

EU-MONTENEGRO
STABILISATION AND ASSOCIATION AGREEMENT
4TH MEETING OF THE SUB-COMMITTEE ON JUSTICE, FREEDOM AND SECURITY

Podgorica, 4-5 February 2014
Venue: Jovana Tomasevića Street 2, Podgorica

1. Opening of the session and summary

The EU delegation recalled the importance for the authorities to strike a good balance between a timely implementation of the measures contained in the action plans, and their compliance with EU standards and best practises. The EU delegation will follow-up on the various issues mentioned during the meeting, including through the organisation of peer reviews taking place in March (judiciary; fight against organised crime and corruption) and April (fundamental rights, fight against drugs).

MNE highlighted the most important achievements since the last subcommittee was held: the opening of the reception centre for asylum seekers and that for irregular migrants; the adoption of the law on child and social protection and on the side of the track record, the increase in drugs seizure. MNE informed that the working groups on chapters 23 and 24 are now preparing the second monitoring report; the dialogue in the occasion of the subcommittee will be the basis to guide the implementation of the action plans and report accordingly. MNE stated that the key issues included in 2014 reform plans in the area of rule of law are: the establishment of a special prosecutor's office (for organised crime and corruption); the implementation of the newly adopted integrated border management strategy for the period 2014-2018; the signature of the operational agreement with Europol and the amendments to the criminal procedure code.

2. Details of the discussion

2.1 Chapter 23 – Judiciary and Fundamental Rights

Judicial reform

In the area of judicial reform implementation of reforms in accordance with the timelines foreseen in the Action Plan is overall well on track.

With regard to the independence and impartiality of the judiciary, the EU delegation welcomed the adoption of the constitutional amendments last summer. They are an important basis for strengthening the independence and professionalism of the judiciary. Now efforts need to focus on their effective implementation - in line with the Venice Commission recommendations and European standards and best practice. Regarding the state of play of selection and appointment procedures for high level judicial officials, MNE informed that the Prosecutorial Council had been promulgated in full composition and that to complete the establishment of the new Judicial Council the four members among prominent jurists remain to be elected by parliament. After parliament failed at the end of December 2013 to elect the

proposed candidate for the Supreme State Prosecutor in the first round of voting, the date for the second round is about to be scheduled by parliament. The Judicial Strategy for the period 2014-2018 is currently being finalised and planned to be adopted in the first quarter of 2014. In parallel the related Action Plan is being developed. Concerning the implementation of the Law on Misdemeanours of 2010 with regard to the foreseen transfer of responsibilities for conducting misdemeanour proceedings to courts and changes to the legal framework for the appointment of misdemeanour judges, MNE plans to regulate this in the framework of the next set of amendments to the Law on Courts. MNE assured that all court judgements are being published with a maximum of 1-2 days of delay. MNE noted that in 2013 there have been no cases of transfer of a judge to another court of a higher instance. MNE was also not aware of cases in which judges presided over the same cases through several instances.

Regarding accountability of the judiciary the EU delegation stressed that further reforms should focus on revising the disciplinary system and on effectively enforcing ethical rules. This should also include the application of proportionate and dissuasive sanctions. The EU delegation also noted the importance of raising citizens' awareness of existing complaint mechanisms and of ensuring that complaints are effectively followed up. MNE informed that during the reporting period no request for lifting the immunity of a magistrate was made.

Concerning efficiency and professionalism of the judiciary, the EU delegation positively noted the substantial decrease of the backlog of court cases older than one year during 2013. Given that nevertheless in 2013 the total backlog of cases has slightly increased, the EU delegation pointed to the need to ensure that reforms to increase the efficiency of the judiciary will enable the system to eliminate the remaining backlog, while at the same time coping with the influx of new cases. MNE informed that in order to encourage judges to apply for temporary transfer (up to one year) to another court financial incentives are in place (salary bonus of EUR 500 plus costs for housing, transport, food). Regarding the state of implementation of the new enforcement system, MNE informed that 13 bailiffs had been appointed and started establishing their offices. The EU delegation also stressed the need for Montenegro to develop comprehensive and reliable judicial statistics in line with the guidelines of the European Commission for the Efficiency of Justice (CEPEJ). MNE explained that PRIS already covers most indicators and that the remaining ones are planned to be incorporated in the course of 2014.

The EU delegation stressed the importance for Montenegro to ensure domestic handling of war crimes in line with international humanitarian law and the ICTY jurisprudence and to cooperate with prosecution and police in the region as well as with the ICTY. MNE informed that regional cooperation on war crimes cases is based on agreements on exchange of information and evidence.

Anti-corruption

As regards the fight against corruption, the EU delegation noted with concern that in this area several important commitments made in the Action Plan have not been met. These concern in particular the adoption of key legislation (amendments to the Law on political party and electoral campaign financing, the Law on public procurement, the Law on lobbying; the law on prevention of conflict of interest, adoption of the Law on general administrative procedure as well as of the Code of Ethics of MPs). The MNE side explained that some of these delays are due to long procedures at all levels as well as in Parliament. The MNE side explained that great efforts are invested in development of drafts of these laws, especially with regard to fulfilment of measures and indicators set in the AP 23. The MNE side also informed the EU delegation in which stage of development is every single law. The EU delegation underlined

that it is an essential feature of democracies that political parties arrive at finding a compromise that serves the general interest and that the adoption of ambitious legislation would send a strong political message. MNE informed that adoption by parliament of the amendments to the Law on political party financing was planned for the following week. Adoption of the Law on public procurement is planned for the first quarter of 2014.

Regarding preparations for the establishment of the Anti-Corruption Agency, MNE informed that the draft Law is planned to be adopted by the government by the end of May. The EU delegation underlined the importance of independence of the new agency, including both management and staff, and of the agency's connection to other relevant institutions and databases. The EU delegation also stressed that until the start of operation of the new agency, capacities of the current oversight bodies in the area of prevention of corruption need to be strengthened.

The EU delegation highlighted that so far track records in preventing and fighting corruption are not convincing (on detected cases of conflict of interest, infringements with regard to asset declarations, sanctioning of breaches of the Law on political party financing, complaints related to behaviour of public officials as well as investigations and prosecutions of high level corruption cases). MNE informed that the special prosecution had initiated preliminary investigations for several cases of high level corruption. MNE informed that the draft Law on the new Special Prosecution was almost ready and that they are looking for adequate premises for the new office. IT experts are working on software solutions to link the new Special Prosecutor's Office to relevant databases and on a safe communication system.

Fundamental rights

On fundamental rights, the EU delegation noted that the most urgent activities to complete and bring the action plan up to speed is the adoption of the following laws: the law on anti-discrimination, the law on the ombudsman and the law on enforcement of prison sentences.

As regards the *general human rights framework and anti-discrimination*, the EU delegation welcomed the further alignment of Montenegro with norms and practice stemming from international conventions. The need to respect judgements of the European Court of Human Rights was also recalled. MNE informed that amendments to the law on anti-discrimination and the Law on the Ombudsman have been sent to the Parliament. On the latter, amendments have been made to better define the competences of the Protector as the National Preventive Mechanism for Torture and Ill-treatment; to, further strengthen its independence and autonomy, define the work positions and relevant salary categories, as well as to ensure an increase level of financial independence of this institution. Both laws are likely to be adopted at the Plenary in March.

As regards the strengthening of the capacities of the Ombudsman, MNE informed that it is currently improving the status and working method of the National Preventive Mechanism and drawing a program of visits to identified institutions. In the course of 2014 secondary legislation to the Ombudsman law will be drafted. The employment of new staff has been postponed to 2014 due to budget restrictions.

In the area of women's rights, the EU delegation stressed that violence against women and domestic violence remains a serious concern and ask the concrete steps undertaken to implement Istanbul Convention, ratified in March 2013. MNE replied that various measures to implement this convention are included in the plan on gender equality. Among the measures, the establishment of a unified country database to record cases of violence against

women is foreseen in 2014. MNE also informed the EU delegation that the gender equality committee of the Parliament continued to exercise its oversight function on domestic violence, by organizing control hearing of relevant institutions. The committee has commissioned a report on the situation of domestic violence in the country; it will be presented in February.

On the fight against discrimination against persons with disabilities, MNE informed that a plan to implement the new provisions of the law on spatial planning has been developed, to facilitate access to buildings.

On the *prevention of torture and ill-treatment*, and on *prison system*, the EU delegation welcomed the implementation of the three urgent recommendations from Council of Europe's Committee for the prevention of torture (CPT), following its visit last year and enquired on the visit's follow-up. MNE stated that the reply to the draft report of CPT will be finalised in the course of February. MNE explained that the new Law on execution of criminal sentences will be adopted in the course of 2014. MNE informed the EU delegation that a probation service has been established in the Ministry of Justice. In parallel, the service is signing memoranda of understanding with the municipalities. Cooperation has been already established with the city of Podgorica. As regards the detention centre in Bijelo Polje, MNE recalled that in 2013 the renovation of the short term sentence area has been completed, however, the prison still lacks appropriate medical and rehabilitation services and there are plans to work in this direction in 2014. MNE admitted that a proper risk assessment related to the new amnesty law was not conducted, due to the lack of time between the moment the law has entered the parliament and its adoption. It was clarified that this was an initiative entirely in the hands of the Parliament itself.

On *media freedom*, the EU delegation strongly condemned the recent cases of attacks against journalists and the overall surge of cases since this summer. The EU delegation stressed the expectation that the authorities investigate and prosecute without delays the perpetrators of these attacks, as well as of the earlier ones, all equally serious and unacceptable. The EU delegation welcomed the establishment of the ad-hoc commission to investigate these cases. MNE replied that both judicial and law enforcement authorities are working intensively to solve these cases and prevent future ones, including by preparing a risk analysis on preventive measures and monitor possible targets. A working team has been established to continue the investigation on some 'core' serious cases.

The EU delegation recalled that Montenegro continued to ensure the *rights of persons belonging to minorities*. It took note, however, that discrimination related to Roma still persists. MNE reported on the measures undertaken to reduce Roma's discrimination, especially on school and education, but also on employment. As regards the continuation of the works to phase out Konik camp, MNE mentioned that the issues related to electricity and water have been solved; a draft design of the new apartments to be built has been completed and activities continued with a view to get construction permits as soon as possible.

Regarding *data protection*, the EU delegation enquired on the implementation of the relevant law, and on the measures to reinforce the agency. MNE reported that trainings are conducted to implement ECtHR rulings in this area; the agency will be provided with additional staff in the forthcoming period. As regards the decision of the Data Protection Agency to remove certain data of the tax administration from its public website, MNE replied that the key issue there was the publication of the unique master citizenship number in internet; they should not

be available. According to the law on free access to information, these data can be in any case be obtained. MNE reassured that this does not have repercussions on the fight against corruption and organised crime.

2.2 Chapter 24 – Justice, Freedom and Security

As regards the areas covered under chapter 24, the EU delegation noted that the action plan is overall on track while some key activities have still to be completed: the preparation for the establishment of a secure communication network between the prosecution and the law enforcement agencies, and the overall analysis of the bodies in charge for the fight against organized crime and corruption. The EU delegation also stressed that bilateral activities with the neighbouring countries in the area of border control are proceeding slowly, both in terms of legal alignment and practical cooperation.

Judicial cooperation

On judicial cooperation, the EU delegation welcomed the adoption of the law on international private law and the law on mutual legal assistance in criminal matters, steps forward in the approximation to European standards in this area. The Commission is currently examining the drafts. MNE informed that it is planned to hire international experts to implement such laws in the course of 2014. As regards bilateral agreements, MNE stated that the package of agreements with Italy has been ratified by Montenegro. It is expected completion of ratification process in Italy, after which these agreements will enter into force. The agreement with FYROM signed in November 2013 will be ratified soon. Negotiations are ongoing aiming at signing the agreement on judicial cooperation with Kosovo* and with Turkey in the course of 2014.

A working group with representatives of the Ministry of Interior, Ministry of Justice, Supreme State Prosecutor's Office and of the Data protection and free access to information agency has been formed to address Eurojust recommendations, following the visit in 2013. In order to meet the mentioned recommendations, Montenegro stated that 1/ it was prepared a protocol on cooperation between the Supreme State Prosecutor's Office and the Data protection and free access to information agency; 2/ trainings are being delivered to the prosecution office, partly funded by EU, on the law on data protection; 3/ secondary legislation to the above mentioned law is prepared, based on the Croatian experience.

Drug prevention, demand and supply reduction

The EU delegation took note of the adoption of the strategy of Montenegro for the prevention of drug abuse for the period 2013-2020, setting up priorities similar to those of the EU drugs strategy. MNE replied describing some of the measures of the accompanying action plan (for 2013) implemented during the reporting period, such as 1/ preventive ones, to promote the level of awareness and informing of youth about the harmful consequences of drug use, including by cooperating with schools and offices for prevention at local level; 2/ the strengthening of cooperation with EMCDDA through participation at their trainings (Reitox Academy). As regards the supply reduction, MNE commented that the border with Albania remains sensitive to drug trafficking. In view of reinforcing the security of Bar Harbour, an ad-hoc working group was established and prepared a risk analysis. As regards the remaining parts of the blue border and the risk for drug trafficking, MNE declared that there is no evidence or intelligence information leading in this direction.

Police cooperation, fight against organised crime

The EU delegation took note of the additional steps undertaken towards the signature of the operational agreement with Europol, which is now within reach, and encouraged Montenegro to continue its cooperation with the agency. MNE replied that the draft operational agreement has been finalized by the Montenegrin side and it is likely to be signed in the second part of 2014. A liaison officer will be posted to The Hague after that.

The EU delegation stated that organised crime remains a serious issue in Montenegro and that the track record on investigations and prosecutions on most complex crimes and on financial investigations is rather limited. MNE informed the EU delegation that the police is undergoing an internal reorganization, including to establish separate offices on economic crimes; on trafficking in human beings; on cybercrime and on anti-terrorism. A total of 16 investigations lead in the course of 2013 to seizure/confiscation of assets. Amendments to the law on internal affair will be completed in the course of 2014. Enquired on the Criminal Procedure Code amendments, MNE informed that the relevant working group finalised its analysis aiming at starting the drafting process early in 2014. As regards the issue of possible interference of the Minister in the activity of the police, with regards to the law on interior affairs, MNE clarified that the relevant articles 42 and 43 of the law, on data collection, are commonly used also in other EU countries and aligned with the Criminal code provisions.

The EU delegation welcomed the amendments of the criminal code, further aligning the national framework with international standards in the area of **anti-money laundering**. MNE explained that a draft new law is being finalized; also the most recent acquis developments (4th Directive) will be taken into account. New provisions will better define suspicious transactions; will increase bank obligations and focus more on 'interesting clients' and strengthen the coordination between the AML administration, police and prosecution. MNE informed on the difficulties experienced by the AML administration in relation to high turnover of staff.

The EU delegation stressed that **trafficking in human being** remains of concern in Montenegro, for the low number of victims identified and the few criminal cases prosecuted. The EU delegation commented that a multidisciplinary approach, victim-oriented, is still to be developed. Montenegro replied that in order to improve cooperation and multisectoral action in detecting and prosecuting cases of human trafficking and providing assistance and protection to victims and potential victims of human trafficking, in October 2013 was signed an agreement on mutual cooperation of state institutions and six non-governmental organizations. In the course of 2014 it is planned to conclude bilateral protocols on cooperation in the field of fight against trafficking in human beings with the countries in the region – Kosovo*, Albania and Serbia.

Asylum and migration

The EU delegation welcomed the opening of the centre for foreigners and of the reception centre for asylum seekers, as further steps toward establishing a modern and efficient system to manage mixed migrations. On asylum, MNE stated that they received 3554 applications in 2013 and already 69 applications in January this year. Although most proceedings are suspended as asylum seekers leave, 2 more cases were granted protection at the beginning of 2014 upon asylum applications that were submitted in the fourth quarter of 2013. The Asylum

directorate received additional staff, and benefited from a broad range of trainings. Preparations have started to adopt a new asylum law in 2015. MNE informed that very soon the first group of asylum seekers will move to the new Centre, once the procurement procedure for the assignment of performing tasks of physical and technical protection of property and persons in the Centre is finalised. On migration, the new Centre is fully operational. A plan in case of influx of migrants has been developed.

Border management and visa policy, including post-visa liberalisation monitoring

The EU delegation took note of the new law on border control, aiming at further aligning with the EU *acquis*, and requested an update on the main activities implemented under the current IBM strategy for the period 2013-2016. The EU delegation highlighted that efforts are needed in particular to modernise borders' equipment and premises, but also to increase the capacities of the police and facilitate inter-agency cooperation. MNE replied that the aim of these amendments was to align with the EU border procedures but still additional amendments will be needed to reach the full alignment with the *acquis*. Following an EU expert mission the IBM strategy is being renovated to comply with the EU model.

MNE informed that a risk analysis forms the basis for the blue and green border surveillance: modernisation of equipment will continue throughout 2014.

Overall, the EU delegation noted that activities with the neighbouring countries in the area of border control are proceeding slowly, both in terms of legal alignment and practical cooperation. MNE informed that visa issued at the border continued to decrease. As regards the visa liberalisation post-monitoring mechanism, the EU delegation recalled that efforts should continue to properly implement all the obligations arising from the visa liberalisation roadmap and to counteract the cases of visa-free regime abuse in the EU and Schengen Associated Member States.

Fight against terrorism

MNE informed that amendments of law on dangerous substances and on weapons are being prepared, as well as a threat analysis on antiterrorism. Works on upgrading arms storages will continue in the course of the year, including on a location in [REDACTED] so far 57% of the surplus on ordinance arms has been already destroyed. On foreign fighters, MNE is aware and closely monitoring the situation but so far the country has not been identified as a transit area.

2.3 Other issues, under AOB

MNE stated that in order to further improve the quality of monitoring and implementing the Action Plans in Chapters 23 and 24, changes will be introduced in the structures of the two working groups. These aim at strengthening the internal co-ordination and to make a better link with the political level (especially as regards the adoption of laws that are delayed).

The EU delegation stated that a set of Peer Review missions to Montenegro, to take place in spring 2014, is being prepared. The findings of these missions will feed into the assessment of progress made over the last year in the areas covered, in particular with a view to the preparation of the 2014 Progress Report. These Peer Review missions are an important part of

the monitoring of the implementation of the Action Plans and of progress made in meeting the interim benchmarks set in the EU Common Position, including with regard to the development of track records in key areas such as organised crime and corruption.

For the Government of Montenegro

For the European Commission
