

EU-MONTENEGRO

STABILISATION AND ASSOCIATION AGREEMENT

2ND MEETING OF THE SUB-COMMITTEE ON JUSTICE, FREEDOM AND SECURITY

Brussels, 12 April 2011

Venue: Berlaymont, conference room Schuman

MINUTES

1. Opening - Adoption of the agenda

The second EU-Montenegro Sub-Committee on Justice, Freedom and Security since the entry into force of the Stabilisation and Association Agreement took place in Brussels on 12 April 2011. Prior to the meeting, the Montenegrin authorities submitted a detailed contribution on recent developments in the area of justice, freedom and security for each item of the agenda, as requested by the Commission. The chairmen of the Montenegrin Delegation and the Commission panel agreed to conduct the meeting according to the agenda submitted prior to the sub-committee by the Commission services.

2. Judicial reform

2.1. Independence

The Montenegrin Delegation provided an update as regards the foreseen sub-constitutional changes to strengthen judicial independence, in particular on the scope of the amendments to the laws on Judicial Council, on Courts and on Public Prosecution Office. Work has started in the meantime concerning constitutional amendments. The Venice Commission will be consulted on the draft constitutional amendments currently prepared by the Ministry of Justice before their submission to the Parliament. Upon a question of the Commission, the Montenegrin Delegation informed that the sub-constitutional amendments would not wait for the adoption of the constitutional amendments. It is expected that the Government will adopt these within 2 weeks and then submit them for enactment by the Parliament. The Montenegrin Delegation stressed that the amendments foreseen to the law on Judicial council foresee *inter alia* that one member of the Judicial Council will be elected among the judges of basic courts and that the Judicial Council will be involved in the election of the president of the Supreme court who is also President of the Judicial Council (by proposing three candidates), thus involving the judicial power in the election of the President of the Supreme Court. The mandate of the Chairman of the Supreme Court is five years.

In reply to a Commission's question, the Montenegrin Delegation explained that state prosecutors are appointed for 5 years by the Parliament, while deputy prosecutors are appointed for life. It is under discussion to amend the Constitutional provisions related to the appointment of prosecutors. An increase in the number of deputy prosecutors is foreseen in September 2011 (i.e. after the full entry into force of the Criminal Procedure Code). Upon question of the Commission, the Montenegrin Delegation also detailed the procedure for appointment of judges, which includes obligatory anonymous tests, written exams and interviews. The foreseen legislative amendments will allow for additional criteria. The Commission stressed the need for transparent procedures and clear criteria for appointment

and promotion of magistrates, and for reinforcement of the merit-based career system. The Commission suggested TAIEX study visits to Member States to learn from their experience in this matter.

2.2. Efficiency and professionalism

In reply to a Commission question, the Montenegrin Delegation provided information on the foreseen measures to rationalise the judicial network. Final decisions on the foreseen reorganisation of the courts network and specialisation are foreseen for 2012. The Commission noted that although the country counts a high number of judges, there is also a high case-load. It expressed concern with regard to the exceeding length of court proceedings, surpassing 3 years and stressed the need to intensify efforts to remedy this trend. The Montenegrin Delegation informed that measures were undertaken in this direction. It was agreed that the Montenegrin authorities will provide the Commission with more detailed information on the duration of proceedings, the number of unresolved cases, and the number of cases resolved at first instance and in appeal. The Commission stressed the need for reliable and consistent data on court cases.

The Montenegrin Delegation provided an update on the implementation of ongoing projects supporting the Judicial training centre. Equipment has been purchased and training activities are being undertaken. The Montenegrin Delegation expressed satisfaction with the cooperation with Member states involved in this project.

The Commission informed that a rule of law peer-review mission will take place in the week of 6-10 June, covering *inter alia* judicial efficiency.

2.3. Accountability

In reply to a Commission question, the Montenegrin Delegation provided an update on the establishment of a Commission for monitoring implementation of the Code of Ethics for judges and prosecutors. An update on the number of disciplinary proceedings initiated by the Judicial Council and the number of criminal proceedings against judges was also provided. In 2008, six disciplinary hearings were initiated, sanctions comprised fines or admonitions. Since the existence of the Judicial Council, 10 procedures were initiated for removal of judges for office. Three judges have been removed from office for negligence and neglect of duty, one judge for involvement in corruption. One judge has been imprisoned.

3. Anti-corruption policy

The Montenegrin Delegation provided a brief presentation on recent developments in the area of anti-corruption. A national working group has been set up consisting of representatives from line ministries and two NGOs for drafting the new law on financing of political parties. The first report on the implementation of measures contained in the Action Plan for the fight against corruption and organised crime (2010-2012) has been adopted and translation is currently being finalised. The software for data processing is in place, administrators will be trained how to operate the system. In the last 15 days, two analyses of the electoral campaigns have been submitted to the Government. In close cooperation with UNDP, DACI is developing a risk assessment of particularly sensitive areas.

Upon question of the Commission, the Montenegrin Delegation provided an update on the investigation of high-level corruption cases. It informed that criminal proceedings were

initiated against 22 individuals for corruption, however none of them was imprisoned. Upon questions of the Commission, the Montenegrin Delegation informed that there are no cases where extended confiscation was adjudicated for corruption. Nonetheless, a small amount of counterfeit products was seized in organised crimes cases. As regards financial investigations, the Montenegrin Delegation informed that these are initiated upon a decision of the prosecutor or request of the police. The Commission noted with concern that the Financial Investigation Unit has not provided so far any report as regards established links on suspicious transactions related to corruption. The Commission announced that the Rule of Law peer-review mission will also look into financial investigations and at the cooperation between different law enforcement bodies.

The Commission stressed the need for high-quality legislative amendments and solid track record in the areas of conflict of interest, asset declarations checks and financing of political parties. The Montenegrin Delegation informed that, following the recommendations addressed by the European Commission and GRECO, 37 amendments concerning anti-corruption legislation are under preparation. Clear provisions for gifts, network data, property checks and checks on salaries, and asset declarations are foreseen. The new legislative framework is to be prepared by the end of the second quarter of 2011. The new criminal procedure code is currently pending enactment by the Parliament. While work is in progress as regards the law amending the law on prevention of conflict of interest, a working group has been set up in March 2011 to prepare amendments to the law on financing of political parties, in line with GRECO recommendations. It was agreed, that the Commission will be consulted on both of the draft laws.

4. Co-operation in criminal and civil matters, fight against organised crime

4.1. Judicial cooperation in criminal and civil matters

Upon question of the Commission, the Montenegrin Delegation informed that draft laws on ratification of the Convention on taking evidence abroad in civil and commercial matters (18 March 1970) and the Convention on the submitting abroad judicial and extrajudicial documents in civil and commercial matters (15 November 1965) are in parliamentary procedure.

The Montenegrin Delegation also informed that an inter-ministerial working group comprising representatives of the Ministry of Justice and the Ministry of Labour and Social Welfare has been established with the task to analyse the need for ratification of the Convention on the protection of children and cooperation in the area of interstate adoption (29 May 1993), and the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (19 October 1996).

As regards the remaining Hague Conventions, no ratification is presently foreseen.

4.2. Police reform, including international police cooperation

The Montenegrin representatives informed that the police development strategy 2011-2013 and its action plan were respectively adopted in December 2010 and March 2011. Amendments to the Rulebook on internal organisation and systemisation of the national police, foreseeing *inter alia* an increase of the number of police officers dealing with investigation of corruption and organised crime, the establishment of an internal audit office

and an unit for undercover investigations, were also prepared in March 2011 and submitted to the Ministry of Interior. The Montenegrin Delegation informed that the unit for international police cooperation has been strengthened with 20 new staff members. A crime map has been produced, which has contributed to achieve significant results over the past three months in particular in the field of drug seizures. The Montenegrin representatives explained that major projects for strengthening the police are foreseen by 2013, such as the introduction of a TETRA system and three online services. However their implementation is conditioned on funding possibilities, as presently there are no available budget funds.

Upon question of the Commission, the Montenegrin Delegation informed that the law on internal affairs will be adopted by July 2011, while the secondary legislation by end of 2011. It was agreed that the Montenegrin authorities will send the draft law on internal affairs end of May/beginning of June 2011 to the Commission services so that it can be assessed in the light of the seven key priorities set out in the Opinion prior to the publication of the 2011 Progress Report. In reply to a Commission's question, the Montenegrin representatives informed that preparations are in progress as regards the conclusion of an operational agreement with Europol.

4.3. Fight against organised crime

The Montenegrin Delegation underlined that the new Criminal Procedure Code foresees strengthening of the investigative capacities and the international police cooperation. Several activities were undertaken to bring police work in line with the criminal procedure code, such as staff increase and identification of pertinent trainings. The Austrian police and an IPA 2010 project are supporting these efforts. The Montenegrin Delegation provided information concerning trainings in relation to the new criminal procedure code. Under an IPA twinning project, 4 trainings are foreseen for prosecutors and penitentiary staff. As regards the judicial training centre, 150 judges, 45 advisors and 99 civil servants have received training and a number of seminars have been organised. A manual for implementation of the criminal procedure code is under preparation, in close cooperation with OSCE.

As regards intelligence-led policing, several projects have been implemented, in cooperation with other institutions. The Montenegrin delegation informed that a crime mapping concerning organised crime is under preparation, in close cooperation with Austria.

The Commission inquired about existing cooperation mechanisms (including information sharing arrangements) between prosecution and police. The Montenegrin representatives refuted the existence of any difficulties under the new arrangements and emphasised that the cooperation between the two entities has so far been successful. They explained that under the new criminal procedure code's provisions suspects are interviewed by prosecutors, thus making the procedure more effective.

The Commission stressed the need for strengthening of the investigative capacities, coordination between law enforcement bodies (including in the framework of financial investigations), and confiscation mechanisms of proceeds of crime. It underlined the importance of strengthening human capacities / resources and of establishing a solid track record of investigated cases.

4.4. Fight against drugs, demand and supply reduction

The Montenegrin delegation provided an update on the implementation of the national legal framework on fight against drugs and drug demand reduction. It informed that a national office on drug prevention is now in place within the Ministry of Health and that the Law on Production and Trade of Drugs is in Parliamentary procedure. The adoption of this law, expected in May 2011, will complete the national legislative framework for fight against drugs. The Montenegrin authorities informed that a mechanism will be set up for updating the list on drugs. It is foreseen that measures for drugs prevention and rehabilitation will be part of the new national strategy against drugs, to be adopted in early 2012.

The Commission inquired about cooperation with the EMCDDA. The Montenegrin representatives informed that the procedure for appointing a focal point for cooperation with EMCDDA is under way.

4.5. Trafficking in human beings

The Montenegrin Delegation informed that the previous national strategy to combat trafficking in human beings (THB) has been fully implemented, while the new one is under preparation. The new strategy, to be adopted by the year-end, will cover in line with international standards the main themes of prevention, education, protection of victims and prosecution of perpetrators of this crime. It will aim at improving international cooperation and partnership with the private sector. The Montenegrin representatives informed that in the reporting period activities on the implementation of the Code of conduct on protection of children have been continued and that this Code was signed amongst others by 200 representatives of the tourism industry. Also, the Protocol on Cooperation with the Employers Union was signed in April 2011, as first of that kind in the region. This Protocol foresees cooperation in the field of prevention of labour exploitation, through the implementation of joint activities in order to inform employees of their rights, reintegrate in society THB victims and raise awareness about seasonal workers' rights, through education and enforcement of employment rights for victims of trafficking.

4.6. Money laundering, confiscation of criminal assets, economic and financial crime

The Commission expressed satisfaction with the fact that the money laundering framework is continuously improving. The Montenegrin representatives provided an update on the status of the Financial Intelligence Unit (FIU). The number of staff has been increased, however a high turn-over is still apparent. The Commission noted with concern that the reporting of suspicious transactions is still done on paper forms which involves a lot of manual work and encumbers the procedure. The Montenegrin Delegation informed that the introduction of electronic encrypted forms is foreseen within 3 to 4 months, depending on the budget available. It noted that due to the lack of funds, professional trainings and upgrading of the IT system remain incomplete. The Commission welcomed the increase of reporting of suspicious transactions by the banking sector. It however noted with concern that banks are still the only entities reporting. The Montenegrin representatives informed that measures have been undertaken to remedy this trend and that more reports are expected by other entities, following the introduction of a unit for control of reporting entities. Seminars and awareness-raising trainings are also under way in this regard.

5. Fundamental rights

5.1. Prison system, prevention of torture and ill-treatment

The Montenegrin delegation reported on measures undertaken to address ill-treatment in prisons and police detention facilities. The situation has been fully assessed through a TAIEX project concerning the legislative framework, capacities and the prison system as a whole. Since the beginning of 2011, significant efforts have been made to strengthen the institutional and administrative capacity of the penitentiary system. The Montenegrin delegation informed that amendments on the law on criminal sanctions are foreseen, which will *inter alia* allow to set up a separate probation department within the Ministry of Justice.

The Commission referred to the findings of the ICPS-King's college for Montenegro and noted with concern the high number of pre-trial detainees- 59,7%, one of the highest scores in Europe. It (actually prison overcrowding is a concern according to statistics and site visits done by the TAIEX prison experts) inquired if the optional protocol to the UN convention against torture (OPCAT) has been signed. The Montenegrin representatives informed that the OPCAT has been ratified in 1998 and that concerning pre-trial detention, the amendments to the criminal procedure code foresee new instruments, including that the court decides the duration of the pre-trial. They stressed that efforts are being made to introduce alternative sanctions such as community work, suspended sentences and educational supervision. 32% of the alternative sentences in 2010 were plea-bargains.

The Montenegrin representatives outlined the steps undertaken to upgrade prison infrastructures. Upon Commission request, the Montenegrin Delegation agreed to provide more detailed information as regards the planned refurbishment of the prison facilities in Bijelo Polje. It informed that a law on juvenile justice has been drafted and is currently in Parliamentary procedure. The Commission inquired if the Council of Europe's recommendations on prison rules have been implemented in the legal system. The Montenegrin Delegation informed that these recommendations are observed as regards minors and that the legal framework has been fully harmonised with EU and international standards. It was agreed to upgrade the dialogue on these issues. The Commission proposed to organise a workshop in autumn to illustrate penitentiary standards in the member states and clarify the scope of the Stockholm programme in this area.

The Montenegrin Delegation informed that the law on establishment of a national mechanism for prevention of torture is currently in Parliamentary procedure. The recently adopted amendments to the law on the Ombudsman foresee the creation of an independent Commission within the Ombudsman office monitoring the national mechanism for prevention of torture. The Commission will count five non-permanent employees and benefit from the overall budget increase of 30%.

5.2. Freedom of expression and media freedom

Regarding freedom of expression and media freedom, the Montenegrin representatives announced Government's readiness to fully decriminalise libel and defamation. The Commission suggested reducing the amount of the fines for defamation fines and compensation for non-pecuniary damage, in line with the case law of the European Court for Human Rights (ECHR). It informed that issues related to freedom of expression will be also reviewed during the rule of law peer-review mission in June 2011. The Montenegrin Delegation informed that trainings are foreseen for judges on the ECHR case law.

5.3. Cooperation with civil society

Regarding the cooperation with civil society, the Commission noted that Montenegro is on the right track and encouraged the national authorities to continue efforts in this direction.

5.4. Anti-discrimination policies, women's and children's rights

The Delegation provided a short update on anti-discrimination policies as well as women's and children's rights. The Commission inquired about current housing arrangements for children with disabilities in the Komanski Most institution for disabled persons. The Montenegrin Delegation informed that as a result of a project with UNICEF, children with disabilities are completely separated from adults. Furthermore, it is foreseen to build a special facility for disabled children in the municipality of Bijelo Polje. Activities are underway to draft a strategy on domestic violence, to inspect buildings that could possibly serve as shelters for victims of domestic violence and to provide trainings to police offices and civil servants. Concerning minority rights, a draft law has been drafted on the mechanisms for collection of data. Awareness-raising activities have been undertaken to inform the public about existing anti-discrimination mechanisms.

The Commission stressed that further efforts are needed in the field of: equal pay for women, domestic violence and support to victims, training of social care workers, children's rights and provisions for disabled children. It underlined the importance of including NGOs in the foreseen awareness raising and training activities. The Commission informed that a communication on the Roma inclusion was adopted on 8 April 2011. It proposed that as of next year, anti-discrimination issues will be dealt with only in the framework of the EU-Montenegro Sub-Committee on Justice, Freedom and Security rather than also in the EU-Montenegro Sub-Committee on Innovation, information society, and social policy.

5.5. Displaced persons, citizenship and property rights

The Montenegrin Delegation informed that all foreseen activities are underway to resolve the status of internal displaced persons (IDPs), in line with the recently adopted Action Plan for IDPs residing in the Konik Camp. This Action Plan resulted in a proposal for an IPA project worth EUR 2,5 million for building 80 houses and creating employment opportunities. Awareness-raising activities have been deployed, including the distribution of leaflets in Romanian and Albanian. A working group has been set up to closely cooperate with the UNHCR to establish a reliable data on IDPs.

The Commission underlined the importance of harmonisation of all laws by 7 January 2012, in order to ensure full access to social and economic rights. It stressed that although citizenship is not an EU competence, it follows closely these issues.

5.6. Protection of personal data and privacy

The Montenegrin Delegation informed that the Ministry of Interior has adopted two rulebooks on the protection of personal data and the manner personal data records should be handled. The rulebooks are legally binding. It clarified that the Data Protection Agency is elected by and reports to the Parliament, whereas its director is appointed following a public competition. The budget of the agency is proposed by the Ministry of Finance.

6. Post-Visa Liberalisation monitoring

The Commission presented the scope of the post-visa liberalisation mechanism, comprised of two main components: continuous monitoring and prevention measures which would allow identifying future immigration waves. The Commission will present a written report to the Council and the European Parliament on the implementation of the visa free regime in the five Western Balkans countries concerned in June this year.

6.1 Asylum and migration, including readmission agreements

The Montenegrin Delegation informed that since the beginning of 2011, 27 requests for asylum were filed, out of which 7 were suspended, 2 persons were granted subsidiary protection and 18 requests are still pending. As regards readmission, 50 requests were submitted since the beginning of the year, which resulted in 26 positive decisions, 5 negative and 19 still in procedure. Currently there are 10 550 foreigners in Montenegro with temporary or permanent residence. The law on foreigners has been fully implemented as well as its secondary legislation. As regards data protection for asylum seekers, this data is not part of the foreigners' registry therefore there are no data protection risks. The construction of a centre for asylum seekers is in progress and expected to be finalised by the year-end.

The Commission inquired about the outcome of the recently conducted by the Asylum Office assessment on the compliance of the national legislation with the EU *acquis*; the profile- notably country of origin- of asylum seekers in the country as well as if a mechanism for the migration flows has been set up, in line with the requirements of the visa liberalisation roadmap. The Montenegrin representatives informed that most of asylum seekers are originating from the region, however since 2011 a new trend has been observed: a significant number of illegal migrants from African and Asian origin transiting via Greece, Albania and Former Yugoslav Republic of Macedonia have submitted asylum applications. A new strategy for integrated management of migration 2011-2016 and its action plan for 2011-2012 have been adopted in March 2011. As regards the assessment made by the national Asylum Office, it concluded that the national legislation on asylum is in line with the EU *acquis*. The Montenegrin Delegation informed that so far there have been no cases before the State Court of Appeals concerning asylum matters, and that asylum seekers have the right to accommodation, education, social protection, legal aid, etc.

6.2. Border management and visa policy

The Montenegrin Delegation informed that a border management strategy has been adopted, giving priority to mutual cooperation between all relevant stakeholders. Works on Dobrakovo and Dracenovac border crossing points (with Serbia) started in June 2010 and are planned to be completed by June 2011. These construction works are co-funded by the IPA 2008 programme. The Montenegrin Delegation informed that the law on ratification of the agreements between Montenegro and Bosnia and Herzegovina on border crossings for international traffic and border traffic are in parliamentary procedure. Discussions with Croatia have not yet been initiated regarding signing of the agreement on border crossings.

Cross border cooperation with Kosovo is to be improved and a new agreement to be signed, as Kosovo police will take over the task from KFOR. In the coming month an agreement on border crossing points (BCPs) will be signed with Serbia, while joint BCPs have recently been set up with Albania. The Montenegrin representatives informed that all 28 BCPs have been connected to the Interpol database. The border police ensures the surveillance over 800 km and counts 1100 staff. Under IPA 2010, border equipment has been provided and new

cameras will be installed to read license plates. The Commission stressed the importance of completing the installation of the system for electronic surveillance “Blue Border”.

The Commission inquired about measures undertaken to inform citizens about the rights and obligations stemming from visa-free travel, and asked for an update on the number of biometric passports issued. The Montenegrin Delegation informed that 270.553 biometric passports and 300.000 biometric ID cards have been issued so far. No proper awareness-raising activities have been conducted taking into account the very low number of asylum-seekers originating from Montenegro in the Schengen area. The Commission highly recommended the organisation of awareness-raising campaigns, including the insertion of an information leaflet in each newly delivered biometric passport to prevent possible asylum migration flows.

It was agreed that the Montenegrin authorities will provide written information about: the anti-corruption trainings organised for border police officers; bilateral agreements for temporary exemption from visas concluded with Kazakhstan, Russia and Belarus, as well as the estimated schedule for upgrading the visa system. It was proposed that upon initiative of the national authorities, a videoconference can take place with representatives of the Ministry of Foreign Affairs (not present at the sub-committee) and DG HOME to discuss visa related issues. Concerning visa refusals, the Commission stressed the need for applicants to receive a written explanation of the reason for refusal and to be informed about their right to appeal.

7. IPA assistance in the area of Justice, Freedom and Security

The Commission made a short presentation of IPA assistance to Montenegro in the area of justice, freedom and security (JLS). The IPA financial envelope for national projects in the JLS sector in the period 2007-2010 is over EUR 17 million, the main beneficiary being the Police. The presentation was followed by exchange of views as regards the implementation of ongoing twinning projects in the area of JLS.

The Commission reminded that as from 2011, Montenegro as candidate country, is eligible for all five IPA components: I (transition assistance and institution building); II (cross-border cooperation); III (regional development); IV (human resources development); and V (agriculture and rural development). However, as the total amount of IPA funds will not be increased, funds will be shifted from Component I to components III-V. In this light, the Commission encouraged the Montenegrin authorities to submit project ideas for JLS actions under component I to be funded by the IPA 2012 programme.