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Subject: EUROPEAN UNION COMMON POSITION  
Chapter 23: Judiciary and fundamental rights

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## EUROPEAN UNION COMMON POSITION

### Chapter 23: Judiciary and fundamental rights

This position of the European Union is based on its general position for the Accession conference with Montenegro (CONF-ME 2/12), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-ME 8/12), in particular:

- any view expressed by either Montenegro or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters;

as well as to the requirements set out in points 24, 28, 41, 42, 43 and 44 of the Negotiating Framework.

The EU encourages Montenegro to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general to develop already before accession, policies and instruments as close as possible to those of the EU.

The EU notes that Montenegro, in its position CONF-ME 7 accepts the *acquis* under chapter 23 as in force on 30 May 2012 and that it will be ready to implement it by the date of its accession to the European Union.

## 1. JUDICIARY

The EU notes Montenegro's intention to adopt a new Strategy for Judicial reform and its accompanying action plan. The EU encourages Montenegro to put in place a monitoring mechanism allowing it to continuously follow up on the implementation of actions and the impact they generate. It stresses the importance of taking swift remedial action should certain measures not lead to the expected result. The EU encourages Montenegro to regularly report on the results of the implementation of the strategy and action plan. The EU stresses the importance for Montenegro to ensure a sufficient budget for the judiciary in the years to come, including for modernising IT and other equipment and infrastructure. The EU also underlines the importance for Montenegro to ensure an inclusive process and a wide consultation process, including civil society, when preparing new legislation and activities that are essential for the success of the reform process.

The EU acknowledges the substantial legal reforms Montenegro is planning in the months and years ahead to reform its judicial system. The EU underlines the importance for Montenegro to prepare these legal amendments with the greatest care and involving all relevant stakeholders, so as to avoid frequent changes later on and thus ensuring legal stability and certainty.

### **Independence**

The EU takes note of the information regarding the *independence* of the judiciary and, in particular, the adoption in July 2013 of constitutional amendments aiming at strengthening the independence of the judiciary, which are broadly in line with the Venice Commission recommendations. They are expected to substantially reduce political influence on the appointment of high-level judiciary officials through the introduction of more transparent and merit-based procedures and through substantial qualified majority thresholds where the parliament is involved.

The constitutional changes also lay the foundations for a future transparent and merit based recruitment and career development system for all magistrates. The EU underlines the importance of ensuring that recruitment, evaluation and promotion systems for judges and prosecutors (including at senior level) are based on uniform, transparent, objective and nationally applicable criteria. The EU notes Montenegro's intention in this respect to introduce such systems through further amendments to a number of laws (Law on the Judicial Council, the Law on Courts, the Law on the Constitutional Court and the Law on the Public Prosecution Office, as well as related implementing legislation). Montenegro needs to establish a track record demonstrating that both appointments and career development of magistrates are transparent and exclusively based on merit without political interference. The EU reiterates the attention it attaches to a fully independent judicial system, both in law and in practice and notes Montenegro's plans to provide additional guarantees for magistrates to be protected from undue influences.

The EU notes that all candidate judges and prosecutors will have to undergo obligatory initial training by the Judicial Training Centre and that there will be a single entry point for a judicial career. Sufficient human and financial resources must be available for the Judicial Training Centre to perform its duties. The EU takes note of Montenegro's plans to strengthen the administrative capacity of the Judicial and Prosecutorial Councils. It stresses the need to ensure adequate human and financial resources for the Councils, as well as to foster transparency and accountability in their work. The EU underlines the pivotal role these Councils will play in the future and stresses the importance of a careful selection of their members.

The EU underlines that the full respect and implementation of judicial decisions is fundamental for a society based on the rule of law. It therefore invites Montenegro to address perceptions of impunity which may arise through the very considerable number of cases (including final convictions for corruption and organised or serious crimes) that benefit every year from presidential pardoning and through limiting the use of amnesty, which should be always made conditional upon a proper risk and impact assessment.

## **Impartiality and accountability**

The EU underlines the importance it attaches to the full respect of high ethical standards in the judiciary. It takes note of the information provided by Montenegro regarding the *impartiality* of the judiciary, in particular the Judicial Information System (PRIS) which ensures the random allocation of cases in all courts with the exception of small courts, the analysis and revision of the disqualification procedures, measures to ensure the prevention and sanctioning of conflicts of interest and the code of ethics for judges and prosecutors which will be amended. The EU invites Montenegro to pro-actively use the tools at hand such as the verification of assets and the enforcement of improved ethical codes, to strengthen the impartiality and accountability of magistrates. The EU underlines the importance of Montenegro demonstrating a track record in these areas.

The EU notes that the constitutional amendments include provisions defining the reasons for dismissal of prosecutors. These will be reflected in subsequent legal amendments detailing the competences and procedures for disciplinary proceedings against magistrates. The EU also notes that functional immunity is a constitutional right for Montenegrin magistrates and sub-constitutional provisions have to be amended so as to ensure full accountability of judges for criminal offenses in line with European best practices. The EU underlines the importance of fair and impartial disciplinary procedures. It also invites Montenegro to ensure regular and effective inspections of the work of magistrates and to actively promote ethical behaviour within its judicial system. In view of enhancing public confidence in the judiciary, the EU encourages Montenegro to establish an effective complaint mechanism for "users of justice", to raise awareness on its existence and to ensure that integrity becomes an explicit criterion in appraisals, promotions and senior appointments. The EU invites Montenegro to establish a track record in terms of consistent and dissuasive disciplinary action.

## **Professionalism/Competence/Efficiency**

The EU takes note of the information regarding the *professionalism, competence and efficiency* of the judiciary and in particular of the measures concerning the development of the judicial statistics and performance indicators, Montenegro's plans related to the further rationalisation of the court network, measures to improve the enforcement of court decisions, the introduction of an incentive-based system of voluntary horizontal mobility/transfer of magistrates and Montenegro's commitment to reduce further the backlog of court cases. The EU underlines the importance of a steady further reduction of the backlogs, which will be a key step in the increased efficiency of the Montenegrin judiciary. The EU stresses in this respect the need to further explore and promote the use of alternative measures such as mediation, court settlements and arbitration. The EU invites Montenegro to ensure tangible improvements in ensuring coherence in jurisprudence and in the enforcement of all court decisions, including through the use of bailiffs - so as to contribute to enhancing legal certainty.

The EU further notes that Montenegro will transform its Judicial Training Centre into an independent institution. The EU underlines that a sustainable long-term solution for Montenegro's Judicial Training Centre is of key importance for the professional development of its magistracy and other judicial staff. The EU also underlines the importance for Montenegro to develop robust statistics as an indispensable tool for managing the judiciary, including on workload monitoring and addressing staffing needs. The EU invites Montenegro to develop a comprehensive human resources policy (for all types of staff working within the judiciary) that plans the needs of the judicial system, sets out how to meet them and which promotes a profession with independence and integrity at its heart. The EU calls upon Montenegro to ensure that these measures are implemented without delay and in line with the set deadlines and to ensure the necessary financial resources for their correct implementation.

## **Domestic handling of war crimes**

The EU takes note of the information provided by Montenegro on the conduct of domestic *war crimes* investigations and trials. The EU underlines the importance of further progress in this area, not only to serve the interests of justice in Montenegro but also to enhance reconciliation both in Montenegro and in the region. The EU stresses that Montenegro needs to ensure that decisions by the Montenegrin judiciary on war crimes cases need to be in line with international humanitarian law, to reflect the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, and to fully apply domestic criminal law. The EU underlines the need to end impunity, including by finally concluding the extremely lengthy investigations and court proceedings that still have not yet resulted in final court rulings. The EU calls on Montenegro to ensure impartial handling of cases by the law enforcement bodies and courts, and to ensure that civilian victims have access to justice and reparations and to cooperate with other countries in the region.

## **2. ANTI-CORRUPTION**

The EU takes note of the legal framework governing the prevention and fight against corruption and in particular the provisions included in the Criminal Code, the Criminal Procedure Code, the Law on the Public Prosecution Office, the Law on Courts, the Law on the Judicial Council, the Law on Free Access to Information as well as the Law on Prevention of Conflict of Interest, the Law on Witness Protection, the Law on Criminal Liability of Legal Persons, the Law on financing of political parties etc. The EU notes that Montenegro is party to the relevant international conventions and legal instruments. The EU also takes note that Montenegro is implementing a national Strategy for the Fight against Corruption and Organized Crime (2010-2014) through an Action Plan covering the period 2013-2014. A National Commission composed of public officials and non-governmental representatives monitors its implementation. The EU invites the National Commission to assess the impact of the Strategy and Action Plan and to propose corrective measures where needed. The EU also underlines the need to develop consistent and reliable statistical data on corruption.

## **Preventive action against corruption**

The EU notes the information provided by Montenegro as regards the institutional arrangements in place for implementing corruption prevention measures : the Directorate for Anti-Corruption Initiative which was integrated into the Ministry of Justice and the Commission for the Prevention of Conflicts of Interest (CPCI).

The EU underlines that Montenegro needs to establish an effective and robust institutional co-ordination mechanism for the implementation and monitoring of anti-corruption measures. In this context the EU notes Montenegro's commitment to establish a new Anti-Corruption Agency. The EU underlines the importance it attaches to ensuring that the Agency has a clearly defined mandate and effective powers, displays a pro-active attitude and is well connected to other relevant authorities and enjoys the necessary independence. The EU also underlines the need for the Agency to be sufficiently resourced, including as regards well trained staff and is headed by a manager recruited exclusively on the basis of transparent criteria with a focus on merits and professional skills. The EU invites Montenegro to strengthen its current anti-corruption bodies prior to the establishment of the new Agency.

The EU takes note of the current arrangements as regards the prevention and sanctioning of conflicts of interest as well as the system of asset declarations. The EU stresses the importance of a well-functioning asset declaration and verification system, which can be a useful tool to prevent and fight corruption and financial crimes as well as to uncover inexplicable wealth, for which appropriate follow-up should be ensured. The EU underlines the need for asset declarations to be publically available, to apply a risk based approach and to verify assets with the help of all relevant data, including registers on immovable and movable (cars and boats) property and data collected by tax authorities. The EU recommends carrying out a periodic review of the asset declaration system to assess its effectiveness. The EU also underlines the need for an effective mechanism to prevent and sanction conflicts of interest, including protecting the financial interests of the EU in view of the allocation of EU pre-accession funds to Montenegro and the expected EU financial support after accession. The EU invites Montenegro to strengthen current arrangements and develop the relevant track records already while preparing for bestowing the future Anti-Corruption Agency with the necessary tools to effectively prevent conflicts of interest and verify assets. It also underlines the importance of continuous training and awareness raising on the importance of preventing conflicts of interest at all levels.

The EU notes that Montenegro has taken legal steps (the Laws on Civil Servants and State Employees and on General Administrative Procedure) and policy measures (Strategy of Reform of Public Administration "AURUM") to reform its public administration. The EU invites Montenegro to establish a public administration solely build on professionalism and merits when it comes to recruitment, promotion and nomination, including of senior managers. It underlines the importance of depolitisation measures and of fostering institutional memory, specialised know how and ethical values. The EU notes that Montenegro will reinforce the Administrative Inspectorate, providing it with a new risk analysis methodology, adopt and implement integrity plans and recruit integrity managers.

The EU notes that Montenegro is preparing a new law on the Financing of Political Entities and Election Campaigns in line with GRECO recommendations. It also takes note of Montenegro's commitment to reinforce the State Electoral Commission (SEC) and the State Audit Institution (SAI). The EU underlines the importance it attaches to the full and correct application of the law and to the need to also ensure the independence of the institutions that will oversee its implementation. The EU also underlines that electoral fraud and the abuse of public funds by political parties – in whatever form they may occur – constitutes a grave violation of the basic principles on which a democracy is built. The EU therefore calls on Montenegro to ensure that the necessary guarantees are in place to avoid that such practices occur.

The EU notes the legal provisions in place concerning free access to information. It also notes that Montenegro will take steps to improve legal coherence, in particular with the Data Protection Law and the Law on Data Confidentiality and will analyse the exceptions from the principle of publication, especially as regards the criterion of foreign and economic policy. The EU takes note of the measures Montenegro has taken in the field of public procurement, in particular through the adoption of a new Public Procurement Law and the implementation of a strategy for the Development of Public Procurement System. The EU underlines the importance for Montenegro to establish the necessary administrative capacity and ability of administrative control authorities to protect the public procurement system from abuses and to ensure that administrative and law enforcement authorities as well as the judiciary effectively investigate and sanction irregularities (*see also Chapter 5 – Public Procurement.*)

The EU takes note of the fact that Montenegro has taken several measures to prevent and fight corruption in particularly vulnerable areas in the context of its 2013-2014 Action Plan for the implementation of the Strategy for the Fight against Corruption and Organized Crime. It also notes other short-term measures in the areas of privatization, urban planning, education, health care, local self-government (including public procurement) and to prevent corruption in the police. The EU calls on Montenegro to assess the effects that these measures have generated and to take remedial action where needed.

The EU notes the recent establishment of an anti-corruption committee in the Montenegrin Parliament which is now monitoring the anti-corruption policy in state bodies as well as the implementation of relevant laws. The EU underlines the important role of the Parliament in driving forward the national anti-corruption policy and in ensuring the political will that will be required to effectively improve the situation as regards corruption.

The EU notes the measures taken by Montenegro to associate civil society representatives to the work on the national Strategy and action plan as well as to the work in the context of the accession negotiations in chapter 23. The EU encourages Montenegro to continue to solicit input of civil society organisations for the development, implementation and monitoring of anti-corruption measures.

### **Repressive action against corruption**

The EU notes that effectively fighting corruption remains an important challenge for Montenegro. The EU takes note of the constitutional amendments that aim at enhancing independence and professionalism of the judiciary. It encourages Montenegro to make the pre-trial investigation phase more efficient and less rigid and notes the planned amendments to the Criminal Procedure Code that will deal with *inter alia* precautionary freezing of assets, the use of Special Investigation Measures (SIMs), rules on dismissal of criminal charges, extending the powers of the police during the preliminary investigation and the timeframe for pre-trial detention.

The EU underlines that one of the keys to tackling corruption in general and high level corruption in particular, is that it is seen to be systematically and successfully investigated and prosecuted and that investigations into such crimes are always followed up with financial investigations. The EU highlights the importance of effective sanctions commensurate to the gravity of the crime. It notes Montenegro's plan to carry out a comprehensive analysis of the organisational structure as well as the capacities and competences of state authorities and public administration bodies in the fight against organised crime and corruption in view of increasing their investigation capacity. The EU attaches great importance to the fact that this needs to bring about a substantial improvement and should address a number of structural weaknesses. The EU notes that the comprehensive analysis will also look into the definition of high level corruption in the light of determining the future competencies of the Special Prosecution Office as regards cases of high level corruption.

The EU highlights the importance of smooth inter-agency co-operation and underlines that electronic access to relevant databases and a secure communication system are indispensable tools for law enforcement bodies. The EU notes Montenegro's intention to put in operation a secure electronic communication system allowing mutual access to data bases and exchange of information between (law enforcement) agencies, including the prosecution office. It further invites Montenegro to expand the use of SIMs (while ensuring that these will not be abused) and to further roll out the concept of intelligence led policing.

The EU encourages Montenegro to rationalize structures and foster specialization within the law enforcement and court system. In this respect, it takes note of the measures planned at the level of the courts (the merger of the two specialized divisions in the High Courts of Podgorica and Bijelo Polje into one within the High Court of Podgorica), the prosecution (through the establishment of a Special Prosecutor's Office, including multi-disciplinary investigative teams and in the Ministry of Interior (by establishing a specialised organisational unit on Financial investigations). The EU underlines the importance for these new structures to be properly resourced, to have clearly defined responsibilities, to be well connected with relevant bodies (allowing better co-operation and information exchange) and in particular to be able to work in a professional, independent and proactive manner.

The EU notes the measures Montenegro will take to allow the collection of unified statistic on corruption cases and their handling through the Judicial Information System (PRIS). The EU encourages Montenegro to also pay attention to equipment and training needs.

The EU encourages Montenegro to move beyond a purely criminal law approach to fighting corruption and calls on Montenegro to substantially strengthen its capacity to conduct complex financial investigations. It notes Montenegro's intention to amend its legislation (Criminal Code, Law on Prevention of Money Laundering and Terrorism Financing) so as to bring it in line with the Financial Action Task Force recommendations. The EU also takes note of Montenegro's commitment to adopt new legislation on asset seizure and to establish an Asset Recovery Office. The EU underlines the importance of these measures in particular in the context of the fight against high level corruption and stresses the need for comprehensive legislation, allocating sufficient financial and human resources, providing the necessary specialised training and above all for ensuring the autonomy of a strong Asset Recovery Office.

The EU notes the shortcomings as regards the current arrangements for whistle blowers and encourages Montenegro to optimise its legal framework and practices regarding whistle blower protection. The EU underlines the importance of limiting immunity rules for magistrates and civil servants to functional immunity only. It takes note of the fact that the Prime Minister, Ministers and Members of Parliament enjoy immunity such that that they cannot be subject to criminal or other liability or detained for opinions expressed or for voting while exercising functions of their office and that no criminal procedure may be initiated against them, or custody ordered, without the authorization of the Parliament, unless they are caught in the act. The EU calls on Montenegro to correctly implement these rules and to ensure that nobody is perceived to be above the law.

The EU notes the information provided by Montenegro regarding the procedure for closure of criminal cases and in particular the commitment of Montenegro to amend the Criminal Procedures Code which should lead to improving the system. The EU encourages Montenegro to ensure a proper review mechanism for decisions of the prosecutor dismissing criminal charges and to introduce the obligation to properly inform the alleged victim of the reasons for closing the case. Montenegro should thoroughly assess the reasons why a very substantial number of investigations into corruption related offences do not result in an indictment.

### 3. FUNDAMENTAL RIGHTS

#### General

The EU notes the information provided by Montenegro as regards fundamental rights and in particular the provisions enshrined in the Montenegrin Constitution. It also notes that in general the legal and institutional framework is in place, including the fact that Montenegro has ratified a number of international agreements regarding the protection of these rights. As regards institutional capacity to ensure the effective application of fundamental rights, the EU notes that the Ministry of Human and Minority Rights is the leading Ministry and that the Ombudsman is the main institution responsible for monitoring the protection of fundamental rights. The EU also notes that in this area shortcomings persist in the practical implementation of the protection of human rights, including by judicial and law enforcement authorities. Administrative capacity and financial means to implement fundamental rights remain limited. The EU therefore invites Montenegro to continue to work on improving the situation as regards the protection of civil and political, as well as social, cultural and economic rights, including the protection of personal data.

#### Human rights

The EU notes the information on the preparation of the new law on the Ombudsman ("Law on the Protector of Human Rights and Freedoms") which will further reinforce the Ombudsman's role in preventing the abuse of human rights through *inter alia* the National Preventive Mechanism (NPM) for torture. The EU underlines the importance of having an independent, professional and well-resourced Ombudsman institution. The EU encourages Montenegro to effectively implement the recommendations of the European Committee for the *Prevention of Torture and Inhuman or Degrading Treatment* (CPT).

The EU takes note of the information as regards the situation in the *prisons* and other closed institutions and in particular the plans to improve their conditions and to enlarge the existing prisons capacity. The EU emphasizes the need to fully align the penitentiary living conditions with European standards. The EU encourages Montenegro to establish an efficient probation system and sufficient rehabilitation and reintegration processes to reduce the level of reoffending.

The EU underlines the importance of the full respect of *freedom of expression* and the media, in particular the effective protection of the physical integrity of journalists. The EU invites Montenegro to establish a Commission to monitor the actions of competent authorities in the investigation of old and recent cases of threats and violence against journalists, including a murder case. The EU takes note of the information provided by Montenegro that the Law on Electronic Media will be amended at the end of 2015 in order to further strengthen the independence of the audio-visual regulator and of the public broadcasting service (*see also Chapter 10 – Information Society and Media*).

The EU takes note of the information provided by Montenegro as regards *non-discrimination and gender equality*, and in particular the planned legal steps, training and reinforcement of the institutional capacity (*see also Chapter 19 – Social Policy and Employment*).

The EU underlines the importance to prevent and fight domestic violence and invites Montenegro to follow up on the effects of the implementation of the Strategy for the Protection Against Domestic Violence.

The EU notes the adoption of the recent Strategy for Improving the Status of *LGBTI* persons and encourages Montenegro to pursue measures to prevent and combat discrimination on grounds of sexual orientation or gender identity, including through the adoption of legislation promoting equality and combating discrimination and homophobia and through increased dialogue with civil society in this field.

The EU also notes the measures planned to ensure full respect of the rights of *trade unions*, in line with the EU Charter of Fundamental Rights (*see also Chapter 19 - Social policy and Employment*).

The EU notes the measures Montenegro plans to improve child protection and enhancing *the rights of the child*, and encourages Montenegro to implement the new National Plan of Actions for Children, and to pursue its efforts reducing the number of institutionalised children, in particular those under 3 years old. It invites Montenegro to also implement the newly adopted law on Social and Child protection, as well as a strategy and to continue to effectively prevent and counter child abuse.

The EU takes note of the information from Montenegro on people with disabilities. It encourages Montenegro to adopt a Strategy for Inclusive Education and annual action plans for the Integration of *People with disabilities (see also Chapter 19 – Social Policy and Employment)*

The EU encourages Montenegro to continue to address remaining shortcomings and to reinforce the human resources and financial capacity as well as the independence of agencies and bodies active in the above areas so as to effectively ensure the respect of rights and freedoms. The EU also invites Montenegro to further work on a constructive relationship with civil society in these areas.

### **Procedural safeguards**

The EU notes the information provided by Montenegro as regards procedural safeguards. The EU notes that the European Court of Human Rights continues to find violations in the constitutional guarantees as regards the right to an *effective legal remedy*. The EU notes that in order to ensure the full respect of this right in the light of the EU acquis and of international standards, Montenegro proposes training for judges and tasked the Ministry of Justice with monitoring the effective application and report on it. The EU notes the information provided by Montenegro on the new law on *Free Legal Aid* and the fact that Montenegro will prepare an analysis of approved cases of free legal aid so as to estimate the necessary funds on an annual basis. The EU underlines the importance of providing sufficient financial guarantees and appropriate request procedures for the effective implementation of the right to free legal aid, in particular for vulnerable groups in the society.

## **Protection of minorities; cultural rights**

The EU notes the information provided by Montenegro as regards measures aimed at the *protection of minorities*, including the implementation of the Strategy for the Advancement of the Status of Roma and Egyptians in Montenegro (2012-2016). The EU calls on Montenegro to continue to implement its strategy for the protection and integration of Roma and Egyptians, especially as regards employment, education and housing, and to ensure the availability of the necessary means. The EU underlines the importance of Montenegro taking structural measures to further improve the protection of minorities. The EU also calls on Montenegro to address discrimination of minorities more pro-actively. It notes Montenegro's commitments to deploy soft measures including promoting integration through actions in the fields of culture, education, local self-government and media; conducting surveys on the representation of minorities in the public administration, including at local level; professional vocational training for members of minority communities; fostering seasonal employment; monitoring health conditions and health care needs etc.

As regards *displaced persons*, the EU took note of the fact that Montenegro envisages a legal analysis of the relevant legislation in view of possible changes to the Foreigners Law. The latter are intended to provide children born in Montenegro with at least one foreign national parent, with permanent resident status. The EU encourages Montenegro to continue to financially support the most vulnerable displaced persons, develop employment programs, training and education projects and invest in new housing projects. In this regard, the EU underlines the particular importance of further improving the social and economic integration of displaced persons.

## **Measures against racism and xenophobia**

The EU notes that in order to ensure the adequate prosecution of hate crime, Montenegro is committed to amending its Criminal Code so as to align it with Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. Montenegro also foresees to align its legislation with the respective international standards (of the Committee on the Elimination of Discrimination against Women - CEDAW and recommendations of the Office for Democratic Institutions and Human Rights - ODIHR) in this field. The EU underlines the importance to address racism and xenophobia through awareness raising, education, the media etc... and to adequately respond at the political and law enforcement level to racist incidents.

## **The protection of personal data**

The EU notes Montenegro's commitments for alignment with the *acquis* on the protection of personal data. In this regard, the EU invites Montenegro to analyse the compliance of the national data protection law with the EU *acquis* as well as with a variety of other domestic laws and subsequently make the necessary changes to its legislation so as to align its legislation with the EU data protection *acquis*. The EU notes that the Data Protection Agency will receive additional resources and tailor-made training.

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In view of the present state of Montenegro's preparations, the EU notes that, on the understanding that Montenegro has to continue to make progress in the alignment with and implementation of the *acquis* covered by the chapter Judiciary and fundamental rights, the following *interim benchmarks* would need to be met before the next steps in the negotiation process of the chapter Judiciary and fundamental rights can be taken:

- Montenegro ensures a close and permanent monitoring of the implementation of the Action Plan in the field of Judiciary and Fundamental Rights through a robust and multi-disciplinary mechanism, paying particular attention to the adequacy of financial resources, institutional capacity and the respect of set deadlines.

### **Judiciary**

- Montenegro adopts and starts implementing its new national strategy of Judicial Reform (2013 – 2018) and the accompanying Action Plan. Montenegro ensures that a monitoring mechanism continuously follows up on the impact of various measures and takes remedial action where needed.

### **Montenegro strengthens the independence of the judiciary, in particular:**

- Montenegro implements constitutional amendments in line with the recommendations of the Venice Commission and European standards and best practices. Montenegro subsequently adopts implementing legislation. On that basis :
- Montenegro establishes an initial track record of appointments of high-level judges and high level prosecutors based on transparent and merit-based procedures and substantial qualified majority thresholds where the parliament is involved.

- Montenegro establishes an initial track record of recruiting judges and prosecutors on the basis of a single, nationwide, transparent and merit based system and ensures that candidate judges and prosecutors undergo obligatory initial training in the Judicial Training Centre prior to their nomination.
- Montenegro establishes an initial track record of implementing a fair and transparent system of promoting judges and prosecutors based on periodic, professional performance assessment (including at senior level).

Montenegro strengthens the administrative capacity of the Judicial and Prosecutorial Councils allowing them to perform in a professional, accountable, transparent, and impartial manner their key functions.

**Montenegro strengthens the impartiality and accountability of the judiciary. In particular,**

- Montenegro strengthens the system for random allocation of cases in all courts with three judges or more through the application of the PRIS system and ensures that the planned analysis on the rationalisation of the court system confirms the commitment to establish a minimum number of judges per court that allows for effective random allocation of cases.
- Montenegro provides an initial track record of regular inspections of the work of judges and prosecutors and ensures that in case of detected breaches of rules, the disciplinary sanctions are effectively enforced. Montenegro develops case law on the interpretation of the disciplinary rules and raises awareness among judges and prosecutors of the interpretation, as well as the amended Code of ethics
- Montenegro establishes a new disciplinary Commission in the Judicial and Prosecutorial Councils for the conduct of disciplinary proceedings against magistrates on the basis of objective criteria. Montenegro ensures that integrity managers in courts also develop measures fostering respect of ethical standards among other court staff.

- Montenegro provides an initial track record that assets reported by magistrates are duly checked, that sanctions are applied in cases of non-compliance, should this occur, and that in cases where reported assets do not correspond to the reality, appropriate action is taken, including criminal investigations where relevant.
- Montenegro aligns legal provisions with the constitution so as to make magistrates fully accountable under criminal law and avoids that the concept of functional immunity of magistrates is abused so that it does not hamper the launch of criminal investigations should there be such requests.

**Montenegro improves the professionalism, competence and efficiency of the judiciary. In particular,**

- Montenegro develops a sound statistical capacity (based on the guidelines on judicial statistics of the European Commission for the Efficiency of Justice (CEPEJ) allowing it through the Judicial Information System (PRIS) to monitor the workload and performance of judges and courts, to measure inter alia the average duration of court proceedings per type of case, the clearance rate, the number of pending cases, as well as the recovery rate, the length and costs of enforcement proceedings. Montenegro analyses these statistics in order to identify backlogs, the exceeding of deadlines for preparing decisions, procedural bottlenecks, as well as human and financial resources involved in resolving a particular type of case. Montenegro actively uses these data as a management tool and takes appropriate action where needed.
- Montenegro continues to implement the rationalisation of the judicial network. Montenegro finalises a new needs analysis establishing the basis for adopting the next steps of the rationalisation which should lead to closing down all unviable small courts.
- Montenegro establishes an initial track record of further reducing the case backlog before the courts, particularly as regards old civil, administrative and enforcement cases. Montenegro makes increasing use of alternative measures such as mediation, court settlements and arbitration.

- Montenegro puts in place a system of permanent voluntary horizontal transfer of judges, based on incentives allowing for an increase in the voluntary reallocations of judges to courts with the highest workload.
- Montenegro ensures the full respect and correct implementation of court orders and rulings. Montenegro establishes an initial track record of an improved clearance and recovery rate of enforcement proceedings in civil and commercial cases. Montenegro finalises a general assessment of the enforcement system and develops further measures where relevant.
- Montenegro adopts a law on training in the Judiciary and secures the necessary financial and human resources to turn the Judicial Training Centre into an institutionally and financially independent body in accordance with the set timeline.

**Montenegro improves the handling of domestic war crimes cases. In particular,**

- Montenegro effectively demonstrates the capacity of law enforcement bodies and courts to handle impartially war crimes cases in line with international humanitarian law and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, and takes effective action to address issues of impunity, in particular by accelerating progress with investigations and prosecutions of these crimes, and by ensuring civilian victims' access to justice and reparations.

**Fight against corruption**

- Montenegro implements its national strategy for the fight against corruption and organised crime (2010 – 2014) and the Action Plan (2013 – 2014). It continuously monitors and assesses the impact of the various measures and proposes remedial action where needed.

**Montenegro strengthens prevention measures in the fight against corruption. In particular,**

- Montenegro establishes a new Anti-Corruption Agency with a clearly defined mandate and effective powers. This agency should demonstrate a pro-active attitude, enjoy the necessary independence, sufficient resources, including as regards merit-based recruitment and well trained staff and be well connected to other relevant authorities (and their databases). Montenegro ensures that the nomination of the head of the Anti-Corruption Agency is conducted in a transparent manner, on the basis of merit and objective criteria, including professional skills.
- Montenegro amends the Law on Conflicts of Interest and puts in place an effective system to prevent conflicts of interest at all levels of the state/public administration. Montenegro provides an initial track record showing an increase in the number of detected and resolved conflict of interest cases, including deterrent sanctions and effective recovery of damages caused to the public budget where relevant.
- Montenegro provides an initial track record of effective implementation of the asset declaration and verification system, including dissuasive sanctions for non-compliance and appropriate follow up measures (including through criminal investigations where relevant) in cases where the reported assets do not correspond to the reality.
- Montenegro adopts and implements ethical codes for members of the legislative and executive at all levels, that would cover rules on conflict of interests, incompatibilities and other unethical or corrupt behaviour and puts in place corresponding accountability tools and a dissuasive sanctioning system for violations of these rules.
- Within the public administration, Montenegro recruits, promotes and nominates public officials on the basis of clear and transparent criteria, focusing on merits and proven skills. Montenegro reinforces the capacity of the Administrative Inspectorate, implements a risks analysis methodology, adopts integrity plans and appoints trained integrity managers in the public administration. Montenegro provides an initial track record of effective sanctions in cases of breach of ethical values.

- Montenegro amends its current legislation on political party financing, ensuring this is fully in line with GRECO recommendations, and reinforces the administrative capacity and independence of supervising authorities. Montenegro provides an initial track record on the correct implementation of the law, including application of deterrent sanctions where required.
- Montenegro implements and assesses the impact of measures taken to reduce corruption in vulnerable areas and takes remedial action where needed, including through disciplinary and criminal measures in cases of detected irregularities.

**Montenegro strengthens repressive measures in the fight against corruption. In particular,**

- Montenegro establishes an initial track record of efficient and effective investigation, prosecution and convictions in corruption cases, including high level cases.
- Montenegro revises its Criminal Procedures Code such that pre-trial investigations become more effective. Montenegro establishes a new special prosecution office which should lead to better priority setting in dealing with serious crime cases, more specialisation of staff and substantially improved inter-agency co-operation and intelligence exchange.
- Montenegro substantially improves the capacity of the Ministry of Interior to run investigations into financial crimes. Montenegro ensures that both the Ministry of Interior and the Special Prosecution Office are well connected to other relevant agencies. Montenegro provides the necessary training on the concept of financial investigation and systematically conducts financial investigations in parallel to criminal investigations into organised crime and corruption cases.

- Montenegro adopts legislation on asset recovery, establishes an Asset Recovery Office (ARO), recruits the management of the ARO on the basis of transparent and objective criteria with a focus on merits and professional skills, and provides an initial track record of an increased number and amounts of criminal assets confiscated, including in cases of high level corruption.
- Montenegro takes steps to improve the effectiveness of its whistle-blowers protection system.
- Montenegro brings the procedure for closing criminal cases in line with EU best practices. This includes the obligation to duly justify the decision towards the alleged victim as well as the creation of a legal possibility for review of the prosecutor's decision on dismissal of criminal charges.

### **Fundamental rights**

#### **Montenegro strengthens the effective application of human rights. In particular,**

- Montenegro further aligns its legal framework (in particular the law on the Ombudsman) with the EU *acquis* and international standards. Montenegro strengthens the independence, professionalism and the institutional capacity of the ombudsman (including through the establishment of the National Prevention Mechanism for Torture). Montenegro guarantees the effective enforcement of human rights - including children's rights and rights of disabled persons - through its court system and other bodies and provides sufficient training in this respect.

- Montenegro implements all recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) from 2008 report and those urgent ones from the 2013 report and in particular improves the material conditions in prisons, detention centres and closed institutions. Montenegro ensures a sufficient follow-up to 2013 CPT report's recommendations. Montenegro prevents and ensures appropriate and swift judicial follow up in cases of ill-treatment should these occur. Montenegro establishes an efficient probation system.
- Montenegro ensures that freedom of expression and the media in the country is improved and applies a zero-tolerance policy as regards threats and attacks against journalists, prioritising criminal investigations should such cases occur. Montenegro establishes a Commission to monitor the actions of competent authorities in the investigation of old and recent cases of threats and violence against journalists, including a murder case. Montenegro provides an initial track record of progress in the investigation, effective prosecution and deterrent sanctions for perpetrators in these cases.
- Montenegro continues to implement the Strategy for the Protection Against Domestic violence, including raising awareness on preventing domestic violence and providing the necessary protection to victims.
- Montenegro continues to implement its Strategy for improving the Status of LGBTI persons, raises awareness of the rights of LGBTI persons and takes appropriate action against acts of discrimination on grounds of sexual orientation.

**Montenegro improves alignment with the EU *acquis* and international standards regarding procedural safeguards. In particular :**

- The Montenegrin courts establish an initial track record of effective legal remedy in line with Article 13 of the European Convention on Human Rights.
- Montenegro disseminates information on legal rights to citizens and ensures that free legal aid is in principle available to all citizens in need, in particular the most vulnerable ones.

**Montenegro steps up the protection of minorities and cultural rights. In particular,**

- Montenegro takes concrete steps – in line with its Action Plan - to prevent discrimination and systematically addresses cases of discrimination through administrative or judicial follow.
- Montenegro implements the Strategy for the Advancement of the Status of Roma and Egyptians in Montenegro, facilitates their access to personal documents and registration as well as their access to education, health, employment and to social housing, including through the allocation of sufficient resources. Montenegro also promotes integration in the fields of culture, education, local self-government, media and socio-economic rights and takes concrete steps to decrease the drop-out rate of Roma children at schools.
- Montenegro increases the quality of living conditions of displaced persons, including by facilitating their registration as well as their access to education, health, employment and social housing.

**Montenegro takes steps to align its domestic legal framework with the *acquis* and international standards against racism and xenophobia. In particular,**

- Montenegro amends its Criminal Code so as to fully align it with Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

**Montenegro ensures for the above policy areas an adequate involvement of civil society in policy development, implementation and monitoring.**

Monitoring of progress in the alignment with and implementation of the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above – including through peer-review missions - with a view to ensuring Montenegro's administrative capacity. In line with the provisions of the negotiating framework, the EU indicates its intention to propose updated interim benchmarks, whenever it is duly justified. In this respect, any measures to adjust pre-accession assistance may only be taken in accordance with applicable rules and procedures. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. A final assessment of the conformity of Montenegro's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Montenegro to provide regularly detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the Conference will have to return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between the opening and the conclusion of the negotiations.