

# Screening report

# Montenegro

## Chapter 24 – Justice, freedom and security

**Date of screening meetings:**

Explanatory meeting: 28-30 March 2012

Bilateral meeting: 23-25 May 2012

## **I. Chapter content**

EU policies aim to maintain and further develop the Union as an area of freedom, security and justice. On issues such as border control, visas, external migration, asylum, police cooperation, the fight against organised crime and against terrorism, cooperation in the field of drugs, customs cooperation and judicial cooperation in criminal and civil matters, Member States need to be properly equipped to adequately implement the growing framework of common rules. Above all, this requires a strong and well-integrated administrative capacity within the law enforcement agencies and other relevant bodies, which must attain the necessary standards. A professional, reliable and efficient police organisation is of paramount importance. The most detailed part of the EU's policies on justice, freedom and security is the Schengen *acquis*, which entails the lifting of internal border controls in the EU. However, for the new Member States substantial parts of the Schengen *acquis* are implemented following a separate Council decision to be taken after accession.

## **II. Country alignment and implementation capacity**

This part summarises the information provided by Montenegro and the discussion at the screening meeting.

Montenegro stated that it could fully accept the *acquis* regarding justice, freedom and security. Montenegro pointed out that important parts of the *acquis* in this area had already been transposed. At the same time, Montenegro acknowledged that considerable efforts were necessary to comply with and implement the *acquis* in areas such as Schengen, the Visa Information System, police cooperation and judicial cooperation in criminal matters.

### **II. a. Migration**

Montenegro stated that migration was regulated by the law on foreigners and by other legislation such as laws on employment, asylum and education. The policy framework is governed by the Strategy for Integrated Migration Management 2011-2016 and by an Action Plan 2011-2012.

With regard to legal migration, Montenegro pointed out that the legal framework on family reunification, the status of third-country nationals who are long-term residents, researchers and students was only partially compatible with the *acquis*. According to Montenegro, its legislation is not compatible with the blue card and EU single permit Directives. Montenegro stated that to ensure good implementation of the new legislation on legal migration, further training was necessary.

According to Montenegro, its legislation on irregular migration is largely compatible with the *acquis*. Montenegro stated that its legislation was fully compatible with Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence and Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. Some legislative amendments will be necessary to address the issue of sanctions against employers of third-country nationals staying illegally.

Montenegro has readmission agreements with the EU, Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Kosovo\*, Norway and Switzerland. Further readmission agreements are under preparation with Moldova and Serbia. According to Montenegro, it will not have any difficulties implementing the EU readmission agreements with other third countries. Montenegro is also committed to complying with these EU agreements when concluding its own bilateral agreements with third partners in the future. To ensure that readmission works

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence.

well, Montenegro has put in place a strategy and an action plan for the reintegration of repatriated persons.

The Ministry of the Interior, supported by the Ministry of Foreign Affairs and European Integration and the police, is the main body responsible for the management of migration. The Ministry of Labour and Social Welfare is in charge of taking care of migrant minors. In August 2012, Montenegro opened a Reception Centre for irregular migrants. Montenegro's general objective is to upgrade the country's capacity in this field and to strengthen its efforts in the fight against irregular migration.

## **II. b. Asylum**

The issue of asylum is regulated primarily by the law on asylum, the decision establishing the State Asylum Appeals Commission and a number of decrees. Montenegro is a party to the Geneva Convention and its Protocol relating to the status of refugees. To implement the Convention and future legislation on asylum, Montenegro considered it important to strengthen its own administrative and technical capacity, including by improving cooperation between the different services responsible for this area. Montenegro stated that its legal framework was only partially compatible with the *acquis*. Montenegro plans to adapt its legislation on asylum to the *acquis* by 2015. Montenegro identified the following areas that needed to be harmonised with the EU legislation:

- Persecution offences;
- Reasons for exclusion;
- The definition of actors of persecution;
- Health protection;
- Ensuring the right to social and child protection;
- The definition of 'safe country of origin', 'first country of asylum', 'safe third country', 'inadmissible application' and 'border procedures';
- Transfer of the residence of persons enjoying temporary protection from one Member State to another;
- The right to financial aid;
- The right to work;
- Reduction or withdrawal of reception conditions;
- Accommodation of persons with special needs;
- The right to appeal with regard to residence and freedom of movement, as well as against negative decisions relating to the granting of benefits.

Currently, Montenegro does not have provisions to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints. Montenegro also stated that it was preparing an electronic database to register asylum seekers. There will also be a need to recruit and train staff to operate the national infrastructure of the Eurodac system, once set up. Montenegro has a rulebook on procedures for taking photographs, fingerprints, signatures and

other data from asylum seekers. According to Montenegro, the data collected are converted into an electronic form compatible with Eurodac specifications.

The main institutions responsible for asylum are the Asylum Office of the Ministry of Interior, the State Asylum Appeals Commission and the Refugee Care and Support Office of the Ministry of Labour and Social Welfare. Montenegro is building a reception centre to accommodate asylum seekers, to be operational by the end of 2012. In the meantime, private facilities (rentals or hotels) are used to accommodate asylum seekers.

The Asylum Office of the Ministry of Interior is responsible for the decision on asylum in the first instance. Montenegro stated that its capacity needed to be enhanced. An appeal may be lodged within 15 days after the first instance decision. The State Asylum Appeals Commission is responsible for deciding on appeals. The Commission needs to render its decision within two months from the date of submission of the appeal. The members of the Commission are administrative court judges; however, the Commission remains an administrative body. Therefore, appeals against its decisions can be heard by the Constitutional Court of Montenegro. To date, one case has gone to the Constitutional Court and its decision is pending. Once a final negative decision in the asylum procedure is made, the Border Police are informed.

Montenegro stated that it considered itself a transit country. It pointed out that asylum claims were often dropped once the applicants realised that Montenegro was not a member of the EU. According to Montenegro, this also explains the relatively low number of asylum seekers (467 for the period from 2007 to May 2012).

## **II. c. Visa policy**

The main legislative framework governing the Montenegrin visa regime is the law on foreigners, the regulation on the visa regime, the rulebook on visa and visa forms and the consular instruction on visa issuing. According to Montenegro, its visa policy is only partially aligned with the EU *acquis*. For example, nationals of Russia, Ukraine, Turkey and Belarus are exempted from visa obligations, which is not in line with the *acquis*. Nationals of neighbouring countries (e.g., Serbia, Albania, etc.) are allowed to stay in Montenegro with a valid travel document for 90 days without visa, but also with a national ID card for 30 days. To address these differences, Montenegro has started preparing a strategy on alignment with the EU visa regime.

Montenegro has 23 diplomatic and/or consular missions abroad issuing visas. Given the limited number of own missions, Montenegro has signed bilateral agreements on mutual representation and issuance of visas with Serbia (covering 42 countries), Bulgaria (covering 5 countries) and Croatia (covering 3 countries). Montenegro declared that it planned to work more closely with EU Member States rather than third countries in expanding its consular representation.

Montenegro also stated that it fully complied with EU standards for security features and biometrics in passports and travel documents. According to Montenegro, Montenegrin passports are produced in accordance with the International Civilian Aviation Organisation and EU standards.

In the context of the future accession to the Schengen area with regard to visas issued at the border, Montenegro stated that these were issued only in exceptional cases for humanitarian reasons, urgent business visits, participation in proceedings before government bodies, sporting events, cultural performances and cruise ships. Montenegro underlined that the number of visas issued at the border had been significantly reduced. In 2011, 120 visas were issued at the border, as against 280 in 2010 and 879 in 2009. From 1 January to mid-September 2012, four visas for entering Montenegro and 12 transit visas were issued at the border.

In view of the need to implement the Visa Information System (VIS), Montenegro pointed out that it did not have an electronic connection between the Ministry of Foreign Affairs and European Integration and its consular posts abroad. According to Montenegro, setting up the VIS would require technical, financial and other forms of assistance from the EU. Preparatory work has begun.

## **II. d. External borders and Schengen**

### *External borders*

The law on border control is the main legal basis for control at Montenegro's external borders. Many elements of this law were inspired by Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (the Schengen Borders Code). However, Montenegro stated that its legislation was only partially aligned with the *acquis*. Secondary legislation is necessary to implement both the law on border control and the law on weapons. Montenegro intends to adopt a new strategy and an action plan for integrated border management by the end of 2012.

Cooperation between the main services involved in border management was formalised by the Agreement on Mutual Cooperation in Integrated State Border Management of 2009. This agreement involves the Ministry of Interior, the Police Directorate, the Customs Administration and the Veterinary and Phytosanitary Administrations. Montenegro stated that it needed to adjust its capacity to ensure control of external borders to meet EU standards. According to Montenegro, all its border crossings are connected to an Interpol database. Major border crossing points are equipped with passport scanners, licence plates cameras, video surveillance and fingerprint scanners. According to Montenegro, extra equipment is needed to ensure sufficient material resources for all border crossing points, in particular the smaller ones.

With regard to surveillance of the 'blue borders', the police have put in place an electronic system for surveillance of the Adriatic Sea, territorial waters and the coastal zone of the Skadar Lake and Bojana River. An electronic system also monitors the 'green border' with Albania on the territory between Skadar Lake and Sasko Lake. With respect to border traffic across alternative roads, Montenegro stated that it was planning to take action (demolishing the roads and putting up barriers) on 44 roads identified. Montenegro signed a number of agreements with neighbours with the aim of enhancing border control. There are joint patrols on the common borders with Albania, Bosnia-Herzegovina, Serbia and Croatia. There are joint border crossing points with Albania and Bosnia-Herzegovina.

An anti-corruption code of ethics for the border police and a rotation mechanism have been put in place. Montenegro has also developed tailor-made training for the border police, delivered at the Police Academy in Danilovgrad.

### *Schengen acquis*

Montenegro stated that its legislative framework was not fully compatible with the Schengen *acquis*. Preparations in this area were at an early stage. Montenegro identified the following actions which will require attention:

- Putting in place the Schengen Information System (SIS);
- Adjusting the legal framework to enable effective cross-border police cooperation compliant with Schengen, including hot pursuit, communication channels, etc.;
- Setting up the SIRENE Bureau and implementing the SIRENE Manual in compliance with the EU data protection rules;

- Adopting a Schengen Action Plan.

## **II. e. Judicial cooperation in civil and criminal matters**

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

According to Montenegro, judicial cooperation in civil matters is based on The Hague Convention on civil procedure (1954) and the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters (1965).

According to Montenegro, its legislation is not in line with EU requirements and amendments to several laws need to be adopted to address the following issues:

- Service of judicial and extrajudicial documents in civil or commercial matters;
- Cooperation between the courts of the Members States on taking evidence in civil or commercial matters;
- The European Enforcement Order for uncontested claims;
- The European Order for Payment procedure;
- The European Small Claims procedure.

As regards family law, Montenegro is a party to the Hague Convention on the civil aspects of international child abduction (1980) and the Hague Convention on private international law on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (1996). Montenegro stated that its legislation was not aligned with the *acquis* in this area, notably on issues such as divorce and legal separation, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation, the recognition and enforcement of judgments in matrimonial matters, and matters of parental responsibility. Montenegro stated that alignment would be ensured by means of a law on international private law to be adopted by the end of 2012. This law would also address discrepancies with the *acquis* on commercial matters.

On insolvency, Montenegro stated that its legislation was only partially aligned with the *acquis*. The law on bankruptcy needs to be amended. With regard to mediation, according to Montenegro the national legal framework is fully aligned with the EU legislation. Montenegro also stated that a Centre for Mediation had been established. However, further training on mediation is necessary.

The existing Action Plan on judicial reform (2007-2012) stipulates the need to establish an appropriate legislative framework for effective international judicial cooperation. Montenegro stated that it intended to continue to follow new legislative developments in this area and stated its intention to strengthen its administrative capacity in the area of judicial cooperation in civil matters, partly through cooperation with regional and international networks and associations.

The basic courts are responsible for implementing the legal framework for judicial cooperation in civil and commercial matters. The Division for International Legal Assistance of the Ministry of Justice is responsible for international cooperation in this area. Montenegro stated that to date no specific training courses in the field of international legal cooperation in civil and commercial matters had been held. Training for the staff of courts and the Ministry are planned in the future to ensure implementation of the new legal framework in this area.

In practice, most cooperation in civil and commercial matters is with Montenegro's neighbours. There is also cooperation with some EU Member States (for example Germany, the UK, France, and Italy). Judicial cooperation in civil and commercial matters is mainly related to the delivery of court and other documents. In a few cases, there were hearings of parties. In 2012, around 1,230 civil cases of international legal assistance (initiated in 2011) were handled. Fifty cases concerned Germany, notably the Montenegrin diaspora there, on subjects such as inheritance, proceeding and record filing.

#### *Judicial cooperation in criminal matters*

Judicial cooperation in criminal matters between Montenegro and other countries is currently based on the Montenegrin Constitution, the Criminal Code, the Criminal Procedure Code and the law on mutual legal assistance in criminal matters. The competent institution for receiving and sending requests for international legal assistance is the Ministry of Justice. The High Courts (in Bijelo Polje and Podgorica) are competent to act on requests from international judicial bodies. The action plan for judicial reform (2007-2012) includes measures to improve the legislative and administrative framework. Montenegro has ratified a number of Council of Europe conventions in this field.

With regard to the principle of mutual recognition, Montenegro stated that foreign judicial verdicts are enforced in Montenegro, if the competent court imposes the criminal sanction in accordance with domestic law, on the basis of international agreements or reciprocity. In this context, Montenegro pointed out that the Constitution stipulated that ratified and published international treaties and generally accepted rules of international law were an integral part of the Montenegrin legal system, had supremacy over domestic legislation and were directly applicable where they regulated relations differently from domestic legislation. According to Montenegro, further efforts are necessary to implement the EU's programme of measures to implement the principle of mutual recognition of decisions in criminal matters.

According to Montenegro, its law on mutual legal assistance in criminal matters was only partially compatible with the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU and its protocols. Amendments will be required to provide for the service of procedural documents abroad directly via the post and controlled delivery, joint investigation teams and secret investigations. Montenegro expects to adopt these changes by 2013. With regard to the principle of *ne bis in idem*, Montenegro stated that it needed to amend its law on mutual legal assistance in criminal matters.

Montenegro stated that its legislation was not aligned with the requirements of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedure between Member States. The Montenegrin law on international legal assistance in criminal matters does not provide for a surrender procedure of persons from one to another country under an arrest warrant. Montenegro also expects to be able to implement the provisions of the Convention of March 1995 on simplified extradition procedures between the Member States of the EU.

Regarding the procedural rights for suspected or accused persons in criminal proceedings, Montenegro stated that its legal framework was fully aligned with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and the proposals of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings of November 2009. However, to fully transpose the Convention on the transfer of sentenced persons and its protocol, further legislative amendments are necessary.

The seizure and confiscation of criminal assets is regulated by the Criminal Code, the Criminal Procedure Code, the law on custodial care of provisionally seized and confiscated property, the law

on international legal assistance and the law on enforcement and security of claims. Montenegro stated that its legal framework was partially aligned with the Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property. According to Montenegro, the following amendments are necessary:

- Harmonise the legislation to provide for the possibility of confiscating assets gained by criminal tax offences;
- Provide the option of confiscating property if it is determined that the value of assets is significantly higher than the convicted person's legal income and if it has been proven before a court that the property was obtained by means of criminal activities.

Montenegro stated that its legislation was not compatible with Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders. The Montenegrin legislation is only partially aligned with Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence and Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties. In this context, the definitions of criminal offences need to be adjusted and the legal reasons for not recognising a financial penalty need to be specified in the law on international legal assistance. The standard certificate for the decision to impose a financial penalty needs to be translated into the official language and then incorporated into the legislation. In June 2012, Montenegro adopted a new law on custody of seized and confiscated property.

In terms of administrative capacities, confiscation, seizure of property and financial penalties is the responsibility of the courts of Montenegro and the Public Property Administration (5 civil servants).

Montenegro does not have an Asset Recovery Office. Therefore, Montenegro stated that its legislation was not compatible with Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

According to Montenegro, its legal framework is only partially aligned with the Convention on driving disqualifications. Montenegro considered that its legislation needed to be amended to:

- Provide a legal basis for recognition and implementation of decisions of foreign courts regarding seizure of a driving licence;
- Designate a central authority for exchanging requests for the implementation of decisions and information regarding implemented decisions (measures) between Montenegro and other states.

Montenegro stated that its legal framework did not comply with Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings and Council Directive 2004/80/EC relating to compensation to crime victims. Montenegro does not have a definition of 'victim' in its legislation. Montenegro intends to amend its legislation to introduce this concept and to provide compensation to victims. Training needs to be prepared and delivered to law enforcement and judicial authorities, notably on the treatment of victims and the protection of victims' interests.

Montenegro pointed out that with regard to criminal records, its legislation did not comply with Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States and Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS). Montenegro



adopted a new regulation on keeping criminal records in September 2011 and will enter in force in January 2013. Montenegro foresees to invest in new IT infrastructure to comply with the *acquis*.

In terms of practical judicial cooperation in criminal matters, Montenegro has signed a number of bilateral agreements, notably with its neighbours Bosnia and Herzegovina, Croatia and Serbia. Regarding cooperation with Eurojust, Montenegro has appointed a contact person — the Public Prosecutor in the basic court of Kotor. Montenegro is committed to concluding a cooperation agreement with Eurojust.

## **II. f. Police cooperation and fight against organised crime**

### *Police cooperation*

Montenegro has been a member of Interpol since 2006. Montenegro stressed that it actively cooperated with Interpol and it complied with Council Common Position 2005/69/JHA on exchanging certain data with Interpol. An International Law Enforcement Coordination Unit has been set up as part of the police and consists of 30 employees. Montenegro stated that it was active in regional police cooperation. Montenegro pointed out that, as far as EU Member States were concerned, it was actively cooperating mainly with the Netherlands, Spain, Germany, Nordic countries and Slovenia.

Montenegro has signed a strategic cooperation agreement with Europol, which entered into force in September 2009. A secure communication link was established and was upgraded in April 2012 to a SIENA communication link. Montenegro stated that a procedure had been launched for the selection of a liaison officer to be deployed to Europol headquarters in The Hague by the end of 2012. Montenegro also stated it had good cooperation with the European Police College (CEPOL). The Montenegrin Police Academy has signed an agreement with the CEPOL and Montenegrin police officers have participated in a number of training events organised by the College.

Regarding cross-border cooperation, Montenegro stated that its legislation was not compatible with Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the Prüm Decision) and the related *acquis*. In order to fully transpose this Decision, Montenegro stated it needed to:

- Provide adequate software (CODIS) for networking with the databases of other countries;
- Develop and implement a plan for setting up national DNA-related infrastructure;
- Establish a secure connection for online direct queries;
- Define and implement a plan for the protection of data recorded in databases, with procedures for preventing unauthorised access, checks, changing or deleting data according to Chapter 6 of Council Decision 2008/615/JHA;
- Define and implement procedures for exchanging supplementary information among national contact points and establish national contact points for exchanging additional data regarding DNA, dactyloscopic data and motor vehicle registration numbers;
- Define and implement procedures for direct exchange of data related to major events and to terrorist offences and establish national contact points for exchanging information related to major events and terrorist offences.

Montenegro also stated that its legislation was not compatible with Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law

enforcement authorities of the Member States of the European Union. To implement the EU approach, according to Montenegro it needs to:

- Develop operational procedures for international police cooperation and implement obligations from the Decision into the instructions of the Police Directorate for the procedures in international police cooperation;
- Amend the workflow on international police cooperation;
- Adjust the case management application;
- Introduce the request/answer forms annexed to the Framework Decision;

On vehicle crime, according to Montenegro, its legislation needs to be amended to comply with Decision 2004/919/EC on tackling vehicle crime with cross-border implications. Montenegro needs to:

- Provide automated checks of motor vehicles (push & pull system) through the Interpol stolen motor vehicle (SMV) database;
- Develop an application for easy upgrade and connection to the SIS II;
- Develop instructions for simultaneous checks (in the SIS II and Interpol SMV) and for action to follow-up a 'hit' for various national agencies related to motor vehicles;
- Develop application and procedures for automated inserting (and erasure) of stolen motor vehicles, registration documents and plates into Interpol and the SIS II;
- Develop instructions for handling stolen vehicles (searched for in the SIS or Interpol database), and a procedure for efficient recovery to the legal owners;
- Define a national contact point for combating vehicle crime;
- Define procedures/instructions for the withdrawal and annulment of all registration documents and plates in the event of Vehicle Identification Number (VIN) forgery.

Regarding security in connection with football matches with an international dimension, Montenegro stated that its legislation was not compatible with Decision 2002/348/JHA. The same is applicable to Decision 2002/956/JHA setting up a European Network for the Protection of Public Figures. In both cases, Montenegro needs to establish a national contact point.

Concerning Decision 2003/170/JHA on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States, Montenegro stated that its legislation needed to be adjusted. In particular, the Decree on Police Representatives needs to define procedures for nominating, sending and joint use of liaison officers. Montenegro also needs to join the EU Liaison Officers Network and draft a manual for liaison officers.

### *Fight against organised crime*

The Montenegrin legal framework for the fight against organised crime is primarily based on the Criminal Code, the Criminal Procedure Code, the law on liability of legal entities for criminal offences, the law on courts and the law on the state prosecutor's office. According to Montenegro, the main institutions responsible for the fight against organised crime are the police, courts, prosecution and the Ministry of Justice.

Montenegro is a party to a range of UN and Council of Europe conventions and protocols related to the fight against diverse forms of crime. With regard to Framework Decision 2008/841/JHA on the fight against organised crime, Montenegro stated that its legislation was only partially aligned with this Decision.

Responsibility for the fight against money laundering and terrorism financing lies with the Central Bank of Montenegro, the Administration for the prevention of money laundering and terrorism financing, and the police (*on money laundering see also Chapter 4 – Free movement of capital*). Montenegro has a Strategy for the prevention and suppression of terrorism, money laundering and terrorist financing for the period of 2010-2014 and an action plan for the period 2010-2012. Montenegro stated that its legislation was aligned with Decision 2000/642/JHA concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information. According to Montenegro, it needs to adopt secondary legislation to define the manner and procedures for exchanging financial intelligence data with foreign financial intelligence units.

Montenegro is a member of the EGMONT Group, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and an observer at the Eurasian group on combating money laundering and terrorist financing (EAG). Montenegro also signed memoranda of understanding related to the exchange of financial intelligence data with counterparts from 26 countries, of which 7 are EU Member States.

Concerning economic crime, including fraud, Montenegro stated that its legislation was aligned with Framework Decision 2001/413/JHA combating fraud and counterfeiting of non-cash means of payment.

As regards trafficking in human beings, Montenegro has ratified a number of UN and Council of Europe conventions and protocols. According to Montenegro, its legislation is not fully aligned with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Montenegro stated that the following amendments were necessary:

- Recognise abduction as a means to carry out trafficking in human beings;
- Improve the protection of the rights of victims of trafficking in human beings;
- Introduce provisions, which provide for severe penalties for official persons in time of his/her official duty, if found to be involved in trafficking in human beings;
- Create specific indicators for early warning and detection of potential victims of trafficking in human beings;
- Create a specialised multilingual questionnaire for identifying potential THB victims amongst vulnerable population categories like immigrants and people without proper personal identification;
- Strengthen the human resources and financial capacity of the office for combating trafficking in human beings.

According to Montenegro, its legislation is partly aligned with Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate irregular migration, who cooperate with the competent authorities. In order to fully transpose the EU legal framework, Montenegro stated it needed to:

- Define the term ‘third-state citizen’;
- Introduce the possibility of access to the labour market, vocational training and education for victims of trafficking in human beings;
- Allow time for deliberation by the victim of the trafficking in human beings.

Regarding the sexual exploitation of children, Montenegro has ratified the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse. Montenegro stated that its legislation was partly aligned with Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography. In order to fully transpose the *acquis*, according to Montenegro the following actions are required:

- Provide for legal definitions of the child, child pornography and child prostitution;
- Provide for types of sanctions for criminal liability for legal persons, as per the Directive;
- Create separate organisational units to deal with victim support and the protection of children during investigations.

According to Montenegro, its legislation is partially aligned with Decision 2000/375/JHA to combat child pornography on the Internet. To fully transpose the *acquis*, according to Montenegro legislative amendments are necessary notably with regard to:

- Criminal charges for offences related to child pornography and sexual exploitation of children;
- The creation of databases on sexual exploitation of children;
- Measures that would legally bind Internet providers to provide information about materials containing child pornography, and to ban access to such materials.

To date, Montenegro has set up a police unit responsible for the fight against child pornography on the Internet and cybercrime. Montenegro ratified the Council of Europe Convention on cybercrime and the additional protocol to it. According to Montenegro, its legislation is fully harmonised with Framework Decision 2005/222/JHA on attacks against information systems.

According to Montenegro, the law on DNA database is partly harmonised with the 2009 Resolution on the exchange of DNA analysis results (2009/C 296/01). Montenegro also needs to introduce the European Standard Set (ESS) and its analysis results. Efforts in this area also need to take into consideration the implementation of the Prüm Decision (see above).

With regard to Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communication services or of public communications networks and Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, Montenegro indicated that its legislation was partly compliant. It stated that the following amendments were required to fully transpose the directives (*see also Chapter 23 – Judiciary and fundamental rights*):

- Introduce an obligation on the part of the operators to retain data and to ensure that it is available for the purpose of carrying out investigations revealing the perpetrators of serious criminal offences;

- Define ‘serious criminal offences’ where the police can request verification from an electronic communication services provider of the authenticity of telecommunication addresses that were connected at a certain point in time.

Montenegro stated that witness protection was regulated by the law on witness protection and the Criminal Procedure Code. According to Montenegro, its legislation is compliant with the Resolution on the protection of witnesses in the fight against international organised crime (95/C 327/04) and the Resolution on individuals who cooperate with the judicial process in the fight against international organised crime (97/C 10/01). Montenegro stated that further changes were required for its legislation to be fully aligned with the Joint Declaration 2003/C 24/02 on the protection of commercial drivers engaged in export trade from becoming victims of organised crime. To this end, Montenegro plans to amend its witness protection legislation in 2013.

## **II. g. Fight against terrorism**

Montenegro stated that its legislation was only partially compatible with the *acquis* on the definition of terrorism, exchange of information and cooperation concerning terrorist offences and the protection of critical infrastructure. Montenegro has put in place a general policy framework (a strategy and an action plan) for the fight against terrorism, which also needs to be further aligned with the EU counter-terrorism strategy and action plan.

Montenegro underlined that it had ratified a number of international and Council of Europe instruments on the fight against terrorism. Montenegro pointed out that it had not faced terrorist actions in the recent years.

## **II. h. Cooperation in the field of drugs**

The Montenegrin legal framework concerning the fight against drugs is based on the Criminal Code, the law on police, the law on prevention of narcotic drugs abuse and the law on the control of substances that can be used in manufacturing of narcotic drugs and psychotropic substances. There are two criminal offences related to drugs defined by the Criminal Code: holding and releasing narcotic drugs into circulation, and enabling the use of narcotic drugs.

Montenegro stated that its legislation was aligned with Joint Action 96/750/JHA concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking. Its legislation is also aligned with the Council recommendations on improving investigation methods in the fight against organised crime linked to organised drug trafficking (2002/C 114/01), and on the prevention and reduction of health-related harm associated with drug dependence (2003/488/EC).

According to Montenegro, its legislation is partly compatible with the following *acquis*:

- Framework Decision 2004/757/JHA laying down the minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking;
- Decision 2001/419/JHA on the transmission of samples of controlled substances;
- Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances
- Joint Action 96/699/JHA concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking.

Montenegro stated it could only partially implement the Council recommendations regarding guidelines for taking samples of seized drugs, and on the need to enhance cooperation and exchanges of information between the various operational units specialising in combating trafficking in drug precursors in the Member States of the European Union. Montenegro has a list of drugs and of drug precursors. Updates to the list do not have to undergo the full legislative procedure. It can be updated on the basis of a proposal of the Ministries of Health or Interior. The update is published in the Montenegrin Official Gazette.

Montenegro has a national strategy on drugs and an action plan inspired by the EU drug strategy and action plan. However, both will expire at the end of 2012. Montenegro also has a specific strategy targeting consumption of drugs by young people. Montenegro stated that it was party to the main international and Council of Europe conventions on drugs. The Ministry of Health has set up a national focal point for cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).

Montenegro has a National Council for the Prevention of Drug Abuse. The Council is chaired by the President of the State and the Minister of Health. Other ministers and representatives of the municipalities attend the Council's meetings. At working level, there is a network of contact persons with representatives of the central government, municipalities and civil society. Relevant individual authorities have also concluded a range of agreements and memoranda of understanding in this area. However, Montenegro stated that an early warning system on new psychoactive substances for collecting, managing and sharing information among authorities responsible for the fight against drugs was still to be established.

For prevention purposes, parents of pupils can get access to free drug tests for home use. Moreover, through cooperation with civil society, connections have been made with schools and courses on healthy lifestyles are part of the curricula of primary and secondary schools.

## **II. i. Customs cooperation**

Montenegro stated that its Customs Service had signed agreements with Customs Services of 27 states, 12 of them EU Member States. There are agreements with neighbouring countries (Albania, Bosnia and Herzegovina, Kosovo and Serbia) on electronic data exchange. Montenegro still needs to initiate the procedure for accession to the Convention on mutual assistance and cooperation between customs administrations (Naples II). Montenegro stated that to implement the Convention, it needed to amend the law on the Customs Service and the Criminal Procedure Code to enhance the powers of the Service.

According to Montenegro, its legislation is partially aligned with Decision 2009/917/JHA on the use of information technology for customs purposes. Montenegro stated that it needed an IT strategy for the Customs Administration with clearly defined actions and deadlines for its implementation. Montenegro pointed out that it needed expert assistance to set technical specifications for upgrading customs IT infrastructure to comply with the decision. Montenegro also intends to draft the terms of reference for selecting experts to develop this strategy.

## **II. j. Counterfeiting of the euro** (*see also Chapter 32 – Financial control*)

Montenegro stated that its Criminal Code covered several forms of criminal offences against payment operations and business transactions: counterfeiting money, counterfeiting securities, counterfeiting and abuse of credit and payment cards, counterfeiting value bearing marks and making, acquiring and giving to another means and materials for counterfeiting. Montenegro also stated that the definition of money in its Criminal Code was partially compliant with the *acquis*. According to Montenegro, its legislation is only partially compatible with Framework Decisions on

the protection of the euro, notably Framework Decision 2000/383/JHA; Framework Decision 2001/888/JHA, and Decision 2001/887/JHA. Montenegro also stated that legal entities were accountable for all criminal offenses against property, payment operation and business activities and official duties.

In 2008 and 2009, two seminars on the protection of the euro against counterfeiting were held by OLAF, the police, and the Central Bank of Montenegro in Podgorica. Montenegro has also established cooperation with the European Central Bank and Montenegrin experts regularly participate in Pericles actions.

### **III. Assessment of the degree of alignment and implementing capacity**

Montenegro has demonstrated good awareness of the EU's strategic and policy framework in this area. Montenegro has taken positive steps to align its legislation with the *acquis*, notably through compliance with the visa liberalisation roadmap requirements. In several areas such as irregular migration, security of documents, and the fight against computer crime, Montenegro claimed full alignment with the EU legal framework. In other areas, Montenegro recognised the need for further efforts to ensure compatibility with the EU standards.

The assessment of the situation in Montenegro is also based on the organised crime threat assessment prepared by Europol at the request of the Council in June 2012. As a result, the Commission recommends that Montenegro pays particular attention to the fight against diverse forms of organised crime and to areas supporting these efforts, such as judicial cooperation in criminal matters and police cooperation. As a priority, Montenegro needs to focus its resources on aligning the legislation, on building capacity in these areas and on delivering a track record of investigations and convictions. Action Plan(s) for the other areas under this Chapter need to take this priority into consideration. Infrastructure and investment projects need to be planned in such a way that these areas are prioritised and investment in other areas is planned across the period of accession negotiations and in the case of Schengen also after the accession.

During the screening meeting, Montenegro suggested that in several areas its legislation fully complied with the *acquis*. Therefore, Montenegro needs to submit relevant legislation to the Commission to allow it to establish the level of compliance.

#### **III. a. Migration**

With regard to migration, Montenegro has primarily focused on aligning its legislation with the *acquis* on irregular migration. However, considerable efforts are necessary to adopt legislation compatible with the *acquis* on legal migration, notably:

- Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;
- Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State;
- Directive 2003/86/EC on the right to family reunification;
- Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents;
- Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research;

- Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

Following the adoption of the new legislation on legal migration, Montenegro needs to put in place a comprehensive training plan to ensure smooth implementation of the new legal framework by its administration.

To verify the level of compliance with Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence and Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, Montenegro needs to submit the relevant legislation to the Commission. Montenegro also needs to align its legislation with Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. It also needs to submit relevant legislation to allow the Commission to verify the level of compliance with Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (the ‘Return Directive’).

The capacity of the Reception Centre for Irregular Migrants is sufficient for the migration pressures Montenegro is currently facing. However, an evaluation mechanism needs to be put in place to continue to assess its capacity. Arrangements to enable short-term increases in capacity, particularly once Montenegro becomes a Member of the EU, need to be put in place. Montenegro needs to continue good implementation of readmission agreements with the EU, and to finalise the network of bilateral agreements with the neighbouring countries. There is a strategy and an action plan for the reintegration of repatriated persons. The focus needs to be put on their implementation.

In general, there is sufficient capacity to implement the *acquis* on irregular migration and readmission. Montenegro needs to analyse the impact of alignment with the *acquis* on legal migration and build administrative capacity through further training.

### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

- Outline measures to align the remaining legislation in the area of migration with the *acquis*, including an impact assessment on administrative capacity, training needs and the budget;
- Set out a mechanism to check that legislation in this area is being implemented;
- Propose an evaluation mechanism assessing the capacity of the Reception Centre for Irregular Migrants and arrangements to boost its capacity in the short term, if necessary; attention also needs to be paid to ensuring that the centre’s staff are adequately trained;
- Strengthen capacity to accommodate, protect and rehabilitate migrant minors and other vulnerable groups of migrants;
- Complete the network of bilateral readmission agreements with neighbouring countries; these need to be compatible with EU readmission agreements with these third countries.

### **III. b. Asylum**

As Montenegro is a party to the Geneva Convention and protocol, basic rights for asylum seekers are guaranteed. However, to achieve full alignment with EU standards and practices, major efforts are needed in terms of legislation, capacity building and implementation.



Montenegro needs to focus on alignment with the following legal acts:

- Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national;
- Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;
- Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
- Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status;
- Directive 2001/55/EC minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;
- Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers.

By putting in place the required technical infrastructure (notably databases), Montenegro would also improve monitoring of the flow of asylum seekers. In this context, further efforts are necessary to implement Council Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints.

Montenegro has the necessary institutions in place to deal with asylum claims. However, administrative capacity needs to be strengthened. The focus needs to be on establishing the origin of asylum seekers, translation and interpretation, and capacity to assess the grounds for refugee status or international protection and take the necessary decisions on these matters. A second-instance administrative decision by the State Asylum Appeals Commission can be appealed against before a judicial authority (the Constitutional Court). Montenegro needs to put in place a stronger mechanism to monitor departures of asylum seekers who intend to leave voluntarily. Montenegro also needs to prepare for a situation where the number of asylum claims increases upon accession to the EU.

### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

- Outline measures to align legislation with the *acquis* in the area of asylum, including an impact assessment on administrative capacity, training needs and the budget;
- Prepare an analysis of what needs to be put in place to meet the technical requirements to cooperate in the context of Eurodac and the Dublin Convention; put in place databases compatible with both Eurodac and Dublin Convention;

- Strengthen the administrative capacity to deal with asylum claims, notably with regard to the establishment of the origin, analysis of grounds to claim asylum, translation and interpretation, and monitoring of voluntary departures;
- Put in place a mechanism to regularly review the capacity of the Asylum Centre to meet demand in the light of changing pressures over time;
- Put in place the structures necessary to cooperate with the European Asylum Support Office and to benefit from the European Refugee Fund, if needed, by the date of accession.

### III. c. Visa policy

Montenegro's visa policy is not fully aligned with EU standards. Montenegro permits visa-free access to nationals who need a visa to enter the EU.

In terms of document security and visa features, Montenegro has reached a good level of compliance, notably with the standards of the International Civilian Aviation Organisation. Additionally, usually six months ahead of accession, Montenegro will receive classified technical specifications on uniform formats for travel documents and visa which it needs to take into consideration by the time of accession.

In the context of the future Schengen accession, the types of visa issued by Montenegro are not fully compatible with the new EU Visa Code. In the course of the visa liberalisation dialogue, Montenegro improved its procedural alignment with the EU. However, further efforts are needed to make the system fully compatible. For example, Montenegro stated that the reasons for refusing a visa were not disclosed to the applicant, which is not in line with the *acquis*. There is also no right to appeal against such a decision. These two elements, however, constitute key elements of the EU's new visa policy. The positive trend of decreasing numbers of visas issued at the border needs to continue.

Complying with the requirements of the Visa Information System will be a major technical and financial challenge for Montenegro. This System requires connections with the Montenegrin diplomatic and consular missions abroad. Moreover, ahead of participation in the Schengen area, consideration needs to be given to alternatives for consular representation abroad by third countries, which are not Members of the EU.

Montenegro has sufficient administrative capacity at central and regional level to implement EU visa policy. The shortcomings in administrative and technical capacity are related primarily to Montenegro's limited number of foreign representations and their lacking electronic connection with headquarters. The situation could be mitigated, if Montenegro asked for representation by other Schengen Member States.

#### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

- Outline measures to ensure that national legislation complies with EU Visa Regulation 539/2001 and to address the shortcomings in administrative and technical capacities to comply with this Regulation;
- Prepare capacity to receive few months ahead of the accession classified information on the security details of travel document and visa format, and implement them in practice.

Moreover, in view of the future accession to the Schengen area, Montenegro is encouraged to start the preparation on the following issues:

- Outline measures to ensure compliance with the Visa Code;
- Draft a strategy and an action plan, including a financial and technical impact assessment, to ensure preparations for the Visa Information System and electronic connections with Montenegrin missions abroad, including to train relevant consular staff;
- Propose measures to further limit the number of visas issued at the borders;
- Prepare possible alternatives to consular representation of Montenegro abroad, using EU Member States instead of non-EU Member States.

### **III. d. External borders and Schengen**

#### *External borders*

Montenegrin legislation in the area of external borders is inspired by the EU *acquis* and practices. However, the legislative and administrative framework for the management of external borders is not fully aligned with EU standards. This includes issues such as the introduction of special tapes for EU Member State citizens at airport border crossing points, the appearance of and method of placing border signs at the state border, the duties of carriers, etc. When amending the legislation, Montenegro needs to take into account the considerable cost implications of alignment. Moreover, provisions on fundamental rights and non-discrimination against travellers need to be incorporated into Montenegrin legislation. This needs to be accompanied by training for the border police.

In terms of its policy framework, Montenegro needs to adopt a new strategy and an action plan based on the EU concept of Integrated Border Management. In recent years, notably during the visa liberalisation dialogue, Montenegro improved the technical equipment of some of its border crossing points. Similarly, surveillance of the ‘blue border’ using modern technology has been put in place. However, further equipment needs to be deployed, notably at the smaller border crossing points. Montenegro also needs to further develop risk analysis for capability related to the management of its borders.

To improve protection of its borders, Montenegro is actively cooperating with its neighbours. Montenegro is considering ways to prevent borders being crossed illegally via alternative roads. Montenegro needs to consider alternatives to demolishing the roads (putting physical obstacles in place and/or introducing electronic surveillance).

Montenegro also needs to improve inter-agency cooperation between the different services involved in activities at the border to increase efficiency, notably with regard to the blue borders. The roll-out of technology to protect the blue border needs to be completed. Montenegro signed a working arrangement with the EU border agency — Frontex — in 2008 and it participates as an observer in joint operations organised by Frontex. Cooperation with Frontex is good and Montenegro regularly contributes to joint risk analysis work.

#### *Schengen acquis*

It is understandable that preparations in this area are at an early stage given that Montenegro will join the Schengen area only after it has joined the EU. At the same time, there is a good technical basis to build on. Montenegro needs to adopt its own national Schengen action plan. It needs to start drafting plans to create a national IT infrastructure compatible with the Schengen Information System, including adequate data protection provisions. Preparations to join the Schengen area

require considerable resources, so careful and thorough planning of individual steps is necessary. The Schengen action plan would be instrumental in these efforts.

### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

- Draft a strategy with the sequence of necessary legal amendments to Montenegrin legislation required before joining the EU and before joining the Schengen area;
- Prepare a comprehensive analysis of the infrastructure and business processes of the competent law enforcement, judicial and vehicle licensing authorities regarding their proposed access to and use of the Schengen Information System (SIS), including the querying, creation, update and deletion of alerts in the SIS. This is also to include an analysis of the sources of information for both alerts and supplementary information to ensure that the SIRENE Bureau is able to fulfil its role in information exchange with other Member States 24/7;
- Prepare a new strategy and an action plan for integrated border management in line with EU concepts;
- Develop a risk analysis model for border management purposes, based on European standards, such as the Common Integrated Risk Analysis Model developed by Frontex;
- Outline measures to improve inter-agency cooperation including the exchange of information at the borders through a joint operational work;
- Propose measures to improve the protection of the external borders through improved operational cooperation with neighbouring countries;
- Suggest steps to effectively prevent cross-border traffic through alternative roads;
- Outline measures to improve the fight against corruption at the borders, based on the anti-corruption code of ethics.

### **III. e. Judicial cooperation in civil and criminal matters**

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

Montenegro is party to most international conventions in this area. Montenegro still needs to ratify the 2007 Hague Convention on the international recovery of child support and other forms of family maintenance. EU regulations governing judicial cooperation in civil and commercial matters will be directly applicable in Montenegro upon accession. According to the information provided, the legislative framework of Montenegro is not fully compatible with the EU *acquis*. Relevant legislation needs to be submitted to the Commission for it to assess the current degree of alignment. Furthermore, Montenegro needs to consider ways to incorporate the regulations into its own legislation ahead of the accession. This is to ensure that upon accession Montenegro has sufficient capacity and experience to apply them. Therefore, Montenegro needs to build up its own administrative capacity to be able to implement the *acquis*, including through training. Statistics also need to be improved to demonstrate efficiency in dealing with requests from third countries.

#### *Judicial cooperation in criminal matters*

This is one of the priority areas that Montenegro needs to focus on. Montenegro has some of the basic principles of judicial cooperation in criminal matters enshrined in its legislation and it has acceded to a number of international conventions. However, the legal framework is not complete and does not fully correspond to the *acquis*. To determine its compliance with the *acquis* with more precision, Montenegro needs to submit relevant legislation to the Commission. In particular, Montenegro needs to implement the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the EU and its protocols and, at least, to implement the provisions of the Convention of March 1995 on simplified extradition procedures between the Member States of the EU, in order to process the transposition of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedure between Member States. The constitution of Montenegro also limits the extradition of Montenegrin nationals to third countries in criminal proceedings, unless there is an international agreement enabling it.

Currently, administrative capacity is not sufficient to meet EU requirements on judicial cooperation in criminal matters. Montenegro needs to lift the role of the central authority and introduce the necessary mechanisms to implement the principle of mutual recognition. Montenegro needs to provide further training to the staff of the courts, the Ministry of Justice, the police and other civil servants. It also needs to put in place the necessary infrastructure. Moreover, it needs to gradually gain experience through practical work with EU partners and use the potential of the available instruments proactively. In this context, Montenegro needs to enable its courts to cooperate directly with partner courts from the EU. Currently, the requests have to pass through the Ministry of Justice.

In terms of cooperation with Eurojust, Montenegro needs to ensure that it meets the requirements for concluding the cooperation agreement, notably on personal data protection. With regard to joint investigative teams (JITs), Montenegro is a party to the Police Cooperation Convention for South East Europe, which is largely built on EU principles. Therefore, it needs to increase the use of these teams with its partners from the Western Balkans region, which are also parties to this Convention. JITs are a useful tool for cooperation with EU Member States under Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.

As regards horizontal judicial cooperation in civil, commercial and criminal matters, Montenegro is not a member of a number of EU judicial networks. The Commission recommends that the Ministry of Justice could usefully prepare for accession by suggesting that the appropriate judicial authorities become observer members of the European Judicial Training Network, the European Network of Councils for the Judiciary, the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, the Network of the Presidents of the Supreme Judicial Courts of the European Union, and the Network of the General Prosecutors of the Supreme Judicial Courts of the European Union. Additionally, when incorporating EU legislation into national law, Montenegro would benefit from participation by the Ministry of Justice in the Network for Legislative Cooperation between the Ministries of Justice of the European Union.

### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

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

- Propose measures to transpose existing regulations into Montenegrin legislation with an impact analysis (administrative, budgetary, staff and training needs);

- Outline steps to improve statistics to monitor efficiency in treating international requests in this area.

#### *Judicial cooperation in criminal matters*

- Outline measures to implement outstanding pieces of legislation, including an impact assessment on administrative capacity, the budget and technical requirements;
- Establish the necessary institutions relevant to judicial cooperation in criminal matters to complete the institutional framework; enable direct cooperation between Montenegrin courts and courts from third countries;
- Prepare and deliver training taking into account legislative developments when aligning legislation;
- Ensure preparations to conclude a cooperation agreement with Eurojust, notably as regards personal data protection.

### **III. f. Police cooperation and the fight against organised crime**

This is the key priority area for Montenegro. In June 2012, the Council invited Europol to present a report on the situation with regard to organised crime in Montenegro, and asked the Commission to ensure that this contribution was taken into account in this screening report.

#### *Police cooperation*

Montenegro is actively participating in regional law enforcement cooperation. It has also established practical cooperation with some EU Member States. As a result, a number of police operations have been conducted in cooperation with the authorities of the EU Member States, but also of the other countries of the region, Interpol and Europol. Concluding an operational agreement with Europol and posting a liaison officer to Europol would help Montenegro to increase such cooperation with the EU Member States.

Montenegro has identified the main challenges it faces in implementing the *acquis* on police cooperation. Given its limited administrative capacity and financial resources, Montenegro needs to prioritise and needs to focus on gradual implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (Prüm Decision) and Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (Swedish initiative).

#### *Fight against organised crime*

Organised crime is one of the major challenges Montenegro is facing. Criminal groups originating from Montenegro or having links to Montenegro operate within and beyond the borders of the country. Montenegro is an attractive location for foreign criminal investment. Another key challenge is drug smuggling, in recent years cocaine from South America. There is evidence that Montenegrin organised crime groups have direct contacts with cartels from South America. At the same time, other forms of crime such as trafficking in human beings, various forms of smuggling, including weapon trafficking and fraud are also present.

Montenegro has strengthened its legislative framework, notably in the course of the visa liberalisation dialogue. It is important to continue work on alignment of the legislation, including the Criminal Procedure Code. Relevant legislation needs to be submitted to the Commission so that a more precise level of compliance can be established. The focus of Montenegrin authorities needs to be in particular on delivering results on investigations, prosecution and convictions.

Relations between the prosecution service and law enforcement authorities need to be improved. Furthermore, Montenegro needs to improve provisions on the use of the special investigative measures used for investigating organised crime, including by extending time limits. Montenegro needs to improve the possibility to work on the basis of intelligence, notably through making access to information easier for investigators from other services (e.g., customs, tax authority, land registry, banking data, and the property registry), and between different branches of the same service. The specialised units dealing with organised crime within the police, and the inter-agency teams already established, need to get appropriate resources and support from their mother agencies. Internal monitoring and verifications mechanisms in relation to the fight against organised crime need to be reinforced.

Montenegro also needs to strengthen its capacity (both law enforcement and judiciary) to investigate financial and economic crime, including money laundering. There is still no proactive track record of financial investigation. This is important given that Montenegrin organised crime groups often operate outside the country. Inter-agency cooperation in this field needs to be improved. It is a concern that the supervision and inspection of the banks in cases when they fail to report suspicious transactions is weak. The banks face only very low fines (max €20,000) and no criminal charges. The total proceeds of crime seized remains low, pending improvements in the implementing legislation in this field, and in administrative capacity. The management of seized property also needs to be improved. There has not yet been a case in which courts issued the final confiscation order with the conviction.

Montenegro's capacity to recognise, investigate and properly address cases of trafficking in human beings is limited and needs to be reinforced. Judicial and law enforcement authorities need to undergo adequate training, while inter-agency cooperation in this field needs to be strengthened, to ensure a streamlined approach to victims. The status of victim of trafficking needs to be decoupled from criminal proceedings. Montenegrin legislation needs to be enhanced to better guarantee all rights of the victims of trafficking, as stipulated in the international conventions and the *acquis*. The recovery and reflection period for victims needs to be defined by the law. Although the right of compensation for victims of trafficking is guaranteed in Montenegrin legislation, no victim has been compensated.

Reports from law enforcement agencies point at possible existence of the risk of links between organised crime and of the political elite of Montenegro. Therefore, it is important for Montenegro to work on an environment in which law enforcement and judicial authorities are enabled to investigate without obstacles and to bring the perpetrators to justice.

### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

#### *Police cooperation*

- Ensure preparations for the signature of the operational agreement with Europol and the posting a liaison officer to The Hague; put in place the necessary data protection standards to allow the smooth implementation of the operational agreement with Europol;

- Implement the necessary IT infrastructure for police cooperation, including analysis of costs, administrative resources, the budget and training needs;
- Participate in cooperation on issues such as security of football matches, vehicle crime, and the protection of public figures.

#### *Fight against organised crime*

- Outline measures to align the national legal framework with the *acquis* and to duly transpose and implement the UNTOC/Palermo Convention and its protocols;
- Build the capacity of the police, the prosecution services and the Anti-Money Laundering Administration to investigate organised crime, notably economic and financial crime, including money laundering;
- Following the publication of the new FATF recommendations, analyse the Montenegrin legislation and update it as appropriate; organise training and develop a set of guidance rules for the regulated sector on the implementation of the new recommendations;
- Increase and apply sanctions for non-compliance with legislation and reporting obligations;
- Put in place an IT policy identifying hardware and software needs for the analysis of data related to money-laundering;
- Improve inter-agency cooperation by enabling easy access to information necessary for investigators, at all levels;
- Make the classified version of the organised crime threat assessment available to prosecution services;
- Strengthen the capacity and resources of the specialised units within the police, and of the inter-agency teams for investigation;
- Ensure that the legislative and institutional framework enables effective seizure, confiscation and management of the proceeds of crime resulting in an increased number of seizures and confiscations;
- Implement the recommendations of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA); step up efforts to recognise and respond adequately to the fight against trafficking in human beings; amend the legislation on victims of trafficking to align it with international instruments and the EU *acquis*;
- Propose steps to implement the strategy on small arms and light weapons.

### **III. g. Fight against terrorism**

Montenegro's legal framework is only partially compatible with the *acquis*. Further efforts are necessary to align Montenegrin legislation to comply notably with:

- Framework Decision 2002/475/JHA on combating terrorism;



- Decision 2005/671/JHA on exchange of information and cooperation concerning terrorist offences;
- Directive 2008/114/EC on the identification and designation of European Critical Infrastructure (ECI) and the assessment of the need to improve their protection.

Compatibility of the Montenegrin policy framework on counter-terrorism with EU strategies and actions plans in this area needs to be further improved. Montenegro has ratified key international and Council of Europe instruments for the fight against terrorism.

According to the available information, capacity in this area is adequate for the threat terrorism poses in Montenegro. At the same time, Montenegrin law enforcement and security services need to continue to monitor the situation, notably in the Sandzak area, and need to contribute to international cooperation in this area.

### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

- Outline measures to align the national legislation with the *acquis* in this area;
- Update the policy framework to take into consideration policy developments at EU level;
- Suggest measures to enhance the security of warehouses and explosives storage facilities.

### **III. h. Cooperation in the field of drugs**

Drug abuse in Montenegro is not a major issue, although an increase in consumption of drugs has been observed in the past several years. However, Montenegro is on a major drugs trafficking route. Montenegrin organised crime groups are active in trafficking drugs, notably cocaine, heroin and cannabis. The port of Bar plays an important role in this illicit business. Montenegrin authorities need to increase their focus on effective, intelligence-led operations against drug trafficking and to develop a solid track record of drug seizures, as the record so far has been limited. In this context Montenegro needs to enhance its international cooperation.

As regards alignment of the legislation, relevant legislation needs to be submitted to the Commission so that the level of compliance with EU standards can be determined more precisely. The Montenegrin policy framework on the prevention and suppression of drugs needs to be further developed, notably by adopting a new strategy and action plan based on the new EU policy framework. The strategy and action plan need to contain evaluation mechanisms.

The conclusion of the various agreements and memoranda of understanding among national authorities involved in the prevention and suppression of drugs is a positive development. However, practical cooperation, notably information exchange, needs to be considerably enhanced. The focal point for cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is not yet operational, due to the limited availability of financial and human resources.

### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

- Enhance operational results of law enforcement and judicial authorities in the fight against drugs trafficking and abuse, including by increasing the amount of drugs seized; to this end improve international cooperation and cooperation with Europol;
- Strengthen security measures and monitoring of the port of Bar;
- Improve practical cooperation, coordination and information exchange of national bodies involved in the fight against drugs;
- Allocate sufficient staff and financial resources to the focal point for the EMCDDA, to ensure an active cooperation with the Agency;
- Keep the list of drugs regularly updated following international and European developments;
- Develop a new national policy framework compliant with the new EU policy framework and include evaluation mechanism for the national strategy and action plan.

### **III. i. Customs cooperation**

Montenegro is active in regional and to some extent international customs cooperation (notably through the World Customs Organisation). However, Montenegro is only partially aligned with the requirements of the *acquis* on customs cooperation. The main focus needs to be on defining customs' IT infrastructure requirements in order to implement Decision 2009/917/JHA on the use of information technology for customs purposes. Montenegro needs to ratify the Naples II Convention and start work on implementing it.

#### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issues:

- Define terms of reference of experts to assist in preparing the strategy on customs IT infrastructure;
- Draft a strategy on changing the customs IT infrastructure;
- Ratify the Naples II Convention and draft a work plan to implement it.

### **III. j. Counterfeiting of the euro**

According to the available information, the legal framework of Montenegro is only partially in line with the *acquis*. Montenegro needs to submit relevant legislation to the Commission to verify the degree of compliance. The 1929 Geneva Convention for the suppression of counterfeiting currency is applicable in Montenegro. Montenegro needs to build administrative capacity to enhance its cooperation with OLAF, Europol and the European Central Bank to prevent euro counterfeiting.

#### *Recommendations*

In the light of the above, Montenegro needs to adopt an action plan, addressing in particular the following issue:

- Strengthen capacity to enhance cooperation with OLAF, Europol and the European Central Bank in this area.