

Montenegro and Negotiations on Chapter 24

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Summary

In light of the stricter criteria for the process of accession to the EU, Montenegro is facing the demanding Chapter 24 on justice, freedom and security at the very beginning of negotiations. Croatian experience demonstrates that the issues concerning the surveillance and protection of state borders, as well as the efficient fight against organised crime, represented key challenges in this area. Better surveillance of border crossings, enhancing judicial and police cooperation with countries in the region, as well as swift and efficient processing of high-profile cases of organised crime, are some of the most important tasks awaiting Montenegro. It would be useful to consider organisational restructuring and personnel reinforcement of the Prosecution's Unit for the fight against organised crime, terrorism and war crimes, following the Croatian USKOK model. It is further necessary to institutionalise direct and close cooperation between the Police Department for the fight against organised crime and corruption and the competent Prosecution unit. Direct cooperation between these highly-specialised bodies of the Supreme State Prosecution and of the Police Directorate, would allow Montenegro to achieve visible results in the fight against organised crime, thereby ensuring a positive outcome of negotiations on this chapter. The transparency of the entire negotiation process should be ensured by regularly reporting to the relevant parliamentary committees on the work of institutions competent for the matters of justice, freedom and security.

INTRODUCTION

Negotiating chapter 24 covers a broad spectrum of areas regarding, inter alia, asylum and migration policies, fight against organised crime, control of external borders, as well as judicial, police and customs cooperation.¹

This chapter regulates the area of justice, freedom and security by efficiently interconnecting the judicial, prosecutorial, police and other relevant bodies of the member states with a view to protecting the external borders while simultaneously guaranteeing security to the citizens within the EU. Some of the key questions addressed under this chapter concern the application of the European arrest warrant, as well as the principle of mutual recognition of court decisions in member states. The *acquis* in this area stipulates the establishment of direct communication between the judicial bodies inside the EU, as well as the possibility of carrying out investigations by joint teams cooperating in the fight against organised crime. It is precisely due to the strategic role of this chapter in the EU legal framework that Montenegro is urged to fulfill the key priorities related to the fight against corruption and organised crime.²

¹ Chapter 24 consists of twelve areas covering policies related to: 1) asylum, 2) migration, 3) visas, 4) external borders and Schengen, 5) the fight against organised crime, 6) the fight against drug trafficking, 7) the fight against human trafficking, 8) the fight against terrorism, 9) judicial cooperation in civil matters, 10) judicial cooperation in criminal matters, 11) police cooperation and 12) customs cooperation.

² The issue of the fight against organised crime and corruption features explicitly both in the Council conclusions of December 2011 and in the Commission spring report on the implementation of reforms in Montenegro of May 2012: Council of the European Union, Council conclusions on enlargement and stabilisation and association process, 3132nd General Affairs Council Meeting, Brussels, 5 December 2011 (p.8) and Report from the European Commission to the European Parliament and the Council on Montenegro's Progress in the Implementation of Reforms.

Based on the dynamics, time-frame and the problems Croatia encountered during the negotiation process on Chapter 24, the goal of this analysis is to identify the potential obstacles in Montenegro's negotiations, as well as to provide recommendations to overcome them.

CHAPTER 24: DYNAMICS OF NEGOTIATIONS IN CROATIA

With the creation of a separate area of justice, freedom and security, which previously formed part of a single chapter on justice and home affairs, Croatia became the first country to negotiate on Chapter 24 in its current form. Montenegro, on the other hand, is the first country to begin negotiations precisely with this chapter which is considered one of the most demanding due to the delicate matters it covers.

Negotiating structure and time-frame for Chapter 24

Timeframe for negotiations on Chapter 24 - Croatia	
April 2005	Negotiating structure
January-February 2006	Screening
June 2006	Screening results
July 2006	Opening benchmarks
April 2008	Negotiating position
September 2009	Closing benchmarks
October 2009	Negotiations start
October 2010	Negotiations end

Working groups for negotiations were formed in Croatia by the government's decision of April 2005. The working group for Chapter 24 consisted of 29 members, coordinated by the Interior Ministry, in cooperation with the Justice Ministry and the Foreign Affairs and European Integration Ministry. Other state bodies which took part in this working group included the Human Rights Bureau, Croatian National Bank as well as the Bureau for the Fight against Drug Abuse. Representatives of the Supreme Court as well as members of the academic community also participated in this working group.³

Prior to commencing the negotiations, Croatian government made a "Negotiating Position" in which it provided measures to be taken in order to fulfill the given benchmarks for the closure of this chapter. Additionally, this document contained a detailed description of strategies for full harmonisation of the national legislation with the EU acquis. Prior to closing the negotiations, a Report on fulfilling the obligations stemming from the initial negotiating position was produced, based on which Chapter 24 was preliminarily closed.

³ Montenegrin working group for Chapter 24 consists of 39 members, including 2 representatives of the NGO sector.

The role of civil society in monitoring and reporting on negotiations

Civil society representatives, who participated in the working group for Chapter 24 in Croatia, were members of the academic community; i.e., four members of the Law Faculty of Zagreb University were selected. Since this chapter deals primarily with technical measures for ensuring smooth functioning of the judicial system and the security of EU borders, NGO participation was minimised to the level of monitoring and reporting on the negotiation process.

Screening⁴ results

Among the results of the analytical report on the state of play of Croatian legislation and institutional framework concerning its alignment with *acquis*, emphasis was placed on the surveillance of Croatian borders.⁵ It was concluded, *inter alia*, that the field of migration along with the asylum policy represents a special challenge, and that a great number of Croatian laws must be aligned with EU norms. For example, Croatia had to change its rules concerning the family reunification of legal migrants, as well as to change the legal provisions defining the period which migrants may spend outside Croatia without losing their right to reside and work.⁶ As regards illegal migration, Croatia had to undertake measures to determine procedures for aerial deportation of illegal immigrants, as well as to precisely define the conditions for residence permit for asylum-seekers who need it for humanitarian reasons.⁷

When it comes to visa policy and border control, Croatia needed to start issuing visa stickers and to align its so-called “negative list of countries” with the EU.⁸ Namely, citizens of countries such as Russia and Turkey are found on the EU’s negative list - i.e., they require a valid visa to enter the EU, while the citizens of these two countries were allowed to enter Croatia and to reside temporarily on its territory without a visa. Furthermore, Croatia needed to take the necessary steps to separate lanes at the border crossings so that the EU and EEA citizens would be using lanes separate from third-country nationals.

Constitutional changes were necessary in order for Croatia to allow the extradition of its citizens to third countries, especially in light of the more efficient fight against organised crime.⁹ Moreover, Croatia needed to establish direct cooperation of its judicial bodies with their counterparts in EU member states, which is why language training was required to facilitate communication between Croatian officials and their EU colleagues. The screening report further underlined the incompatibility of the Croatian Criminal Code with *acquis*, due to dual criminality principle for various offences committed on different countries’ territories, which therefore had to be removed. Additionally, the mutual recognition of court decisions on property seizure, as well as direct execution of foreign judicial decisions in general, was demanded.¹⁰

4 Screening refers to the process of reviewing the national legislative and institutional framework of the candidate country and includes the assessment of the level of its harmonisation with the *acquis*. Based on the screening results, EC produces a report which indicates the shortcomings of the national framework to be addressed during the negotiation process.

5 Screening report on Croatia: Chapter 24, p.15

6 *Ibid.*, p.2

7 Screening report on Croatia: Chapter 24, p.3

8 *Ibid.*, p.16

9 Screening report on Croatia: Chapter 24 p. 17-18

10 Screening report on Croatia: Chapter 24, p. 18-19

The report also highlighted the need for closer cooperation with Eurojust¹¹ by identifying the relevant institution which would serve as a nexus between the Croatian judicial officials and their colleagues from EU member states. Similarly, it was necessary to second a liaison officer from Croatia to be placed in Europol for a more efficient police cooperation.¹² The area of cyber crime also required thorough alignment of the Croatian legislation with *acquis* with regard to supervision and interception of Internet communication, urgent data protection and cross-border access to data.¹³

Opening benchmark for Chapter 24

As a condition for opening negotiations on Chapter 24, the Commission established one benchmark. Namely, Croatian authorities needed to update the Action plan for integrated border management of both the land and maritime borders. It was further requested to undertake concrete measures for border officials' training, better coordination of all bodies involved in border supervision, enhancing interinstitutional cooperation, as well as to provide a detailed financial plan on resources invested and resources further needed to fulfill this condition.¹⁴ Bearing in mind that the EU external borders move to new countries with Croatia's accession, it was expected that this issue would come to the fore as one of the key questions for opening negotiations on Chapter 24.

Closing benchmarks for Chapter 24

Having fulfilled the opening benchmark, Croatia delivered its negotiating position to Brussels. Following this, the Commission presented the closing benchmarks even before the negotiations began. In its joint negotiating position, the EU listed six conditions¹⁵ which Croatia needed to fulfill in order to provisionally close Chapter 24.

As regards derogative measures - a rare phenomenon in the area of justice, freedom and security - the authorities in Zagreb succeeded in obtaining a temporary derogation related to the peculiarity of the Croatian border with Bosnia and Herzegovina which cuts the Croatian coast near Dubrovnik. Derogation concerning the Neum corridor allows Croatia to maintain joint control of those border crossings with Bosnian authorities until the moment of its entry into Schengen area, while simultaneously committing to apply all rules stipulated by *acquis*. Based on such an agreement, Croatia kept these joint border crossings with Bosnia, thereby allowing the border officials of one country to control entrance and exit of individuals on the territory of the other country.¹⁶

11 Eurojust - The European Union's Judicial Cooperation Unit

12 Ibid., p.10

13 Ibid., p.11

14 Report on the conduct of negotiations of the Republic of Croatia on the accession to the EU (Izvešće o vođenim pregovorima RH za pristupanje EU), p.102

15 1) enhancing asylum system, 2) enhancing visa policy, 3) integrated border management and the protection of borders, 4) readiness to implement Schengen rules, 5) changing the judicial system in order to allow the application of the European arrest warrant, 6) defining terrorism according to the EU rules (Izvešće o vođenim pregovorima RH za pristupanje EU, p.103)

16 Treaty concerning the accession of the Republic of Croatia to the European Union, Annex V, p.35

MONTENEGRO AND CHAPTER 24

In certain areas of Chapter 24, Montenegro is better placed than Croatia was at the outset of negotiations. Namely, relevant international documents, such as the Hague convention on the taking of evidence abroad in civil and commercial matters, have been ratified already.¹⁷ Extradition agreements covering own nationals have been signed with several countries in the region. Integrated border management is assessed as an area in which substantial progress has been made already.¹⁸ Yet, a further step in that direction is expected through the adoption of a new Strategy for integrated border management, covering the period between 2013 and 2016, as foreseen in the government's work plan for 2012.¹⁹ In line with the recommendations made at the screening meeting in Brussels, next steps to be taken in order to enhance the border policy include signing of a cooperation agreement in the area of integrated border management between the Interior Ministry, Police Directorate, Customs Directorate, Veterinary and Phytosanitary Directorates. Furthermore, to align with the Schengen acquis, it is necessary to regulate the obligations of carriers and the early delivery of data on the movement of persons and goods, which should contribute to a more efficient fight against organised crime, terrorism and illegal migration.²⁰

As regards legislation, Montenegro is expected to align its Law on Asylum and Law on Foreigners, as well as to amend the Law on Internal Affairs. Even though the implementation of the new Criminal Procedure Code is assessed positively in the most recent spring report of 2012, its efficient implementation is still hampered due to insufficient information-sharing between the prosecution and the police, and because of a general lack of cooperation and unclear division of responsibility between relevant institutions involved in implementing the Code.²¹ Montenegro, just as Croatia, will also need to apply the provisions concerning the European evidence warrant, as well as to meet the criteria in the field of personal data protection. One of the core tasks awaiting the Justice Ministry is to ensure a more efficient judicial cooperation in criminal matters.²²

Montenegrin visa policy is one of the most problematic areas covered under Chapter 24, having in mind that the system for issuing visas with the necessary level of security does not exist, while too great a number of visas is still issued at border crossings. Since this is an area which will require significant financial resources to be invested in software needed to ensure better protection of Montenegrin borders through a more rigorous control of third country nationals' entry, it is possible that the issue of visa policy will appear as one of the benchmarks in Chapter 24.

Depending on the speed of its reforms and the consequent timing of its accession to the EU, Montenegro could face the problem of border disputes just as Croatia did. Namely, if Montenegro joins the EU before its neighbours do, its accession will move the EU's external borders to Albania and Kosovo. Having in mind the Croat-Slovene dispute over the Piran Bay, Montenegrin government should tackle all open border questions on time, including the issue of Prevlaka²³ as well as officially demarcate the borders with Croatia, Serbia and Bosnia²⁴, with an emphasis on

17 Montenegro 2011 Progress Report, p.59

18 Ibid.

19 Work plan of the government of Montenegro for 2012 (Program rada Vlade Crne Gore za 2012. godinu), p.13

20 Comments by Mr Dragan Pejanović, Interior Ministry Secretary and the Head of the working group for Chapter 24

21 Report on Montenegro's progress in the implementation of reforms, COM(2012)222, Brussels, 22 May 2012

22 Montenegro 2011 Progress Report, p.59-60

23 Mixed Croat-Montenegrin Commission for border demarcation at Prevlaka, headed by Foreign Ministers of the two countries, is responsible for the preparation of the legal framework for demarcation to be presented before the International Court of Justice in The Hague.

24 Montenegro officially demarcated its border only with Albania.

security of the border with Kosovo. A particular concern of the EU as regards border security in Montenegro is reflected in the frequent rotation of trained staff²⁵ which casts doubt over the capacity of the border police to deal with security issues effectively. The issue of security of the border with Kosovo²⁶ should be resolved by institutionalising cooperation with Pristina authorities; i.e., by signing the relevant agreements. Also, inefficient control of the maritime border, despite strengthening of the electronic surveillance capacity of the Bar and Kotor ports²⁷, is recognised as an area demanding additional efforts.

When it comes to concrete measures, areas covering the fight against organised crime and drug trafficking are recognised as the stumbling bloc which might slow down Montenegro's accession to the EU. The quantity of seized drugs is low - much greater efforts are expected of Montenegrin authorities, since Montenegro is identified as one of the main Balkan routes for drug trafficking to and from the EU.²⁸ Despite several cases of temporary seizure of valuable property suspected of having been acquired illegally, the EU demands strengthening the fight against organised crime and efficient processing of these cases. In the spring report on the implementation of reforms, the European Commission pointed to the necessity of further building the capacity of special police investigative teams - since October 2011, only three financial investigations have been launched in the field of organised crime.²⁹ Therefore, it is important to strengthen the mechanisms for investigating and processing organised crime cases, particularly by enhancing the intelligence work of the police. In addition, it is necessary to reinforce the capacity of the State Property Agency in order to make better use of assets seized during the fight against organised crime actions.³⁰

25 Montenegro 2011 Progress Report, p.59

26 The problematic nature of the border with Kosovo is underlined in the 2011 Progress Report on Montenegro (p.59) as well as in the Analytical report accompanying the EC Opinion on Montenegro's application for membership (p.105), where it is explicitly stated that: "border with Kosovo is not demarcated and poses a challenge in terms of crime activities."

27 Montenegro 2011 Progress Report, p.59

28 Ibid., p.62

29 Report on Montenegro's progress in the implementation of reforms, COM(2012)222, Brussels, 22 May 2012, p.8

30 Ibid., p.9

CONCLUSIONS

What proved to be the most efficient move by the Croatian authorities which allowed for a provisional closure of this chapter are visible results in the fight against organised crime. EU's positive assessment was primarily based on efficient processing of high-profile cases of organised crime. The work of the Croatian Police (especially the Police National Department for the Fight Against Corruption and Organised Crime - PNUSKOK) and of the Croatian Prosecution (especially the Department for the Fight Against Corruption and Organised Crime - USKOK) in identifying major criminal groups and arresting their leaders, as well as in confiscating their illegally acquired property, represented one of the key elements which allowed for a positive progress assessment in Croatia in this field.³¹

In light of the stricter criteria for opening of the accession negotiations, reflecting the mood of member states which are reluctant to admit unprepared countries to the EU, Montenegro should be aware that without concrete fulfillment of conditions regarding the fight against organised crime, it could be easily blocked in the negotiation process, or that the provisional closure of this chapter could be unnecessarily prolonged. Hence, it is extremely important to strengthen the institutional cooperation between the prosecution and law-enforcement authorities - a shortcoming which is continuously repeated in the Commission reports as one of the main obstacles to an efficient fight against organised crime. One of the possibilities could involve adopting a special law which would structurally alter the prosecution's Unit for the fight against organised crime, terrorism and war crimes, based on the model of Croatian USKOK. That way, a special unit for the fight against corruption and organised crime would be established at the Supreme State Prosecution, which would directly cooperate with the Department for the fight against organised crime and corruption at the Police Directorate.

³¹ "High-profile cases of organised crime have been investigated swiftly (...) USKOK has been active in prosecuting high-profile cases of organised crime." 2010 Progress Report on Croatia

RECOMMENDATIONS

Government

- Intensify the work of the Commission for preparing the legal procedure for border demarcation between Montenegro and the Republic of Croatia and prepare the legal framework for demarcation at the Prevlaka region.
- Sign the Agreement on state border with Bosnia and Herzegovina whose draft already exists.
- Begin negotiations on demarcation with Serbia and Kosovo as soon as possible, in order to sign the agreements on state border.
- Ensure efficient implementation of the newly amended Law on management of temporary and permanently seized property with a view to allow efficient execution of court decisions in the area of organised crime, which fall under the jurisdiction of the State Property Agency.

Police Directorate

- Launch investigation in all cases indicating the existence of elements of organised crime. Following its own conclusions from the Organised Crime Threat Assessment in Montenegro, the Police Directorate, in cooperation with the relevant unit of the Supreme State Prosecution, should dedicate more attention to the growing tendency of 'investing money illegally acquired through criminal activities in the purchase of real estate and luxurious objects'.³²

Parliament

- Find the consensus on adopting the Law on Internal Affairs in order to enhance the regulation of areas covered under Chapter 24.

Supreme State Prosecution

- Regularly report to the relevant parliamentary committee about the investigations in the area of organised crime.

³² 'Organised Crime Threat Assessment in Montenegro' (MNE OCTA 2011), p.14

LITERATURE

EU Documents:

- *Screening report on Croatia: Chapter 24* (http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_24_hr_internet_en.pdf)
- *Treaty concerning the accession of the Republic of Croatia to the European Union* (<http://register.consilium.europa.eu/pdf/en/11/st14/st14409.en11.pdf>)
- *Croatia 2010 Progress Report accompanying the communication from the Commission to the European Parliament and the Council, SEC(2010)1326, Brussels, 9 November 2010*
- *Communication from the Commission to the European Parliament and the Council - Commission Opinion on Montenegro's application for membership of the European Union, COM(2010)670, Brussels, 9 November 2010*
- *Analytical report accompanying the communication from the Commission to the European Parliament and the Council, SEC(2010)1334, Brussels, 9 November 2010*
- *Montenegro 2011 Progress Report accompanying the communication from the Commission to the European Parliament and the Council, SEC(2011)1204, Brussels, 12 October 2011*
- *Council of the European Union, Council conclusions on enlargement and stabilisation and association process, 3132nd General Affairs Council Meeting, Brussels, 5 December 2011*
- *Report from the European Commission to the European Parliament and the Council on Montenegro's Progress in the Implementation of Reforms, COM(2012)222, Brussels, 22 May 2012*

Croatian government documents:

- *Negotiating position of the Republic of Croatia for Chapter 24* (original title: *Pregovaračko stajalište RH za poglavlje 24*) (<http://www.mvep.hr/custompages/static/hrv/files/pregovori/4/24.pdf>)
- *Annex to the negotiating position of the Republic of Croatia for Chapter 24* (original title: *Dodatak na pregovaračko stajalište RH za poglavlje 24*) (<http://www.mvep.hr/custompages/static/hrv/files/pregovori/4/24a.pdf>)
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Other documents:

- *"Organised Crime Threat Assessment in Montenegro"* (original title: *"Procjena opasnosti od organizovanog kriminala u Crnoj Gori MNE OCTA 2011"*), Police Directorate of Montenegro, Podgorica, July 2011 (http://www.upravapolicije.com/fajlovi/upravapolicije/editor_fajlovi/pdf_fajlovi/MNE_OCTA_2011_-_javna_verzija.pdf)

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Institute Alternativa is a non-governmental organization, established in September 2007 by a group of young, educated citizens, with experience in the civil society, public administration and business sectors.

The mission of Institute Alternativa is to strengthen the democratic processes in Montenegro by identifying and analyzing public policy options.

The strategic aims of Institute Alternativa are to: increase the quality of development of public policy, contribute to the development of democracy and the rule of law, and to contribute to the protection of human rights in Montenegro.

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- *Report on democratic oversight of security services*
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