

SCREENING MONTENEGRO

Analytical examination of the acquis

AGENDA - Chapter 23 Judiciary and fundamental rights - EXPLANATORY meeting

Date: 26 – 27 March 2012

Venue: Albert Borschette Building, Room 1 D

Chairperson: [REDACTED], Head of Unit, DG Enlargement

DAY 1 - 26 March 2012

Topic	Time and Speaker	Legal instruments for reference ¹
Welcome/ Opening	9:30 – 9:45 [REDACTED], DG ENLARGEMENT	
JUDICIARY		
1. Judiciary	9:45 – 10:30	
1.1. Independence (legal and administrative conditions of employment, including appointments, promotion, transfers, dismissal...)	[REDACTED], DG JUSTICE	<ul style="list-style-type: none">▪ European Convention of Human Rights pdf▪ UN Basic Principles on the Independence of the Judiciary, 29 November 1985, A/RES/40/32. pdf▪ European Guidelines on Ethics and conduct for public prosecutors (the Budapest guidelines) adopted by the Conference of Prosecutors General of Europe on 31/5/2005. pdf▪ Bangalore Principles of Judicial Conduct” (“Bangalore Principles”), adopted by the UN Human Rights Commission on 23 April 2003 pdf

¹ The list of legal instruments included in this agenda is indicative and not exhaustive.


<p>1.2. Impartiality</p> <p>(including code of ethics/code of conduct, anti-corruption policy and accountability of judges)</p> <p>1.3. Professionalism / competence / efficiency</p> <p>(including in and pre-service training, sufficiency of resources, enforcement of judgments)</p> <p>1.4. Judicial Reform</p> <p>(including reform strategies/ action plans)</p>		<ul style="list-style-type: none"> ▪ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities html ▪ Recommendation No R (86) of the Council of Europe on Measures to Prevent and Reduce the Excessive Workload in Courts pdf ▪ Council of Europe recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal System pdf (www.legislationonline.org)
<i>Questions and answers</i>	10:30 – 11:15	
<i>Coffee break</i>	11:15 – 11:30	

ANTI-CORRUPTION POLICY

<p>2. <u>Anti-Corruption policy</u></p> <p>2.1 EU Instruments</p> <p>2.2 International instruments</p> <p>2.3 The links between corruption and other areas:</p> <ul style="list-style-type: none"> ◦ financing of political parties ◦ good governance ◦ economic development ◦ fighting organised crime 	<p>11:30 – 12:15</p> <p>██████████ -</p> <p>DG HOME</p>	<ul style="list-style-type: none"> ▪ Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of the Member States of the EU OJ C 195, 25.6.1997 html ▪ Convention of 26 July 1995 on the protection of the European Communities' Financial Interests: JO C 316 of 27 November 1995 (also relevant for judicial cooperation in penal matters) html ▪ Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41996A1023(01):EN:NOT) ▪ Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0719(02):EN:NOT) ▪ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector OJ L 192, 31.7.2003, p.54 html ▪ Commission Decision of 6 June 2011 - Establishing an EU Anti-corruption reporting mechanism for periodic assessment ("EU Anti-corruption Report") (C(2011) 3673 final) (http://ec.europa.eu/home-affairs/news/intro/docs/110606/3673/COM%20Decision%20C(2011)%203673%20final%20_EN.pdf) ▪ Council Decision 2008/582/JHA of 24 October 2008 on a contact-point network against corruption (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0852:EN:NOT) ▪ Council Decision 2008/801/EC of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption OJ L 287, 29.10.2008, p.1. (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:287:0001:0110:EN:PDF) ▪ Council Decision 2004/579/EC of 29 April 2004 on the conclusion, on behalf of the European Community, of the United Nations Convention against Transnational Organised Crime OJ L
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		<p>261, 6.8.2004, p.69 html</p> <ul style="list-style-type: none"> ▪ UN Convention against Corruption, Merida 2003 pdf ▪ OECD-Convention on Combating Bribery of foreign public officials in International Business Transactions, of 17 December 1997; (also relevant for judicial cooperation in penal matters) html ▪ Council of Europe Criminal Law convention on Corruption, opened to signature on 27 January 1999; (also relevant for judicial cooperation in penal matters) html ▪ Council of Europe Civil Law convention on corruption, opened to signature on 4 November 1999 html ▪ UN Convention against Transnational Organized Crime, Palermo December 2000. html ▪ Council of Europe Resolution (97) 24 on the <u>Twenty Guiding Principles For The Fight Against Corruption</u> (http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution(97)24_EN.pdf) ▪ Council of Europe Recommendation on Codes of Conducts for public officials (recommendation no. R(2000)10) html ▪ Council of Europe Recommendation on Common Rules against corruption in the funding of political parties and Electoral Campaigns (rec(2003)4) html
<i>Questions and answers</i>	12:15 – 13:00	
<i>Lunch</i>	13:00 – 14:30	


3. FUNDAMENTAL RIGHTS

<p>3.1. Fundamental Rights</p> <ul style="list-style-type: none"> • Dignity • Right to life and to the integrity of the person • Prohibition of torture and inhuman or degrading treatment or 	<p>14:30 – 15:30</p> <p> , DG JUSTICE</p>	<ul style="list-style-type: none"> ▪ <u>Articles 6 and 7 of the Treaty on European Union</u>, and related <u>case law</u> of the European Court of Justice html (The treaty, not the case law) ▪ <u>European Convention</u> for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) as amended by Protocol No. 11 and its Protocol of 1952; pdf ▪ <u>Charter of fundamental rights of the European Union</u>, OJ C 303 of 14 December 2007, p.1 html ▪ Protocol N°4 of 1963 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) and its Protocol of 1952 pdf
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punishment.

- Prohibition of slavery, servitude, and forced or compulsory labour.
- Respect of private and family life and communications.
- Protection of personal data (*See hereafter 3.6. and chapter 24 for provisions related to police co-operation*).
- Right to marry and right to found a family.
- Freedom of thought, conscience and religion
- Freedom of expression including freedom and pluralism of the media.
- Freedom of assembly and association, including freedom to form political parties, the right to establish trade unions. (*as concerns trade unions, see chapter 19*)

- Protocol N°6 concerning the abolition of the death penalty of 1983 [pdf](#)
- UN Convention on the elimination of all forms of racial discrimination (New-York; 7 March 1966); [html](#) (bad link)
- Council of Europe Convention on the protection of individuals with regard to automatic processing of personal data (Strasbourg, 28 January 1981); [html](#)
- European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Strasbourg, 26 November 1987); [html](#) (Bad link)
- The following protocols to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) as amended by Protocol No. 11: [pdf](#)
 - Protocol n° 1 of 1952
 - Protocol N°4 of 1963
 - Protocol N°6 on the abolition of the death-penalty of 1983
 - Protocol N°7 of 1984.
 - Protocol N°12 of 2000.
 - Protocol N°13 of 2002
- UN Declaration on the elimination of violence against women (General Assembly resolution 48/104 of 20 December 1993) [html](#)
- Council of Europe Recommendation Rec (2002) 5 on the protection of women against violence [html](#)
- UN Convention on the rights of the child (New-York, 20 November 1989) and its Protocols [Html](#)
- Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000) [html](#)
- Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13 of 20.01.2004, p. 44 (also relevant for judicial cooperation) [pdf](#)


<ul style="list-style-type: none"> • Treatment of socially vulnerable and disabled persons and principle of non discrimination. (see chapter 19) • Right to education • Right to property. • Gender equality and women's rights • Rights of the Child 		
<i>Questions and answers</i>	15:30 – 16:00	
<i>Coffee break</i>	16:00 – 16:15	
<u>3.2. Procedural safeguards</u>	16:15 – 17:00	
Liberty and security	<div style="background-color: black; width: 100px; height: 20px; margin-bottom: 5px;"></div> DG JUSTICE	<ul style="list-style-type: none"> • European Convention of Human Rights, Art 5, 6, 7, 13, Protocol 4 Art 1, Protocol 7 Art 2, 3 and 4, pdf • Charter of fundamental rights of the European Union, OJ C 364 of 18 December 2000, p.1 (Articles 47-50) html
Right to a fair trial (civil and criminal justice)	<div style="background-color: black; width: 100px; height: 20px; margin-bottom: 5px;"></div> DG JUSTICE	<ul style="list-style-type: none"> • Council Directive 2002/08 of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes <div style="text-align: center;">  LexUriServ.pdf (131 KB) </div>
<i>Questions and answers</i>	17:00 – 17:30	
End of Day 1		

DAY 2 - 27 March 2012

FUNDAMENTAL RIGHTS (<i>contd.</i>)		
3.3. Respect for and protection of minorities	9:30 – 9:45 [REDACTED], DG JUSTICE	<ul style="list-style-type: none"> • Council of Europe Framework Convention on the protection of Minorities (Strasbourg, 1 February 1995) html • European Charter for Regional or Minority Languages html
3.4. The EU Fundamental Rights Agency		<ul style="list-style-type: none"> • On 28 November 2008, the Council adopted <u>Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law</u> on the basis of Articles 29, 31 and 34(2)(b) of the former EU Treaty. • Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights <i>OJ L 53, 22.2.2007, p. 1–14.</i>
<i>Questions and answers</i>	9:45 – 10:15	
3.5. Protection of personal data	10:15 – 11:00 [REDACTED], DG JUSTICE	<ul style="list-style-type: none"> • United Nations guidelines concerning Computerized personal data files, adopted by the General Assembly on 14 December 1990 html • Organisation for Economic Co-operation and Development (OECD): Recommendation of the Council concerning guidelines governing the protection of privacy and transborder flows of personal data, adopted by the Council 23 September 1980 html • European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): Article 8 html • Convention 108/81 for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981) html - Additional Protocol to the Convention regarding supervisory authorities and transborder data flows, CETS No 181 (Strasbourg, 8 November 2001). http://conventions.coe.int/Treaty/en/Treaties/Html/181.htm • Treaty on the Functioning of the European Union (TFEU): Article 16 <i>Official Journal C 115, 9/05/2008 P.47</i> • Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31. html • Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002

		<p>concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) <i>Official Journal L 201</i> , 31/07/2002 P. 0037 – 0047</p> <ul style="list-style-type: none"> • Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC OJ L 105 13.04.2006 p. 54 • Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws OJ L 337 8.12.2009 p.11 • Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (30.12.2008) OJ L 350 30/12/2008 P. 0060 - 0071 • EU Charter of Fundamental Rights of 7 December 2000 pdf • Judgement of the European Court of Justice of 20 May 2003, Joint Cases C-465/00 OJ C 171, 19.07.2003, p. 3 , C-138/01 OJ C 171, 19.07.2003, p. 3 and C-139/01 OJ C 171, 19.07.2003, p. 3 – Rechnungshof • Judgment of the European Court of Justice of 6 November 2003, Case C-101/01 OJ C 7, 10.01.2004, p. 3 - Bodil Lindqvist • Judgment of the European Court of Justice of 30 May 2006 Joined Cases C-317/04 OJ C 228, 11.09.2004, p. 31 and C-318/04 OJ C 228, 11.09.2004, p. 32 - PNR data • Judgment of the European Court of Justice of 16 December 2008 Case C-524/06) OJ C 44 of 21.02.2009, p.5 – Huber (general processing of personal data relating to citizens of the Union who are nationals of another Member State and the concept of necessity) • Judgment of the European Court of Justice of 16 December 2008 Case C-73/07 OJ C 44 of 21.02.2009, p.6 – Satakunnan (Processing and flow of tax data of a personal nature) • Judgment of the European Court of Justice of 9 March 2010 Case C-518/07 OJ C 113, 01.05.2010, p. 3 - (Independence of national supervisory authorities) • Judgment of the European Court of Justice of 7 May 2009 Case C-553/07 OJ C 153 0f 04.07.2009, p.10 – Rijkeboer • Judgment of the European Court of Justice of 9 November 2010 Joined Cases C-92/09 OJ C 317, 20.11.2010, p. 29 and C-93/09 OJ C 317, 20.11.2010, p. 29 - Volker und Markus Schecke
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		<p><u>Commission decisions on the adequacy of the protection of personal data in third countries:</u></p> <ul style="list-style-type: none"> - ARGENTINA : Commission Decision C (2003) 1731 of 30 June 2003 - OJ L 168, 5.7.2003 pdf - CANADA : Commission Decision 2002/2/EC of 20.12.2001 on the adequate protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act - OJ L 2, 4.1.2002, p.13. pdf - SWITZERLAND: Commission Decision 2000/518/EC of 26.7.2000 - OJ L 215, 25.8.2000, p. 1. html - UNITED STATES OF AMERICA: <i>Safe Harbor</i>: Commission Decision 2000/520/EC of 26.7.2000 - OJ L 215, 25.8.2000, p. 7. html - GUERNSEY : Commission Decision 2003/821/EC of 21 November 2003 on the adequate protection of personal data in Guernsey - OJ L 308, 25.11.2003, p. 27. pdf - ISLE OF MAN : Commission Decision 2004/411/EC of 28.4.2004 on the adequate protection of personal data in the Isle of Man, - OJ L 151, 30.4.2004, p. 48. Html (only bibliographic notice) - JERSEY: Commission Decision of 8 May 2008 on the adequate protection of personal data in Jersey (notified under document number C(2008) 1746) - OJ L 138, 28.05.2008 - FAROE ISLANDS: Commission Decision of 5 March 2010 on the adequate protection provided by the Faroese Act on processing of personal data (notified under document C(2010) 1130) - OJ L 58, 09.03.2010, p.17-19 - ANDORRA: Commission Decision of 19 October 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Andorra (<i>notified under document C(2010) 7084</i>) (Text with EEA relevance) (2010/625/EU) OJ L 277, 21.10.2010. <p><u>Model contracts for the transfer of personal data to third countries:</u></p> <ul style="list-style-type: none"> • <u>Commission Decision 2001/497/EC</u> on standard contractual clauses for the transfer of personal data to third countries, of 15 June 2001 under the Directive 95/46/EC; OJ L 181, 4.7.2001, p. 19. pdf • Commission Decision 2004/915/EC of 27 December 2004 amending Decision 2001/497/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of personal data to third countries; OJ L 358, 29.12.2004, p. 74. pdf • Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (notified under document C(2010) 593) Official
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		<p><u>Journal L 39 of 12.02.2010, p.5</u></p> <p><u>Data protection in European institutions and European Data Protection Supervisor:</u></p> <ul style="list-style-type: none"> • Regulation (EC) 45/2001 of the European Parliament and of the Council of 18. December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data; OJ L 8, 12.1.2001, p. 1. pdf • Decision No 1247/2002/EC on the regulations and general conditions governing the performance of the European Data-protection Supervisor's duties, OJ L 183, 12.7.2002, p. 1 pdf • Decision No. 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty (European Data Protection Supervisor); OJ L 12, 17.1.2004, p. 47. pdf
<i>Questions and answers</i>	11:00 – 11:30	
<i>Coffee break</i>	11:30 – 11:45	
EU CITIZEN'S RIGHTS		
4. EU Citizen's rights	11:45 – 12:30	<ul style="list-style-type: none"> • Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, relating to the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, OJ L 278 of 8.10.1976, p. 5, as amended html • Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329 of 30.12.1993, p. 34 html • Council Directive (94/80/EC) of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in municipal elections for citizens of the Union residing in a Member State of which they are not nationals, OJ L 368, 31/12/1994, p. 38, as amended html • Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30/04/2004, p. 77 html (only
4.1 Right to vote and stand as a candidate in elections to the European Parliament	 DG JUSTICE	
4.2 Right to vote and stand as a candidate in municipal elections		
4.3 Right to move and reside freely within the European Union		

4. 4. Diplomatic and consular protection		bibliographic notice) <ul style="list-style-type: none"> • Decision of the Representatives of the Governments of the Member States meeting within the Council of 18 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations, OJ L 314, 28/12/1995, p. 73 html • Decision of the Representatives of the Governments of the Member States (96/409/CSFP) meeting within the Council of 25 June 1996 on the establishment of an emergency travel document, OJ L 168, 06/07/1996, p. 4 html
<i>Questions and Answers</i>	12:30 – 13:00	
<i>Conclusions</i>	13:00 – 13.15	

The acquis related to this chapter published in the Official Journal can be found in the EURLEX database:

<http://eur-lex.europa.eu/en/legis/latest/index.htm>

<http://eur-lex.europa.eu/en/dossier/index.htm>.

