

Updated Assessment of the implementation by Montenegro of the roadmap for visa liberalisation

18 May 2009

With a view to facilitating the comparison with the first assessment made in November 2008, the latter has been kept in the present document in open text followed by the updated assessment presented in boxes.

BLOCK 1 Document Security

General Assessment of block 1:

Montenegro has made very good progress towards the fulfilment of the block 1 benchmarks in the last year. From May 2008 until beginning of May 2009, more than 100,952 new biometric passports, 163,583 ID cards and 75,181 driving licences have been issued. The security specifications of the new biometric documents (photos) are in line with ICAO and EU standards. The integration of a second biometric identifier (fingerprints) is under consideration.

Montenegro has demonstrated the political will to complete the replacement of the old travel documents with new biometric passports by the end of 2009; in this context, for the issuing of the new biometric passports, which is centralised, managed and supervised by the Ministry of Interior (MoI), the appropriate infrastructure has been put in place in order to ensure efficient and secure production process and personalisation and distribution procedures.

The staff involved in the whole process is carefully selected and appropriately trained.

Regarding breeder documents, the Montenegrin system is based on a central data base and a PIN system; the registry procedure, the storage and issuance of certificates have been found efficient and secure.

It appears that Montenegro meets the benchmarks set under Block 1 of the roadmap.

Detailed comments on block 1 by policy area:

Passports/travel documents, ID cards and breeder documents (benchmarks 1-5)

November 2008 Assessment:

According to the Law on Travel Documents, the replacement of the old passport will be completed by the end of 2009. Problems or other difficulties during the first period of implementation of the new system have not been reported. In its additional report submitted in October 2008, Montenegro provided specific information on the issuance of diplomatic and services passports [120 diplomatic and 20 official passports were issued], which follows procedures proscribed by the Law on Travel Documents and the Decree on Persons Entitled to Issuance of Diplomatic and Official Passports. Details are provided on persons eligible for the diplomatic passports.

Information was provided on the security specifications of the new biometric passport (two finger prints taken, inscription in a chip, collection of data), as well as on the administrative procedure in place for the personalisation and distribution process (issuing system, distribution, storage of blank documents, central and regional units involved in the process). The personalisation process is centralised within the Department for information technologies of the Ministry of Interior and Public Administration (MoIPA).

Regarding training programmes, officials dealing with visas and passports are made aware of the Ethical Code of the State Administration Employees and Civil Servants, which contains provisions on issues such as political neutrality, abuse of office and confidentiality. However, additional anti-corruption training programmes with a stronger focus on specific elements are required.

It was reported that several instructions for human resources, defining procedures to be followed in the personalisation and distribution of new biometric passports and ID cards, have been developed. However, no mention is made of trainings held to ensure that officials possess the required competences to complete these tasks.

A reporting system with Interpol has been successfully established, with data on lost and stolen travel documents communicated electronically to the Interpol national Bureau in Podgorica.

Good efforts have been made to improve the level of security of ID cards and breeder documents. Issuance of breeder documents is governed by the Law on Travel Documents and the Law on Identity Cards, which require citizens to produce a citizenship certificate, a birth certificate or a marriage certificate with ID card applications. Local self-government bodies are responsible for issuing these certificates as they manage the Record of Montenegrin citizens under the supervision of the Ministry of Interior and Public Administration. Attention should be paid to ensuring that all information contained in relevant databases is authentic.

The Law on Citizenship was adopted in February 2008. This law establishes a central electronic register on Montenegrin citizens which will be created from data held in citizen books by local self-government bodies. Responsibility for creating and managing this register is with the regional units of the Ministry of Interior and Public Administration.

Further information is requested on:

- administrative procedure for personalisation and distribution of passports, in particular fingerprinting procedure;
- procedures and facilities regarding breeding documents: storage facilities, security standards, and issuance procedures, in particular on methods in place for verifying that all personal data entered into relevant databases is authentic;
- the setting up of a central electronic register of Montenegrin citizens, in particular financial resources and human resources of competent units and their ability to ensure the efficient functioning of the system;
- content and frequency of current trainings on the Ethical Code, the profile of persons conducting trainings, and the number of participating officials (central and regional level);
- trainings held on implementation of measures introducing new biometric passports and ID cards to ensure that human resources possess required competence;
- statistical data on number of new biometric passports issued in Podgorica and other locations.

May 2009 Updated Assessment:

Issuance of new biometric passports and identity documents is continuing smoothly. Between May 2008 and beginning of May 2009, 100,952 biometric passports, 163,583 ID cards and 75,181 driving licenses have been issued.

Security specifications of all new centrally produced biometric passports and identity documents are in line with EU and ICAO standards. EAC (Extended Access Control) for fingerprints is not yet integrated but is under consideration pending experience gained using this system in the EU.

Only a minority BCPs possess the equipment and access to the data network required for gathering data from biometric chips. At these BCPs, reading of biometric chips can only be performed in case of suspicion, as Montenegrin law prohibits systematic checks of this type. Further progress should be made by installing necessary equipment for reading biometric data at all BCPs and by providing the legal possibility for systematically reading and using chip data in passports.

The integrity and security of the personalisation and distribution procedure for passports is in line with EU standards. Presence of applicants is mandatory for the application process, and recorded data is registered and transferred from regional to central level using a secure central electronic database. Personalisation is centralised within the Department for Information Technologies of the MoIPA in Podgorica. The production system is fully automated and the entire production area is under video surveillance and divided into different security zones. These are controlled by an electronic access system, and access levels for employees are defined in accordance with their duties. Blank documents are stored in the personalisation centre and access is based on the 'four eyes' principle.

All personalised travel documents are distributed in double locked metal safes and transported by the transport service of the MoIPA in secure cars. The delivery system is electronically monitored, and personalised passports are delivered to applicants in person and only after

fingerprint verification.

All staff involved in the issuing of documents is carefully selected and receive special training on the systems used in the personalisation procedure.

Anti-corruption measures for staff engaged in travel document issuance are adequate. There are strict sanctions for violating the code of ethics. Clear division of responsibilities and duties in official instructions and strong supervision and monitoring of officials provide additional barriers against corruption. No cases of corruption in the services of issuing travel or citizenship documents have been reported by Montenegrin authorities since the introduction of biometric passports.

The system for reporting data on lost and stolen passports to Interpol functions smoothly and efficiently. Following the introduction of new travel documents, 78 cases of lost or stolen passports have been reported by May 2009.

Regarding breeder documents, the registry procedure, and storage and issuance of certificates are secure, efficient and in accordance with the European and international standards. Entries in registers can only be made by specially authorised and well-trained registrars in local authorities. A unique PIN number is allocated to all citizens and recorded in registries.

Completion of the electronic register on Montenegrin citizens is foreseen for July 2009, and is supervised by a central governmental team (the Project Council). Currently, all certificates submitted with applications for new passport and ID card are being scanned and electronically archived in this electronic registry.

BLOCK 2 Illegal migration, including readmission

General assessment of block 2:

Montenegro has made significant progress in the fields of border management, asylum and migration.

On border management, in order to ensure compliance with the EU standards, a new law is in its final stages of drafting and is planned to be adopted during the second quarter of 2009. The organisation of the border police is in line with EU standards and inter-agency cooperation is satisfactory. The human resources allocated are sufficient. The staff is professional and highly motivated. Risk analysis is functional. The improvement of training curricula should be a matter of priority. Further improvements and modernisation of the infrastructure and of technical equipment at all Montenegro BCP's are necessary for ensuring a good level of border control and surveillance. A working arrangement with Frontex is agreed and to be signed shortly.

The asylum system is functional and efficient in responding to the country's limited needs in this area. The legal framework in place is in line with EU standards and appeal procedures are functioning. The practical solutions put in place in the absence of a reception centre (planned to be opened in 2010) are adequate.

Montenegro needs to continue the efforts to find a sustainable solution for Displaced and Internally Displaced Persons (IDPs) residing in the country. .

Significant progress has been made on issues related to the management of migration. The Law on Foreigners in force of January 2009 is in line with EU standards. Its implementation (together with the implementation of the Law on Employment and Work of Aliens) remains to be seen. The establishment of the Council for Implementation of the Strategy for Integrated Migration Management 2008-2013 is a positive step towards improved cooperation among the national competent authorities. A detention facility for illegal migrants is still under construction. The readmission agreement with the European Community is being implemented smoothly.

It appears that Montenegro meets a large majority of the benchmarks set under Block 2 of the roadmap. Further verification is necessary on the implementation of the Law on Foreigners and additional information on a possible sustainable solution in the near future regarding displaced persons and IDPs.

Detailed comments on block 2 by policy area:

Border management (benchmarks 6- 9)

November 2008 Assessment:

The Law on State Border Surveillance was adopted in 2005 and introduced a legal framework in the field of border management, which was inspired by the Community acquis on border management. However further harmonisation with EU standards in this area (in particular the Schengen Border Code) is required. In order to introduce necessary changes, amendments to the law are planned by the end of 2008, and in addition, a new Law on State Border Surveillance may be drafted and adopted in 2009.

The adoption of amendments to the Law on police with relevance to border management is envisaged by the end of 2008. Plans also exist to adopt by-laws sending police officers abroad as liaison officers.

The Police Administration was established by the Decision on Organisation and Work of the State Administration in 2005. The Border Police is established under the Police Administration in accordance with the Rulebook on Internal Organization and Systematization, and comprises four departments. There are 7 land border police branches and one marine branch. The Border Police employs 1470 officers, and its current staffing level is around 91%.

In order to secure the borders at rivers and lakes and on the sea, the Border Maritime Police was established as a separate section within the Border Police. Its tasks, which are laid down in the Law on Surveillance of the State Border and Law on Police, include prevention and detection of criminal acts, protection of the lives and security of citizens, and border surveillance. Detailed information was provided on the system in place for the management of blue borders.

An Integrated Border Management (IBM) strategy and Action Plan was adopted which are currently being implemented by various administrative bodies. A Cross-Sectorial Commission was established in January 2008 to oversee implementation while the Integrated border and border-crossing administration is the responsibility of the MoIAP. In addition, regional IBM centres are being established to coordinate and synchronise border-related activities of the Border Police, the general police, customs etc.

Montenegro should ensure that coordination between the various administrative bodies involved in border management functions efficiently by strengthening inter-agency cooperation in this area. The current "mechanisms of co-operation among national agencies" are based on intensive informal co-operation among all state bodies that execute their tasks on border crossings and along border lines. This cooperation should be formalised through protocols, memoranda of understanding or agreements.

Measures regarding the improvement of infrastructure, equipment and IT technology are foreseen. In this context, the integration of all BCPs into the data communication network of the Police Administration is a priority. However, currently only eight BCPs are connected, and although Montenegro reported in October 2008 that this number will rise to 10 by the end

of 2008, it also noted that problems persist with extending the data communication network to additional BCPs such as Sitnica. Furthermore, it needs to be ensured that sufficient funding is provided to meet priorities regarding infrastructure, equipment and IT technology as defined in the IBM strategy and Action Plan.

Several border management cooperation protocols have been signed with neighbouring countries. Conclusion of a Working Arrangement regulating mutual cooperation between FRONTEX and the competent authorities is planned in the period to come.

Further information is requested on:

- plans for adoption and implementation of the amendments to the current Law on State Border Surveillance and plans for adoption of a new Law;
- the functioning of the border police, in particular its human resources and training programmes, plans to fill vacancies, development and implementation of Standard Operational Procedures, risk analysis and exchange of information, and anti-corruption measures;
- implementation and plans to update the Strategy on Integrated Border Management, including priorities, planned activities, competent bodies and deadlines;
- plans on establishment and coordinating activities of regional teams for border control and IBM centres;
- plans to integrate all BCPs in the country with the data communication network and central database of the Police Administration;

May 2009 Updated Assessment:

A new draft Law on State Border Control (comprising both border control and border surveillance) is currently being finalised and will be adopted by the end of the second quarter of 2009. It will further harmonise the country's legislation in this field with the Schengen Border Code. The necessary implementing measures should be adopted as a matter of priority.

The Montenegrin Border Police is centralised and clearly structured. A direct chain of command exists between Border Police units at national, regional and local level. The planning system is satisfactory, and functions on the basis of the Action Plan for Border Management adopted in 2006. The Border Police adopts an overall annual plan at national level, which is used as the basis for annual and monthly plans adopted by all regional branches, in cooperation with the central level.

Regarding inter-agency cooperation, agreements are now in place formally regulating cooperation between the Border Police and other national authorities involved in border management (Police Directorate, Customs Administration etc). These agreements cover a wide range of areas including the establishing of joint task teams, sharing of information and joint risk analysis. Regional IBM centres have been established and coordinate inter-agency cooperation at this level.

Available human resources are sufficient, and the staffing level is 96%. The border police is able to allocate the necessary staff and technical resources to strategic locations to meet increased pressure caused by seasonal inflows of travellers. Border police staff is highly motivated, professional and generally well-informed of their tasks.

However, training curricula at the Police Academy for border police officers are currently inadequate. The basic training for border police officers is too general and does not focus sufficiently on key basic competences such as profiling and detection of fake documents. In addition, there is a need to organise more specialised and advanced training on risk analysis, detection of persons hiding in vehicles etc on the basis of a strategic training programme.

Regarding anti-corruption measures, significant steps have been taken. Anti-corruption trainings are continuing in 2009 with a 'train the trainer' programme for 38 senior border police officers, who will thereafter train officers at regional level. The code of conduct is well-known by border police officers and copies of it are available at all BCPs. Hidden cameras exist at BCPs in order to detect cases of corruption.

The risk analysis system is functional and is based on an efficient reporting system, although there are no special situational centres at any level. Strategic risk analysis reports are produced monthly at central level by an Intelligence Department, and operational reports are produced weekly by regional branch offices, each of which has one intelligence officer. Risk analysis should however be further improved. The number of trained intelligence staff should be increased at all levels and electronic exchange of information should be facilitated to ensure faster transmission and accessibility of risk indicators and profiles.

Regarding border surveillance, tactics employed at both green and blue borders are adequate but there is an overall need for improved and modern equipment such as alarm systems, vehicles, helicopters or fixed-wing aircraft, as well as trained sniffer dogs. Plans to open a modern maritime surveillance system are underway.

Further improvements of the infrastructure and equipment at all BCPs (28) are also required. Premises at some of the smallest BCPs require modernisation, and it should be ensured that all BCPs are properly fenced off. Regarding equipment, the number and selection of devices used in border checks are inadequate. Availability of integrated passport readers at BCPs is limited and no devices exist for taking fingerprints. Sniffer dogs should be trained and used for inspection of vehicles.

There is also a strong need to integrate all BCPs into the data communication network as only a limited number of the BCPs have live access to national databases (8), and of these only three can access INTERPOL databases.

Although border demarcation with neighbouring countries is yet to be completed, in practice cross-border cooperation functions smoothly and efficiently. The Working Agreement with FRONTEX is agreed and will be signed in June 2009.

Asylum (benchmarks 11-12)

November 2008 Assessment:

The establishment of the legal framework in the field of asylum made some progress with the adoption of secondary legislation in 2007 complementing the Asylum Law which entered into force in 2006. This secondary legislation includes measures related to the interview procedure

for asylum seekers, as well as procedures and methods for taking photos, fingerprints and signatures of asylum seekers.

Since August 2008 UNHCR has been working with the MoIPA in order to elaborate legislative amendments to improve the legal status of refugees and IDPs. To this end UNHCR proposed on 14 October 2008 to the Ministry of Interior and Public Administration draft texts to be included in the Law on Foreigners under a special Chapter on the integration of Displaced Persons. The texts seek to ensure access to all rights (economic, social, political, civil and cultural). The proposal contains texts concerning also "refugees with continuous international protection needs" that go beyond the scope of the relevant provisions in the current Law on Asylum (Art. 75/2).

The Office on Asylum and the State Asylum Appeal Commission, which decide in first and second instance on asylum requests, were established and staffed. However, it appears that the State Asylum Appeal Commission is an administrative body and no judicial remedy exists to its decisions.

Regarding the provision of adequate infrastructure, the tasks of providing accommodation to persons seeking asylum are carried out by the Bureau for Refugee Care. Montenegro reports that this authority is obliged to provide assistance to all asylum seekers during inspection of their claims by providing accommodation, education and healthcare, as well as ensuring that basic socioeconomic rights such as the right to work are respected.

As regards the access of asylum seekers to accommodation, an Asylum Seekers Centre has been under construction and suspended for lack of funds. Under an IPA 2009 project EU funds are envisaged for the finalisation of its construction as well as national co-financing for necessary equipment and connecting the building to utilities.

Further information is requested on:

- legislative and administrative measures implementing the Asylum Law;
- functioning of the Asylum Office and the existence of an independent judicial appeal body, in particular on whether the Administrative Tribunal has the status of a judicial body and on whether a judicial recourse is available against decisions of the State Asylum Commission;
- Bureau for Refugee Care, in particular regarding resources allocated to ensure its proper functioning and its overall capacity, and the functioning of the reception centre for asylum requests;
- data on types of decisions on asylum requests, length of procedures, actual exercise of rights by asylum seekers and refugees;
- financial support and basic socio-economic benefits accorded to asylum seekers.

May 2009 Updated Assessment:

The legislative framework on asylum is relatively advanced, and the Law on Asylum takes into account EU standards. Efforts should now continue to ensure effective implementation on the rights and obligations of asylum seekers.

The necessary state bodies for the asylum system are functional; Asylum Office, State

Asylum Appeal Commission (SAAC), Bureau for Care of Refugees. The Asylum Office is sufficiently staffed for the current limited workload, although further training of case handlers is required. Of the 16 applications for asylum received by the Asylum Office since the country's independence in May 2006, two received a positive decision.

The SAAC is the only second instance decision body. It has the competence to review both the procedures followed by the Asylum Office in the first instance decision, and the substance of this decision. However, no full judicial review is foreseen (only two of the five SAAC members are judges). 6 appeal decisions have been reached so far, 5 of which were rejected. Further training of members of the SAAC is required.

The Bureau for Refugee Care is functioning and adequately staffed. Further efforts are however required to strengthen reception conditions for asylum seekers. The reception centre is still not operational, and should open in 2010. In its absence, asylum seekers are placed in hotels, at the cost of UNHCR. Only limited financial support is provided, and the right to work is not granted. Access to basic medical and educational services is however guaranteed by the law.

Refugees and beneficiaries of subsidiary protection recognised under the Law on Asylum enjoy under the law a large number of rights, including access to the labour market, documentation, social assistance, housing and education in line with EU standards. However, further efforts are required to facilitate beneficiaries' access to these rights, in particular by building the capacity of the Bureau for the Care of Refugees and continuing to adopt necessary implementing measures and ensure coordination between the relevant bodies.

Concerns remain over the status of displaced persons (DPs) and internally displaced persons (IDPs). There is a continuing need for the authorities to properly address this issue, including by granting full access to rights to this group.

Migration management (benchmarks 10, 13-17)

November 2008 Assessment:

The new draft Law on Foreigners is due to be adopted in the near future. The draft law contains provisions on the rights of third-country nationals such as access to the territory, residence rights, and issuance of travel documents, as well as regulations on the visa regime, return policy, data collection on migration, carriers' liability and authorities responsible for migration management. The adoption of this law is therefore a priority for the future development of a comprehensive migration policy. Information was submitted on the Strategy for Integrated Migration Management for the period 2008-2013 together with its action plan listing priority activities for the period 2008-2009. A special body, the Council for Implementation of the Strategy for Integrated Migration Management is to be established to coordinate and monitor implementation of this strategy.

Regarding additional administrative structures responsible for migration management, Migration, Visa and Readmission Departments have been established under the Ministry of Interior and Public Administration and another Department for Foreigners and Fighting Illegal Migration has been created under the Police Administration. The registers of temporary and

permanent residence of foreigners are managed by both of the aforementioned administrations, while a further register of foreigners residing with a work permit is managed by the Employment Agency. While the establishment of such registers is welcomed, there is a need to ensure efficient communication between the different administrations in order to ensure that the data can be used for risk analysis and monitoring of third-country nationals.

The Strategy for Permanent Solution of the Issues of Refugees and Internally Displaced Persons was adopted in March 2008. Montenegro states that returnees enjoy the same rights as nationals in areas such as employment, healthcare and social support and provides accommodation during their initial period of stay. However, as returnees are in a particularly vulnerable situation, which requires not only that they enjoy the same rights as all the population; proactive assistance in order to facilitate their reintegration within society is also essential. As part of the reintegration strategy measures on issuance of documentation, restitution of property, schooling, social welfare, employment etc. for returnees need to be adopted. These should be based on legal or operational instruments.

Due to its geographical position, Montenegro is also a country of transit for illegal migration flows. In order to strengthen capacities to tackle illegal immigration, measures in this area such as the Strategy for fighting against trafficking in human beings are being developed and implemented. These are further analysed under block 3.

Return decisions and expulsions have to be carried out in accordance with the Law on movement and residence of foreigners. A full assessment of the extent to which an integrated return management policy is however not possible with the limited information provided.

Implementation of the Readmission Agreement between the European Community and Montenegro is now underway and further bilateral readmission agreements are envisaged with the main neighbouring countries of transit.

Further information is requested on:

- the Law on Foreigners, once adopted, and the administrative and legislative measures foreseen for its implementation;
- progress regarding the adoption of relevant legislation on carriers' liability;
- administrative capacity in the migration field, in particular human resources assigned to the Council for Implementation of the Strategy for Integrated Migration Management and its mandated activities;
- methods used by competent authorities in collecting and producing statistics on migration flows;
- reintegration measures and assistance for returnees (including for persons re-admitted under the EC-Montenegro re-admission agreement), including their legal basis, period during which assistance is offered, and statistics on beneficiaries;
- assessment of Action Plan for fighting trafficking in human beings, and content of future plan which will be adopted by the end of 2008;
- human resources dedicated to the fight against illegal migration and organised smuggling of human beings, division of competences between law enforcement agencies in charge of inland detection, and administrative methodology for detection and investigation of illegal immigration;
- policy for returning third country nationals illegally staying in Montenegro to countries of origin or transit, in particular on administrative bodies involved in the

- return procedure and their resources and capacity, conditions in detention facilities, maximum length of detention as part of return procedures and length of the entry ban;
- cooperation on readmission with countries of origin and transit of illegal immigrants;
- statistics concerning the relation between return decisions taken and removals carried out.

May 2009 Updated Assessment:

Regarding the legislative framework for migration management, significant progress has been made. The new Law on Foreigners entered into force on 8 January 2009. The approach, structure and concepts used are in line with the EU acquis in this field. The law distinguishes the visa regime from the residence permit system and identifies three major types of residence according to duration: up to 90 days, temporary and permanent. Furthermore, the law stipulates conditions for the granting of permanent residence status and lists the rights and obligations of this category. The bylaws required for the implementation of the Law on Foreigners are currently being drafted and are expected to be finalised in July 2009.

Further efforts are required to ensure clear legal provisions on carriers' liability.

The Law on Employment and Work of Aliens which is implemented since January 2009 complements the Law on Foreigners and ensures that employment of third country nationals is sufficiently regulated at the legislative level. The Law allows the authorities to set an annual quota for labour migrants, the size of which is determined according to the needs of the labour market as defined by the Ministry of Labour

The new legislative framework significantly alters the organisational structure for migration management. Competence on foreigners' legal entry and residence exceeding 90 days has been fully transferred from the Police Administration to the MoIPA. The police remains competent for handling short stay entries. The new labour migration system will also increase the workload of the Employment Bureau, as submission of a work permit application to this body now precedes submission of a residence permit application to the MoIPA.

Implementation of the new legislative framework cannot be fully assessed at this early stage. Efficient implementation of will require the provision of necessary human resources and training on their new competences. Efficient inter-agency cooperation is very important to this end too, in particular between the Employment Bureau and MoIPA. The recent establishment of the Council for Implementation of the Strategy for Integrated Migration Management 2008-2013 is a positive step forward, as it provides a forum for coordination and cooperation among all relevant national bodies .

Further efforts are required to improve the data collection and migration monitoring systems. Registers on foreigners currently remain paper-based and separated between different authorities. A centralised register for foreigners is currently missing but will be in operation from November 2009, under the management of the MoIPA. It should be ensured that functional, electronic access to this database is available to all relevant central authorities and local offices of the Police and administration.

Data collection forms on legal migration are unified and are in line with EU standards (Regulation 862/2007). Data on illegal migration is collected and analysed by the Border

Police, which has the experience and capacity required to fulfil this task both at local and central level. All data on foreigners is forwarded from the Police and MoIPA to the Statistical Office (MONSTAT) on a monthly basis, and MONSTAT plans to submit statistics on 2009 to EUROSTAT. However, it currently lacks the human resources required to efficiently process and analyse migration statistics.

Regarding integration policy, a more proactive approach is required both towards legally residing third country nationals and returnees to ensure they benefit from financial and social support to which they are entitled by relevant laws.

The administrative capacity to fight against organised forms of illegal migration is sufficient, and legislation allows for heavy sanctions on organisers and accomplices. Cross-border cooperation occurs with neighbouring countries on an *ad hoc* basis. Statistics suggest however that existing capacity is not being efficiently used, as there is a decrease of the number of investigated cases of organised illegal migration (10 cases in 2007, and 4 in 2008). Inland detection is conducted on the basis of intelligence reports and statistical analysis, and controls of illegal migration hotspots are regularly conducted.

Expulsion of illegally residing third country nationals is regulated by the new Law on Foreigners which ensures basic safeguards for migrants and is in line with European standards. Practical cooperation on returns with the neighbouring countries from which the majority of illegal migrants originate is good. The timely completion of the detention facility for illegal migrants by the end of 2010 should be a priority.

The Readmission Agreement between the EC and Montenegro is being implemented efficiently.

BLOCK 3 Public order and security

General assessment of block 3:

Montenegro has made substantial progress towards the fulfilment of the block 3 benchmarks.

The country has made a very good progress in establishing the legal framework for the fight against organised crime and corruption, continuing on further alignment with European and international standards.

Montenegro has demonstrated political will to continue the on-going implementation of policy strategies and action plans in key areas such as organised crime, corruption and drugs. Certain progress was made in the fight against trafficking in human beings though efforts should continue. Further steps have been taken to additionally develop the existing legal and institutional framework in the fields of money-laundering and confiscation of criminal assets. The forthcoming adoption of the new CPC will be an important step as it is expected to have positive effect on all areas related to the fight against organised crime and corruption by introducing, amongst others, a new concept of criminal proceedings, improving the investigation capacities of the Montenegrin competent authorities, introducing the concept of *reverse burden of proof* regarding confiscation of criminal assets. The efficient implementation of the new Code will require further efforts, in particular proper training of the relevant bodies and institutions. Regarding inter-agency cooperation and coordination in the fields of law enforcement and judiciary improvements are noted. Operational and investigative capacities of the law enforcement bodies should be further enhanced and strengthened. Some good examples of international law enforcement cooperation exist, as well as willingness of the Montenegrin authorities to further develop it. Some progress can be noted in the area of personal data.

Montenegro has improved its strategic, legal and institutional framework to tackle all areas related to fight against organised crime and corruption. It is essential to ensure proper and efficient implementation of new legislation. The level of successful convictions remains low across all sectors, in particular regarding cases of organised crime and corruption, including high level corruption. Given that the fight against organised crime and corruption is a continuous process, priority in the future should be given to further strengthening the administrative capacity of all competent authorities by providing them with the necessary professional training, appropriate modern equipment and sufficient financial resources.

It appears that Montenegro meets the majority of benchmarks set under block 3 of the roadmap. Further efforts are needed regarding implementation of the legal framework, including through allocation of adequate financial and human resources.

Detailed comments on block 3 by policy area:

General/Overall policy on preventing and fighting organised crime and terrorism (benchmark 18)

November 2008 Assessment:

The Strategy to fight organised crime and corruption is implemented since 2005 and its action plan since 2006. The action plan is regularly monitored and updated by a National Commission set-up in 2007 and entrusted with that task. The third implementing report was issued in July 2008. The action plan is a detailed document setting measures to fight organised crime and corruption, though very often it focuses on trainings and awareness-raising activities. The action plan contains concrete deadlines for implementation by the responsible institutions. Progress has been achieved so far in terms of quantity of activities implemented or being implemented. However, in terms of impact, the results are not fully convincing. The priorities ahead are not clearly formulated and information on the human and financial resources used or additionally planned in this policy area is missing. Special departments in high courts have been recently created and in parallel, the competences of the special prosecutor for organised crime were extended to cover wider aspects of the organised crime policy. The statistics reported indicate a decrease in the number of unresolved cases in 2008 compared to previous years though convictions are not reported on.

There is a good strategic framework on prevention and fight against organised crime. However a more focused and priority-oriented approach in assessing the concrete results achieved and their impact on the policy is required. The lack of information on the human and financial resources used/planned, in particular with regard to the law enforcement authorities, prevents an assessment on the administrative capacity available for implementation.

Further information is requested on:

- provide analyses of the main results achieved in the framework of the strategy and action plan on organised crime, outline the next main priorities;
- report on the national implementation measures of the UN Convention on Transnational Organised Crime and its Protocol against the Illicit Manufacturing and Trafficking in Firearms;
- organigrammes reflecting the institutional set-up as regards the fight against organised crime (MoIPA, judiciary, etc.), including for each specific policy area (trafficking, economic crime, drugs, anti-corruption) providing details also on the number of allocated and filled posts;
- provide data on trends (covering 2006-2008) broken down against type of crime, including number of convictions.

May 2009 Updated Assessment:

The implementation of the Strategy to fight organised crime and corruption and the action plan for 2009 has continued. The National Commission released its Fourth Report in February 2009, which assessed the progress achieved in 2008 and made recommendations for actions in the coming period. A good level of cooperation and coordination for monitoring the implementation is in place at both inter-ministerial and ministerial levels. Nevertheless,

further efforts should be pursued so as to ensure effective and timely realization of delayed measures. It is envisaged that a new strategy against organised crime and corruption will be developed in 2009.

Montenegro has broadly introduced the legal framework necessary for fighting organised crime. The adoption of the new Criminal Procedure Code (CPC), which is currently in parliamentary procedure is expected to significantly enhance the investigative capacities of the competent national authorities.

The institutional and administrative capacities of the law-enforcement and judicial authorities in preventing and fighting organised crime have generally increased but some deficiencies remain. Competent authorities should be further strengthened by recruiting additional staff, in particular in certain police services, and providing specialised training and equipment.

Statistics should be improved in order to allow for tracking of trends in organised crime and corruption. The work of the tripartite body, attached to the National Commission, bringing together police, prosecutors and courts, and assigned with presenting comparable crime data, is expected to contribute to this end. It is important to further develop data collection methods, providing analyses and interpretation of available statistics.

Policy on preventing and fighting trafficking in human beings (benchmark 19)

November 2008 Assessment:

The general legal and institutional framework for implementing the policy on prevention and fight against trafficking in human beings is largely in place. The strategy for fighting trafficking in human beings has been implemented since 2003. The current action plan is planned to be updated by the end of 2008 and will be supplemented by an action plan on trafficking in children. Legislation and procedures on victims' protection are as a whole established. Legal provisions aiming to help foreign victims who face hardships in other countries have been drafted but not yet adopted. A National coordinator is appointed and is engaged with regional cooperation initiatives, awareness raising and training activities, including assistance to victims. Cooperation with NGOs and international organisations is established. However, Montenegro needs to further update and reinforce its legal and institutional framework in the area of trafficking in human beings, especially to implement the provisions of the recently ratified Council of Europe Convention on trafficking in human beings. Significant efforts are required to build up appropriate capacity to identify and assist victims of trafficking, including by providing specialised training to competent law enforcement and judicial authorities. The statistical data show a limited number of investigations on trafficking in human beings and no convictions.

Further information is requested on:

- analysis of the main results achieved in the framework of the present strategy and action plan and provide the final report on their implementation;
- update of the Strategy for trafficking in human beings and an outline its main priorities;

- national implementation measures of the Council of Europe Convention;
- the division of responsibilities between the responsible bodies;
- details on training for governmental bodies with responsibility in anti-trafficking.

May 2009 Updated Assessment:

The new Action Plan for the implementation of the Strategy for the fight against trafficking in human beings for 2009, adopted in December 2008 builds on past achievements and follows up on partially completed actions. Trafficking in children is part of the overall Action Plan.

Montenegro has established a legal framework in the field of trafficking in human beings which is generally in line with EU and international standards. The existing legislation on witness protection is adequate.

There is a good level of coordination and cooperation among relevant authorities. It is based on a Memorandum of Mutual Cooperation of the responsible ministries and institutions, including NGOs. However, the number of investigations remains low. It remains important to further enhance the capacity of the responsible authorities to identify potential victims.

Extensive work in the field of prevention and public awareness-raising on anti-trafficking is done by the Office of the National Coordinator. Specialised training is provided to relevant institutions at national and local level. Particular focus is put on raising the awareness of vulnerable groups (women and children) as well as on training on identification of potential victims for government officials. The protection shelters and victim assistance are run by NGOs and financed by the government. Their existing capacity is sufficient given the low number of victims of trafficking (4 persons in 2007, 3 persons in 2008).

The plan to establish a common database on victims of trafficking allowing an on-line access of the competent authorities is an important step towards providing better victim assistance.

Policy on preventing and fighting financial crimes (money-laundering, terrorist financing, confiscation of assets) (benchmark 20)

November 2008 Assessment:

The legal framework and procedures in the area of anti-money laundering are in the process of development and consolidation. The new Law on prevention of money-laundering and financing of terrorism, adopted in November 2007, is a step ahead towards alignment with European and international standards. The administrative structure for implementing anti-money laundering legislation has been set up but it is not sufficiently staffed and trained. There is a lack of well-established and efficient inter-agency cooperation mechanisms. The data provided show a significant decrease in the last two years in the number of suspicious transactions reported and the cases submitted for investigation to police and prosecution authorities. It appears that there have been no convictions for money-laundering until now.

Efforts to impose stricter control over funds invested in construction and real estate industry remain weak.

Overall, Montenegro needs to continue its efforts towards further harmonisation with European and international requirements in the field of money laundering. By-laws need to be adopted and the related Council of Europe Convention needs to be transposed into national law and implemented. The current weak enforcement of legislation requires the enhancement and strengthening of the administrative capacities of all responsible bodies, in particular that of the competent Administration for the prevention of money-laundering and terrorist financing that functions as a Financial Intelligence Unit (FIU).

The Law on management of the temporarily and permanently confiscated property has been recently adopted. Major changes are expected with regard to the foreseen adoption of a new Criminal Procedure Code (CPC), which envisages introducing, among others, the *reverse burden of proof*. The draft CPC has not yet entered the parliamentary procedure. Montenegro has not yet fully established the necessary legal and administrative framework for the confiscation of criminal assets. The CPC and other relevant legislation should be further examined once adopted. Sufficient human and financial resources are required to ensure proper implementation of the envisaged legislation.

Further information is requested on:

- details on foreseen developments in anti-money laundering legislation (e.g. provisions of laws, timetable for drafting and/or adoption);
- developments related to the adoption of the new Criminal Procedure Code and other legislation relevant to confiscation of criminal assets (provide timeframe for adoption/implementation);
- state of implementation of Financial Action Task Force (FATF) standards;
- specific plans for implementing the new legalisation on confiscation of criminal assets (including administrative structures, human and financial resources available/planned; inter-agency cooperation established or to be established);
- monitoring mechanisms of financial transactions;
- existing/planned interagency coordination and co-operation mechanisms both for money-laundering and confiscation of criminal assets (e.g. exchange of information, joint actions);
- provide details on training activities on money-laundering and confiscation of criminal assets.

May 2009 Updated Assessment:

The legislation on money-laundering has been further developed by the adoption of a set of regulations in December 2008. The implementation of the Law on prevention of money-laundering and financing of terrorism should further continue, including by enacting the relevant implementing legislation. The necessary financial and human resources should be ensured on a sustainable basis to that effect.

The Montenegrin FIU is well-staffed and provided with sufficient budget and adequate legal framework for its operation. However, the number of suspicious transactions has been decreasing. The record of final successful convictions for money-laundering (one case in April 2009) remains very limited. Better application of appropriate investigative methods and improved cooperation among the relevant law-enforcement authorities are necessary. To this

end, and for the general purposes of fighting crime, Montenegro envisages the setting-up of an inter-agency intelligence centre (National Coordination Office) with the participation of all major law enforcement bodies, expected to be operational by early next year.

Proper implementation of the new Law on confiscated criminal assets of August 2008 will be in practice made possible by the adoption of the new Criminal Procedure Code, the new Law on the State Property Agency and the necessary changes to the Criminal Code. The establishment of the State Property Agency which will be responsible for the managing of confiscated goods should now be ensured. Proper training should be provided for the efficient implementation of the new framework.

Anti-drug policy (benchmark 21)

November 2008 Assessment:

The National strategic response to drugs 2008-2012 and the action plan for 2008-2009 were adopted in May 2008 and an action plan for 2010-2012 drafted. The strategy is in line with the EU approach to address both the demand for and supply of drugs. Coordination and monitoring of implementation will be entrusted with the National office for drugs once it is operational. The project currently being implemented with the EMCDDA is important for establishing standards of information collection. Data on drug seizures is not sufficient and reporting on trends and accessibility of drugs information at border crossing points is lacking.

As Montenegro has only recently started the setting up of a strategic framework of drug policy, considerable work is still needed to ensure its implementation, including training efforts. The institutional framework also remains to be completed and inter-agency cooperation, as well as international cooperation, needs further strengthening. The alignment with EMCDDA information collection standards is important to build up assessment capacities. There are few results in the prosecution of transit and trafficking of drugs.

Further information is requested on:

- operational capacity (staff, budget, training, timetable for making operational the National office for drugs);
- examples of joint activities in the framework of international law-enforcement co-operation (databases, method for information exchange, number of joint operations/cases etc.);
- examples of international cooperation on reduction of drug demand (trainings, seminars, workshops, exchange of expertise and experience);
- statistics on number of investigations, indictments and convictions for drug trafficking.

May 2009 Updated Assessment:

Steps have been taken to establish a coordination mechanism for monitoring and evaluating

the on-going implementation of the anti-drug strategy and action plan. The fundamental legislative framework for fighting drug crime is in place, though it needs to be further developed, for example by adopting the Law on precursors.

The existing institutional set up on tackling drug-smuggling cases is satisfactory. The on-going efforts to strengthen coordination and cooperation among national law enforcement agencies should continue. Further improvements at the borders, including intensification of the activities of border police and customs authorities, are essential for preventing drug smuggling. An efficient network to monitor precursors should be also established.

International law enforcement cooperation on drug cases is at a good level.

The National Office for Drugs has been set-up and started its work. Its national Information Unit on Drugs will be the focal point for cooperation with EMCDDA. Work on the establishment of EMCDDA-aligned information collection standards has continued.

The newly-opened modern Forensic Institute is expected to enhance the Montenegrin authorities' capacity to work in all crime areas, including drug cases. Further upgrading of technical equipment, in particular for the purposes of detecting drugs at the borders should be envisaged. General and specialised training on drugs is provided to relevant authorities. Investigation and prosecution of cases on drug trafficking should be further pursued.

Policy on preventing and fighting corruption (benchmark 22)

November 2008 Assessment:

The implementation of the 2005 strategy to fight organised crime and corruption and its action plan is monitored and updated by the National commission which was set-up in 2007. Some progress has been attained in establishing the legislative framework for preventing and fighting corruption, but important laws, like the Law on prevention of conflict of interests, are not adopted yet. Also, some positive steps have been taken to tackle corruption at local level by introducing model programmes and plans for policy development, as well as raising public awareness.

Efforts are still needed to further align the national law to key international instruments and recommendations. The institutional framework in the anti-corruption policy area needs to be significantly improved. Enhanced expertise and capacity building activities for law enforcement agencies - in particular for the office of the special prosecutor and special police task force on anti-corruption – and the judiciary are important for conducting effective investigations. Inter-agency cooperation and coordination remain insufficient which undermines the fight against corruption. An annual breakdown of statistics on corruption cases, including high-level corruption, is lacking.

Further information is requested on:

- national implementation measures of the UN and Council of Europe Conventions;
- state of implementation of remaining GRECO recommendations;
- operational capacity (staff, budget, training);
- division of responsibilities between the responsible bodies;

- framework of inter-agency law enforcement cooperation in the anti-corruption area (databases, method for information exchange, joint operations etc.);
- annual statistics over several years (e.g. for the period 2006-2008), including high-level corruption cases.

May 2009 Updated Assessment:

The legal and administrative framework in the area of preventing corruption has to a large extent been created and has become operational (Directorate for Anti-Corruption Initiative, public campaigns, Codes of Ethics for different state authorities). Internal control activities in all law enforcement agencies have been created and are functioning at a satisfactory level.

The adoption of the Law on the Prevention of Conflicts of Interest in December 2008 has been a positive step. The implementation of the innovations incorporated in the legislation should be pursued, including by reinforcing the Commission for the Prevention of Conflicts of Interest. The process of implementing GRECO recommendations and international conventions continued. Efforts should be maintained to complete all remaining actions.

In terms of investigation and prosecution, close working relations have been established amongst the different authorities responsible for fighting corruption. Final convictions for corruption are still limited, compared to the number of opened investigations and also to the public perception of the phenomenon. Human resources and expertise should be further improved, in particular within specialised police departments, the special prosecutor and specialised court departments in anti-corruption. The exchange of intelligence between competent authorities (including tax authorities, Customs, FIU) should be further improved. To this effect, the intended creation of an inter-agency intelligence centre (National Coordination Office), should contribute to improvement of investigations and prosecutions.

The new Criminal Procedure Code, introducing, inter alia, the use of special investigative techniques in corruption cases should be adopted and proper training of relevant staff is carried out.

Extensive educational, training and public awareness work is being done across all sectors by the Directorate for the Anti-Corruption Initiative. Ethics and integrity is part of basic training for new Customs officers. Certain developments of anti-corruption training within the police have also taken place, however, introduction of regular training in this field in the Police Academy should be considered.

Judicial co-operation in criminal matters (benchmarks 24-26)

November 2008 Assessment:

Progress has been made in the field of judicial cooperation in criminal matters. Efforts to fully align with the remaining key international instruments, as well as to ensure their effective enforcement at national level should continue. Montenegro is party to the main European and international conventions in the field of extradition, mutual legal assistance and other forms of legal and judicial cooperation and has also concluded a significant number of bilateral agreements. A specific Law on international legal assistance in criminal matters has recently

been adopted. Necessary arrangements and procedures for implementing requests for extradition, mutual legal assistance and transfer of sentenced persons are in place.

Regional and international cooperation, both at the level of the State Prosecutor's office and Ministry of Justice, is well developed. A number of memoranda of understanding and bilateral agreements have been signed with neighbouring countries.

Regular training on international and European judicial cooperation is provided to judges, prosecutors and officials from the Ministry of Justice. Training is delivered through the Judicial education center and the Agency for human resources managing, taking advantage of EU-financed projects.

A contact person for Eurojust has been appointed and negotiations on cooperation agreement are ongoing.

Further information is requested on:

- statistics on extradition, explaining also the number and grounds for refusal and legal bases utilized (bilateral, Council of Europe or UN conventions);
- detailed overview of the existing responsibilities and human resources of the central authorities dealing with judicial cooperation;
- existing and planned actions aiming at developing and improving direct international contacts with judicial authorities.

May 2009 Updated Assessment:

In February 2009 the 2nd Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters entered into force. The new Criminal Procedure Code is expected to further improve and facilitate the implementation of judicial cooperation by additionally specifying the provisions on the use of special investigative techniques.

There is a good level of international judicial cooperation with priority given to international requests for legal assistance and extradition, on the basis of Council of Europe Conventions and some bilateral agreements. Work is under way for further bilateral agreements with neighbouring countries to be concluded.

Coordination at national level, though active, is primarily based on an informal basis. Preparations are under way to introduce clear, written provisions to regulate existing cooperation among the Ministry of Justice, Ministry of Interior, the Prosecutor's Office and the Courts.

A *Manual on judicial cooperation in criminal matters* is planned to be produced in 2009 which will be a useful tool for practitioners. The shortage of human resources as well as the specialised training needs should be addressed to help, amongst others, reducing the average period for complying with rogatory letters and extradition procedures.

Law enforcement co-operation (benchmarks 27 - 31)

November 2008 Assessment:

Cooperation between law enforcement agencies, including exchange of data and information is currently being carried out on an informal basis. A formal legal act is being prepared but not yet adopted. Preparations are under way for the establishment of a National coordination office to coordinate the cooperation and exchange of information among the police, customs administration, the public revenue office and the Anti-Money-Laundering Administration. Regional cooperation at operational level should be further enhanced. Cooperation, including exchange of information and joint operations with EU Member States is established. In September 2008, a strategic cooperation agreement with Europol was signed.

Overall, the arrangements for law enforcement cooperation at national level need substantial improvements. Montenegro should pursue its plans to establish an appropriate formal legal and institutional basis, as well as to build up sufficient administrative capacities.

The operational and special investigative capacity at the level of law enforcement bodies is not yet sufficient. Certain steps have been taken to establish an appropriate legal and institutional set up within the police administration for performing such activities both at national and regional level. Measures aimed at building up criminal analytical and operational capacities are being implemented with the support of EU Member States and other international donors. The need for specialised training, including on criminal analysis and special investigative techniques, and modern technical equipment should be properly addressed.

Further information is requested on:

- the present practice for inter-agency co-operation among the different national law enforcement authorities (existing databases, access to each others' information, results of joint actions etc.);
- measures planned to reinforce co-operation, including preparation of co-operation protocols/agreements (agencies/authorities to be covered, timeframe for drafting and adoption, coordination mechanisms etc.);
- details on the setting-up and functioning of the National Coordination Office (staff, budget, training etc.);
- results achieved in co-operation with third countries;
- legal framework and current practice on the use of special investigative techniques (type of techniques available, legal constraints on their use, access to databases with confidential information etc.);
- details on the projects to establish criminal intelligence units at central and local levels planned for 2009.

May 2009 Updated Assessment:

The measures taken to formalise the existing informal inter-agency cooperation and exchange of information, including at border crossing points, should be further followed-up and accelerated. Cooperation agreements between the Police Directorate and the Tax and Customs Administrations have been concluded, while an agreement with the Prosecutor's Office is due to be signed. The establishment of the National Coordination Office which will bring together

relevant law-enforcement agencies, thus allowing for effective and efficient cooperation and intelligence exchange should be given priority (planned to be completed by early next year).

The implementation of an intelligence-led law enforcement project for 2008-2010 is ongoing. Once implemented at country-wide level, it is expected to lead to better investigations in all crime areas. It should however, be supported by appropriate budget and training activities. .

The operational and investigative capacities of the law-enforcement bodies need further development and improvement. The new Criminal Procedure Code will improve the framework of the use of special investigative techniques. An instruction book on informant handling has been adopted. Specific plans exist to develop and adopt (in 2009) a number of practical tools for law enforcement practitioners (e.g. Manual on the application of special investigative techniques, Manual on intelligence led policing).

Montenegro should proceed with the ratification of the strategic cooperation agreement with Europol and ensure its effective implementation.

The administrative capacity of the bodies in charge of international law-enforcement cooperation should be strengthened, in particular of the Directorate of International Police Cooperation. Shortages of staff and technical equipment, as well as working procedures should be addressed as these remain essential for enhancing law-enforcement capacities to effectively fight all forms of crime, as well as for cooperating at international level.

Protection of personal data (benchmark 32 -33)

November 2008 Assessment:

Considerable efforts are still needed to make progress on protection of personal data. A new law on protection of personal data has not been adopted yet. Once adopted, the legislation needs to be checked for compliance with the *acquis communautaire* in this field. An independent and efficient data protection supervisory authority is still absent, which is also one of the requirements for the conclusion of operational agreements with Europol and Eurojust. However, the government has adopted a Strategy and an action plan on personal data protection. It includes measures and activities for setting up and ensuring the operation of that body but does not contain specific timelines. The Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and trans-border data flows (CETS No. 181) is not yet signed and ratified.

Further information is requested on:

- details and text of the new law on protection of personal data, and the set-up of the independent supervisory authority;
- details and text of the Strategy and an Action on personal data protection, including specific timelines;

- details on the application of the law on protection of personal data and supervision of the police;
- details and timelines on the signing and ratification of the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and trans-border data flows (CETS No. 181).

May 2009 Updated Assessment:

Some progress has been noted in the area of personal data protection, primarily through the adoption of a new Law on the protection of personal data. Additional efforts are still required as this law should be further aligned with the acquis, and notably with Directive 95/46 EC. An independent National Agency for the Protection of Personal Data should be set up and made fully operational. State sectors should now fully apply the new personal data protection law.

BLOCK 4 External relations and fundamental rights

General assessment of block 4:

Montenegro has made substantial progress towards the fulfilment of the block 4 benchmarks.

The country has broadly put into place the strategic, legislative and institutional frameworks with regard to the areas of freedom of movement and identity documents, and citizens' rights including anti-discrimination and protection of minorities.

The established legal framework ensures freedom of movement and access to documents for all Montenegrin citizens. Efforts to solve pending issues like the status of displaced and internally displaced persons and granting full and effective access to identity documents for these categories should be further stepped up. There is lack of clarity on whether these are all registered and have access to identity documents. Montenegro has set up a clear legal framework which stipulates the conditions and circumstances under which the Montenegrin citizenship is acquired. Some concerns remain over the extent of the legislation's application regarding former Yugoslav citizens. A broadly adequate legal framework on anti-discrimination has also been put in place, whereby fundamental rights are protected and upheld, and all forms of discrimination are prohibited. An Anti-discrimination law has not been adopted yet. The legal and institutional framework for the protection of minorities is already largely in place and there have been increased efforts for its implementation through actions for the improvement of the situation of minorities. However, progress is rather slow (in particular, regarding the RAE population).

It appears that Montenegro meets a large majority of the benchmarks set under Block 4 of the roadmap.

Detailed comments on block 4 by policy area:

Freedom of movement and identity documents (benchmarks 34 – 36)

November 2008 Assessment:

Montenegro has put in place legislation ensuring the freedom of movement, as well as legislation and procedures for issuing identity and travel documents. The right of free movement is guaranteed to every Montenegrin citizen by the Constitution and can be restricted only under certain circumstances like criminal prosecution or for security reasons. Discrimination on any ground is prohibited by the Constitution and also incriminated by the Criminal Code.

The Law on travel documents and the Law on identity cards set out the terms and conditions under which travel and identity documents can be issued. Montenegro has also introduced legal provisions aiming at facilitating certain minority and ethnic groups in completing the application forms for identity and travel documents in their own language (Serbian, Bosnian, Albanian and Croatian), including in Cyrillic writing. Refusals to issue travel documents can be appealed at two administrative instances. With regard to the issuance of documents, the country reports that there have been neither cases of discrimination reported nor particular difficulties for a specific group.

Identity cards for displaced persons are issued by the Ministry of Interior and Public Administration, while those for internally displaced persons are issued by the Office for Refugees. Legal provisions which will regulate the issuance of documents to asylum seekers, recognised refugees and persons who are granted subsidiary or temporary protection are planned to be adopted in November 2008. Information on the procedures for obtaining identity documents for the above categories is lacking, as well as statistical data on the number of DPs and IDPs who have already been issued identity documents. It remains unclear whether at present recognised refugees have access to identity documents in the absence of legislation regulating their issuance.

There are no statistics on access to documents for any of the categories of persons.

Further information is requested on:

- procedure for issuing documents to DPs and IDPs;
- statistics on access to documents for DPs and IDPs (applications/documents issued);
- present access to identity and travel documents of recognised refugees;
- statistics on access to documents for refugees (applications/documents issued);
- adoption of legal provisions on the issuance of identity documents to asylum seekers and refugees.

May 2009 Updated Assessment:

As to the access to identity documents of displaced persons (DPs), internally displaced persons (IDPs) and refugees, in December 2008, displaced persons (DPs) were all registered and issued with new identity cards. Under the Law on Asylum, the DPs being granted refugee

status have the right to be issued refugee identity cards and refugee travel documents. IDPs residing in Montenegro were registered with the Bureau for the Care of Refugees and issued with identification documents. The Bureau has now stopped issuing new documents and only issues duplicates of lost ones. Due to the very limited numbers of displaced and internally displaced persons making use of the Law on Asylum, Montenegro has recently launched a public campaign to address this issue. Nonetheless, concerns remain over some IDPs not being registered, and consequently, having no access to identity documents. Efforts to ensure the resolution of the status of displaced and internally displaced persons and the full and effective access to identity documents for these categories should be stepped up.

Citizens' rights including protection of minorities (benchmarks 37 – 41)

November 2008 Assessment:

Discrimination is currently prevented by the Constitution and provisions in the Criminal Code (sanctioning unequal treatment). In addition, laws on prohibition of discrimination and on protection of the disabled are being prepared.

Montenegro has established a broad legal and institutional framework regulating the rights and protection of national minorities. Further to the Constitutional provisions, a special Law on Minority Rights and Freedoms is adopted, as well as a Strategy on Minority Policy. The Ministry for Human and Minority Rights Protection is entrusted with supervising the respect of minority rights and freedoms.

Since November 2007, Montenegro has been implementing the Strategy for improving the status of the Roma, Ashkaeli and Egyptian population for the period 2007 – 2012. A specialised inter-agency commission which also includes representatives of Roma NGOs has been created. Some activities concerning the integration of the Roma population are reported, in particular regarding schooling and radio-broadcasting in Roma language. Detailed results covering also other areas like housing, health care and employment are not provided. Information regarding measures aimed at other minority groups and their integration in the society is missing. A fund for minorities has been set up but financing seems mainly limited to actions related to Roma.

Regarding investigation of ethnically motivated incidents, information on procedures is not sufficient. There are no cases, nor reports by the ombudsperson/NGOs reported.

The Laws on Montenegrin citizenship and on the registers of temporary and permanent residence were adopted in February 2008. The terms and conditions for acquiring Montenegrin citizenship are generally described. According to the law, dual citizenship is not permitted except in very limited cases like marriage with a Montenegrin national or possession of Montenegrin citizenship upon country's proclamation of independence. There are no explanations on actions taken to address the problems related to former Yugoslav citizenship, including on progress in negotiating dual citizenship agreements with relevant neighbouring countries.

Further information is requested on:

- progress with adopting anti-discriminatory legislation;
- procedures to investigate ethnically motivated incidents;

- activities related to other minority groups than Roma (Ashkaeli and Egyptians);
- results achieved in areas like housing, health care, employment etc;
- measures taken to tackle problems related to former Yugoslav citizenship;
- results in securing financing of actions to promote other minority groups besides Roma.

May 2009 Updated Assessment:

Regarding anti-discrimination, Montenegro has put in place a broadly adequate legal framework whereby fundamental rights are protected and upheld. All forms of discrimination are prohibited through constitutional provisions, the Criminal Code, the Criminal Procedure Code and sectoral legislation. The draft Anti-discrimination law has not yet been finalised but it is planned to be adopted by mid 2009. The draft appears to broadly cover relevant EU standards in a wide range of sectors. It will provide for the establishment of an anti-discrimination agency, either by granting new powers to the Ombudsman or by creating a new institution, and will also provide for funds allotted for public awareness campaigns. At present, discrimination complaints can be lodged with the Ombudsman. However, there is almost no track record of such instances.

The Montenegrin Citizenship Law constitutes a quite clear legal framework and stipulates 4 ways by which Montenegrin citizenship is acquired, i.e. by origin, by birth on Montenegrin territory, by naturalisation and pursuant to international treaties and agreements. The law is quite restrictive regarding naturalization as it doesn't allow for having the citizenship of another country and sets additional demanding requirements (e.g 10 years of lawful residence in the country, accommodation and guaranteed source of income, basic knowledge of the language, etc.). There are exceptions to the obligation of single citizenship. Yet, some concerns remain on the practical implementation of the law, including due to allegations of its arbitrary application. Montenegro has concluded a dual citizenship agreement with Former Yugoslav Republic of Macedonia, while negotiations are still on-going with Croatia, Bosnia and Herzegovina and Serbia.

Minority Councils (elected by the minorities) have been set up and provided with financial support by the Government through a special Fund for Minorities. Montenegro is making good efforts in implementing its minority integration policies with some increase in activities and projects concerning the integration of the Roma population including education, social and health care and employment actions. However, overall progress in the improvement of minorities' conditions, especially the Roma, appears to be rather slow and not easily quantifiable, due to, inter alia, a lack of reliable data and a relatively limited budget.