Guard Agency, an agreement on the text at technical level was reached in October 2018.

### **Judicial cooperation in civil and criminal matters**

The draft Law on judicial cooperation with EU Member States on criminal matters was adopted by the government in September 2018. It aims to transpose an important number of EU *acquis* instruments into domestic legislation and to improve the efficiency of mutual legal assistance in criminal matters. However, it will need to be further amended at a later stage to transpose some recent or forthcoming EU *acquis* instruments (e.g. Eurojust, ECRIS, European Public Prosecutor's office and provisions on the Joint Investigation Teams). The draft Law on judicial cooperation with EU Member States on criminal matters will enter into force only upon Montenegro's accession to the EU.

Luris, the electronic case management system for judicial cooperation, which was installed at the Ministry of Justice in 2015, functions as a monitoring tool of trends in judicial cooperation. Both in criminal and civil matters, Montenegro's judicial cooperation is primarily with Western Balkans countries and EU Member States. On criminal matters, Montenegro receives the highest number of request from Western Balkans countries (326 requests in 2017), in majority extradition requests and requests for transfer of criminal proceedings.

A training plan for Montenegrin judges and prosecutors was adopted and is being implemented, with the technical support of the EU. In addition English language courses continue to be provided to judges and prosecutors. Yet the needs of capacity building remain important.

The nomination of a Montenegrin liaison prosecutor in Eurojust in September 2017 brought positive results. From the 1 January 2018 to October 2018 Montenegro has been involved in 16 registered cases. As requesting country, the Liaison Prosecutor of Montenegro opened and registered five operational cases at Eurojust and, as a requested country, Montenegro has been involved in 11 cases (ten being operational cases and one being a general case registered by

the College of Eurojust). This nomination also raises the awareness of Montenegrin prosecutors on the relevance to cooperate with their peers through Eurojust.

Following the signature of a Memorandum of Understanding in September 2018, Montenegro now participates in the EU Justice programme. Montenegrin private and public organisations can take part in EU funded projects on judicial cooperation in a number of crucial areas where institutional capacity must be further strengthened.

### **Fight against organised crime**

The draft Law on internal affairs, which is expected to introduce a merit-based recruitment, evaluation and promotion system in the police sector, is finalised. However, its adoption is put on hold until the adoption of the new Law on state administration, designed to simplify and rationalise the public administration system. Under the new law, "directorates" that are currently under certain ministries (such as the Police Directorate under the Ministry of the Interior) could have their institutional setting changed and acquire more administrative independence.

The staff of the Special Police Unit (SPU), dealing with high-profile organised crime, was increased by 50% up to 30 staff members. Also, the SPO was strengthened by two additional special prosecutors. In total 34 out of 37 posts in the SPO are currently filled. A decision is being prepared to improve the housing situation of the SPO.

At national level, law-enforcement agencies have now a secure channel of communication with key state institutions, which allows a quicker and safer exchange of data during investigations. However, the existing national police databases are still not inter-operable and have no single search feature. Many databases have insufficient data and need to be updated, for example the national cadastre.

According to the national SOCTA for 2018-2019 (Serious and Organised Crime Threat Assessment), the number of organised criminal groups in Montenegro was reduced from twenty to eleven since 2013. Yet the fight between organised crime groups, including gangs-related murders, continued during the first half of 2018. Five organised crime groups' members were arrested, including the leader of one of the most prominent gangs. Between October 2017 and August 2018, 182 people were prosecuted for charges related to organised crime; 15 serious and violent crimes were prevented.

Montenegro continued to develop its *international police cooperation* with EU Member States - a key element in the fight against Montenegrin organised crime groups, as most of their members live and operate abroad. This was illustrated by high-profile operations that led to important drug seizures and the arrest of Montenegrin crime groups' members, either in Montenegro or abroad, thanks to a good cooperation with the police services of Bulgaria, France, Greece, Italy and the UK. Investigations on prominent cases are on-going with other Member States as well. The cooperation with EU-funded projects in this area is optimal and brings results. Montenegro cooperates closely with INTERPOL and EUROPOL (JITs), and takes part in Analytical Work Programmes (e.g. "Smoke", "Cannabis", "Cola", "Sustrans" and "Travellers").

As regards the automated exchange of DNA, dactyloscopic and vehicle registration data, Montenegro's recent membership in the EU ISA<sup>2</sup> Programme (Interoperability Solutions for

European Public Administrations, businesses and citizens) will allow Montenegro to benefit from the interoperability solutions developed under the ISA<sup>2</sup> programme and develop an automated exchange system.

In the fight against *tobacco smuggling*, the police made important seizures of smuggled cigarettes (for a total value exceeding 10 million euros) in three different cases involving dozens of legal entities and people. In one case, seven customs officials from Bar were arrested. Montenegro remains an important source of counterfeit and contraband cigarettes headed for the EU.

Amendments to the Law on the prevention of *money laundering* and terrorism financing were adopted in June 2018, with a view to align with international standards and with the EU *acquis*<sup>2</sup>. Seven investigations have been launched since 2017, in which money-laundering is being prosecuted as a stand-alone crime – a long-standing policy recommendation. Progress in police cooperation with EU Member States (e.g. Cyprus) has substantially raised the efficiency of investigations conducted in this area.

There was a surge in *financial investigations* in 2017 (18 financial investigations were launched in relation to organised crime, compared to one in 2016); the trend was confirmed in the first half of 2018, with seven new financial investigations launched. This remains, however, much fewer than the overall number of criminal investigations, as financial investigations are still not launched systematically at the beginning of each investigation. An amendment to the Law on seizure and confiscation of assets is being prepared based on EU experts recommendations, under which the launch of financial investigations would become less stringent. Training and capacity building for judges, prosecutors and investigators on financial investigations continued.

Temporary *asset confiscation* carried out in 2018 included real estate, yachts, luxury cars and more than 63 million euros of funds, affecting more than one hundred legal entities. Plea bargains continue to be used as a tool to increase the level of confiscations, leading to milder sentences in some organised crime cases.

By the end of September 2018, there had been no progress on investigation, prosecution and conviction of *trafficking in human beings*. Detailed recommendations from a TAIEX expert mission report delivered in May 2018 have not been implemented.

Montenegro continued to implement the activities planned in the Action Plan on *illicit trafficking on firearms* between the EU and the South East Europe region (through participation in international projects and meetings, data exchange). The national focal point on firearms is still to be appointed. No staff increase has occurred in this area. Important seizures of arms took place between October 2017 and August 2018. More than 330 pieces of firearms of different models and calibre, 462 pieces of various types of explosives (hand grenades, explosive devices, detonators, dynamite), 10 kg of explosives, one pack of TNT and over 10000 pieces of ammunition of different calibres were seized.

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<sup>2</sup> See Chapter 4 (prevention of Money Laundering)

## **Co-operation in the field of drugs**

The cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), including capacity building activities, continued in 2018. Yet, the National Drug Observatory of Montenegro is not ready yet to participate as a full member of the EMCDDA. It is currently understaffed and has a reduced budget autonomy. There was little progress made to develop the national drug information system (NDIS) in accordance with the EU/EMCDDA standards and protocols. Despite a good technical and scientific capacity in the different institutions dealing with drug-related issues, data collection on drugs remains fragmented and not centralised. As regards the National Early Warning System on new psychoactive substances, its deficiencies have not been addressed, in particular its insufficient operational character, insufficient procedures, the insufficient involvement of law enforcement and health authorities, and the under-resourced coordination functions.

On the law-enforcement side, the anti-drug Division of the Police Directorate investigated eight high-profile cases in the first nine months of 2018, including three international cases. Criminal charges against 202 people were brought forward since the beginning of 2018 for offences relating to drug smuggling. Drug seizures accounted for three tons from January to September 2018.

## **Fight against terrorism, anti-radicalisation**

Montenegro adopted amendments to the Law on international restrictive measures in July 2018 to comply with MONEYVAL recommendations. Further to the EU high-level counter-terrorism visit in May 2018, Montenegro still needs to appoint a national coordinator on counter terrorism. Montenegro signed in October 2018 the joint Action Plan on Counter-Terrorism for the Western Balkans, at the occasion of the Justice and Home Affairs Ministerial in Tirana. It will set out specific steps for enhanced cooperation in countering terrorism, including on money laundering and terrorism financing, and preventing radicalisation over the next two years. Three investigations into cases of terrorism financing are currently on-going.