

Standard Summary Project Fiche – IPA centralised National and CBC programmes

Legal harmonisation

1. Basic information

- 1.1 **CRIS Number:** 2007/19300
1.2 **Title:** Legal Harmonisation
1.3 **Sector:** EU standards 03.34
1.4 **Location:** Podgorica, with nationwide project activities

Implementing arrangements:

1.5 **Contracting Authority (EC)**

EC Delegation in Montenegro

1.6 **Implementing Agency:**

European Commission

1.7 **Beneficiary (including details of project manager):**

The Beneficiaries are the Secretariat for EU integration, Secretariat for Legislation, line ministries, Parliamentary Committee for International and European Integration and Parliamentary Committee for Legislation.

The Project Managers are the Secretariat for EU integration and the Secretariat of the Parliament.

1.8 **Overall cost:**

€1.1 Million

1.9 **EU contribution:**

€1.1 Million

1.10 **Final date for contracting:**

Two years from the date of conclusion of the Financing Agreement

1.11 **Final date for execution of contracts:**

Four years from the date of conclusion of the Financing Agreement

1.12 **Final date for disbursements:**

Five years from the date of conclusion of the Financing Agreement

2. **Overall Objective and Project Purpose**

2.1 Overall Objective

To assist Montenegro in strengthening the institutional capacity for approximating and harmonizing with the EU acquis.

2.2 Project purpose

The project purpose is the provision of advice to: 1) support the co-ordinating role of the Sector for European integration in the legal approximation process; 2) to foster the role of the Secretariat for Legislation in the legal approximation process; and 3) support the role of the Parliamentary Committee for International and European Integration, and the Parliamentary Committee for Legislation.

2.3 Link with AP/NPAA / EP/ SAA

All strategic programming documents highlight the need to create a more efficient system of coordination on European integration issues including the implementation of the European partnership priorities and the implementation of the SAA .

The European Partnership underlines the need to continue strengthening the capacity of the Parliament in all areas, in particular in relation to the adoption of the EU acquis, as well as the capacity of the European integration units in the relevant ministries and coordination mechanisms on EU matters including on SAA and IPA.

The SAA states, under Article 72, that Montenegro shall ensure the compatibility of existing and future laws with the Community acquis as well as their proper implementation and enforcement (for further details see annex 3).

2.4 Link with MIPD

The MIPD emphasises the need to prepare the Montenegrin public administration, in particular the Ministries of International Economic Relations and European Integration (now Secretariat for EU integration), to deal successfully with the European integration process and with the implementation and enforcement of the SAA (for further details see Annex 3).

2.5 Link with National Development Plan

The Republic of Montenegro has not yet adopted a National Development Plan.

2.6 Link with national/ sectoral investment plans

The project directly links to two key action plans in the sector:

- a) The Action Plan for the implementation of the SAA
 - b) The Action Plan for the implementation of the European Partnership
- (For further details see Annex 3.)

3. Description of project

3.1 Background and justification:

A strategic goal of Montenegro is to become a member of the EU. Under Article 72 of the SAA (initialled in April 2007), the country committed itself to harmonise its laws with those of the European Union. A key element of any pre-accession strategy is preparing the state, through a process of institution building, to adopt and apply the *acquis*.

Under the SAA, the Government is undertaking concrete steps to create the institutional infrastructure that is necessary to establish clear horizontal procedures and to prepare the ministries for the complex process of harmonisation. In addition steps are also being taken to prepare the institutions for implementation of the new process.

Experience acquired in the other accessions has shown that it is very important to approach the process of approximation and harmonisation in a co-ordinated and systematic way in order to minimise the demands on limited human and financial resources. A system for co-ordination of the legal approximation process is being established by the Secretariat for European Integration and will need to be gradually implemented by the line ministries.

The Secretariat for European Integration consists of three sectors: 1) a Sector for the EU Association Process; 2) a Sector for Assistance Coordination; and 3) a General Affairs Service. The Sector for the EU Association Process includes a Department for the Coordination of the Association Process and a Department for Translation and Development of a National Version of the *Acquis Communautaire* (i.e. a Translation Unit – TU).

The first steps taken to set up a coordination system can be summarised as follows:

- In April 2007, the Government adopted a new EU integration coordination structure. The coordination operates at three levels – i) political, ii) strategic, and iii) operational. The responsible governmental bodies at the respective levels are: i) the College of the Prime Minister for European Integration, ii) the Commission for European Integration, and iii) the Groups for EU Integration.
- Seven Groups for EU Integration have been established, responsible for the harmonisation of the *acquis*. They correspond to the negotiating chapters within the responsibility of respective Sub-committees, which are based on the SAA structure.
- The Secretariat for European Integration has been entrusted by a government decree with the responsibility to check the compliance of the national legislation with the EC law. In other countries this has usually been done by the Secretariat for Legislation.
- A declaration of conformity with EC law is annotated to any proposed legislation that is subject to legal approximation to the *acquis* (this is provided for in the Book of rules of the Government).
- The Legislative Committee and Parliamentary Committee for International and European integration has started to play a key role for the completion of the legal approximation process.

Apart from a coordination structure, the process of approximating means new laws or adapting existing laws.

The process of enacting laws in the country is prescribed by the Constitution, and in the Book of Rules of the Government and the Parliament. The procedure for adopting laws is carried out in three phases:

Phase I: The relevant line ministry prepares a first version of the law (drawing on its own expertise and/or with the help of external expertise). The first document produced in this phase is the Proposal for Enactment of a Law. It is mandatory that the ministry submits the Proposal for Enactment of a Law to the Legislative Secretariat. They check that it complies with the Constitution; the overall legal system; the Ministry of Finance's requirements (i.e the financial implications); and finally with the Secretariat for European Integration to ensure compliance with the *acquis*.

After adoption, the Government delivers the proposed law to Parliament, initially to be discussed within the relevant Parliamentary Committees, and then to the full Parliament for approval. Two Parliamentary Committees - the Legislative Committee and the Committee for International and European Integration - are responsible for issues related to the compliance of the national laws with the *acquis*. They also follow and facilitate the legal approximation process, and the obligations imposed by the Agreements with the EC to provide regular information on these matters to Parliament.

Phase II: This is the phase when the text formally becomes a draft version of the law, and becomes a public document subject to comments and scrutiny of the public. The results of that consultation can lead to amendments to the draft version of the law, which is then subject to the same procedure as in Phase I.

Phase III: The Draft Law with any amendments is submitted for revision by the same bodies and institutions, as described in the previous two phases. At the end, it is enacted by the Parliament (by 2/3 of the votes for systemic/organic laws, and simple majority for other laws).

The system of coordination that is being put in place needs to be supported to build knowledge about the *acquis*, to build the capacity to implementing it. This will require further strengthening of the human resources in the Secretariat where there has been a big turn over of staff. A limited capacity in the line ministries to provide a working interface also needs to be tackled. And the marginal role of the Secretariat for Legislation in the harmonisation process will need to be re-considered, because their limited knowledge of various EU measures often leads to delays or misinterpretations of legal drafts.

On the Parliamentary side, the control function of Parliamentary Committees needs to be further strengthened.

And finally the absence of translated translations for significant parts of the *acquis* is a major problem for all the actors, and assistance is required to bolster the TU.

3.2 Assessment of project impact, catalytic effect, sustainability and cross border impact (where applicable)

The project will seek to strengthen efficiency of the legal approximation process as well as capacity of administration and Parliament to operate more closely according to EU standards, thus allowing smoother implementation, increased democratic control, citizens' confidence in the overall system and an improved cooperation with EU.

In addition, the catalytic effect is to advance Montenegro in its strategic goal of joining EU.

3.3 Results and measurable indicators:

The project consists of delivery of advisory services to strengthen institutional capacities in relation to the adoption of the EU acquis.

The main general results following the implementation of the activities will be:

- Increase of internal expertise and knowledge of EC Law in line ministries, in the Secretariat for European Integration, Secretariat for Legislation and relevant Parliamentary Committees;
- Existence of clear procedures for communication among all legal approximation actors.

The main general measurable indicators will be:

- Number of draft laws harmonised with main EU directives and regulations;
- Reporting and monitoring mechanisms developed.

(For further details on results and measurable indicators see the log frame at Annex 1.)

3.4 Activities:

The primary general target of the assistance shall be the development of technical and management capacities, including devolved management, planning and management of personnel and material resources to be allocated to the legal harmonisation process.

Activity 1: Supporting the Sector for European Integration to strengthen its co-coordinative role of the legal approximation process

In particular the focus will be given to:

- Create/upgrade a database for approximation and harmonization of the legislation;
- Further upgrade reporting mechanisms (development of standard reports on implementation of a National Plan for approximation of legislation to the Government, statistics, model reports of the legal approximation working groups);
- Develop monitoring mechanisms (development of early warning procedure and communication with all key actors in legal approximation process, evaluation techniques);

- Improve communication with all institutions and institutional structures involved in the legal approximation process by training on procedures, filling in forms and preparation of reports, evaluation techniques);
- Strengthen capacities of the Translation Unit (TU) in the Secretariat for European Integration and foster automation of translation through IT supporting tools;
- Develop of the practical guide for consistent check of compliance of national legislation with the EC law.

Activity 2: Support line Ministries - working groups on legal approximation - and the Secretariat for Legislation

The project will support the establishment and operation of various legislative working groups covering areas related to the *acquis*.

Members of the working groups will be supported through a training programme and direct technical assistance in the preparation of legislation.

The project will assist the beneficiaries to prepare a detailed work plan for each working group. This will include:

- Assessing current national legislation in key areas and identifying structure and content for amendments and new legislative instruments in line with the EU legislation (gap analysis);
- Preparing a prioritised list of legislative measures to be transposed from EU laws;
- Drafting of legislation in some of the main areas of concern. This will include the harmonisation with the key European directives and regulations
- Development of general skills on impact assessment

Members of the Legislative Secretariat will be supported through a training programme and direct technical assistance (case studies) to expand the competence and capacity of this body in understanding EU legislative requirements. Twinning experts will provide on the job training using examples from the daily practice and activities of the Legislative Secretariat. At the same time, through the training sessions, the general knowledge on the EC law, principles and practices will be further increased and extended.

Activity 3: Supporting relevant Parliamentary Committees to strengthen their role in the legal approximation process

In particular the focus will be given to:

- Training delivery on the principles of EC law and the process of harmonisation for members of the Legislative committee and Committee for International and European Integration.
- Introduction with the best practices and experiences from other countries
- Provision of guidelines to help the committees in carrying out their tasks.

The main target groups will be the President of the Committees, the administrative staff, and the parliamentarians. If deemed appropriate, staff working for the Unit of Research and Documentation of the Parliament may be included in the capacity building exercise. In particular, the training will focus to strengthen the capacities of the parliamentary committees in respect of their responsibilities closely linked with the legal approximation process.

Activities 1, 2 and 3 will be implemented through a twinning. Should a twinning not result in the sourcing of the required expertise, alternative methods of recruiting expertise will be employed. These may include a service contract, twinning light or a grant agreement with an EU member state institution (official or mandated body) following a call for proposals and whereby the EC contribution will cover 100% of the eligible cost of the contract.

The main project partner for activities 1 and 2 will be the Secretariat for EU integration. For activity 3 it will be the Secretariat of the Parliament.

However, given the institutional independence and responsibility of the different branches of powers, it is not feasible to provide permanent or continuous advisory representation at all institutions at the same time.

A resident twinning advisor will sit in the Secretariat for EU integration and a mobile team is envisaged, with ad-hoc, autonomous, and needs-dependent tasking, to perform an advisory function to the various ministries, secretariats and Parliamentary committees.

A number of study visits are also foreseen to allow direct exposure to best practices in legal approximation, as well as public awareness activities.

3.6 Conditionality and sequencing:

The key macro level conditionalities are already in place. The project includes the following conditionalities:

- 1) Appointment of counterpart personnel and allocation of working space and facilities by the beneficiaries for the twinning advisors before the launch of the tender process;
- 2) Participation by the beneficiary in the tender process as per EU regulations;
- 3) Appointing the relevant staff by the beneficiaries to participate in capacity building activities, steering and coordination committees as per work plan.

In the event that these conditions are not met, suspension or cancellation of projects will be considered.

3.7 Linked activities

Previous projects in this field were mainly financed under the CARDS State Union Budget: a Policy and Legal Advice Centre providing technical advice on legal harmonisation but focussing mainly on internal market; a Twinning on EU integration to set up EU integration structures in both Serbia and Montenegro; and a Parliamentary project in cooperation with the Council of Europe Assembly.

Under the national CARDS budget, support has been given to the MIEREI (then transformed to the EU Secretariat) in training staff and EU contact points in line Ministries in programming, project management, EC procurement as well as in management of cross border programmes, preparation to selected community programmes and EU communication.

Procurement of some IT and multimedia equipment has complemented these actions. Additional assistance is earmarked for DIS preparation under CARDS funds.

This proposed project will focused more on creating capacities and establishing an efficient system for coordinating the entire approximation process.

So far, UNDP and Open Society have provided assistance for a Capacity Development Programme (approximately €200,000, with a further € 300,000 planned for 2007) for supporting the coordination role of the Secretariat and the Deputy Prime Minister Office on EU integration, and strengthening institutional capacities related to SAA implementation. NDI has also been active in past years in supporting the work of the Parliament and strengthening the capacity of both administrative staff and parliamentarians.

3.8 Lessons learned

Although progress has been made through the previous assistance, a number of challenges remain:

- *Conditionalities:* Often project implementation is hampered by both insufficient staff or/and high turn over of staff. And resources allocated to (newly established) institutions is sometimes inadequate to them to properly exercise their mandate. The project will put a stronger conditionality in assuring that sufficient operational funds are available in the government budget.
- *Coordination within the government:* Further improvements – in line with the spirit of EU accession – could be realised with stronger government leadership in the coordination efforts among the ministries, and a stronger focus on the operational issues relating to the coordination and harmonisation of policies. The project, whenever possible, will facilitate the coordination amongst stakeholders.
- *Coordination with the Government and the Parliament:* Further improvements are needed in communication and cooperation between Government and Parliament on issues related to EU accession. The proposed project, whenever possible, will enhance the coordination.
- *Cross cutting issues:* An important lesson learned during the CARDS period is that appropriate mainstreaming of cross-cutting issues would be stimulated through the mobilisation of specific expertise. In a similar vein as above, specific expertise may be mobilised under the twinning covenant to target support for the mainstreaming of cross-cutting issues (see further details below at section 6).

4. Indicative Budget (amounts in €)

The indicative budget for the provision of services through twinning or alternative means is €1.1 million.

5. Indicative Implementation Schedule (periods broken down per quarter)

Contracts	Start of Tendering	Signature of contract	Project Completion
Contract 1	Q2 2008	Q4 2008	Q4 2009

6. Cross cutting issues (where applicable)

The mainstreaming of the cross cutting issues is addressed on two levels:

- 1) How the internal policies, structure or operating procedures of the beneficiary will conform with or promote the cross cutting issues set out
- 2) How the project's outputs (e.g. laws, regulations, policies, action plans, etc.) will address the cross cutting issues set out below.

6.1 Equal Opportunity

In general, gender needs will be considered as an analytical instrument, from programme design onwards.

The project will support the approximation of national legislation to the acquis thus inserting in the legislative system provisions that enhance equal opportunities.

Considering that the majority of the project is devoted to capacity building, curricula and delivery mechanism (place and time schedule) of training programmes should be designed so as to encourage women's participation and be gender sensitive.

6.2 Environment

There is an extensive part of the acquis related to environmental protection. The establishment of an efficient system for approximating and harmonising with the acquis will enhance the legal basis for environmental protection in Montenegro.

6.3 Minorities

The project will assist beneficiaries in implementing mechanisms to ensure that in the legislative process the principle of equitable representation of ethnic minorities is taken into consideration so as to reflect the ethnic diversity of Montenegrin society.

ANNEXES

- 1 - Log frame in Standard Format
- 2 - Amounts contracted and Disbursed per Quarter over the full duration of Programme
- 3 - Reference to laws, regulations and strategic documents:
 - Reference list of relevant laws and regulations
 - Reference to AP /NPAA / EP / SAA
 - Reference to MIPD
 - Reference to National Development Plan
 - Reference to national / sectoral investment plans
- 4 - Details per EU funded contract (*) where applicable:
 - For *TA contracts*: account of tasks expected from the contractor
 - For *twinning covenants*: account of tasks expected from the team leader, resident twinning advisor and short term experts
 - For *grants schemes*: account of components of the schemes

ANNEX 1: Logical framework matrix in standard format

LOGFRAME PLANNING MATRIX FOR Project Fiche	Programme name and number: European Standards	
Legal approximation	Contracting period expires 2 years after signing of the FA	Disbursement period expires 5 years after signing of the FA
	Total budget : 1.1 M€	IPA budget: 1.1 M€

Overall objective	Objectively verifiable indicators	Sources of Verification	
Strengthening the institutional capacity for approximation and harmonization with the EU acquis			
Project purpose	Objectively verifiable indicators	Sources of Verification	Assumptions
1) To support the co-coordinative role of the Sector for European integration in the legal approximation process 2) To foster the role of the Secretariat for Legislation in the legal approximation process 3) To support the functioning of the Parliamentary Committee for International and European Integration and Parliamentary Committee for Legislation.	Harmonisation process advancing in a coordinated, organised and synchronised manner	EC Reports Independent reports/verification of level of compliance with EU practices	Government and Parliament commitment to EU integration accession
Results	Objectively verifiable indicators	Sources of Verification	Assumptions
1.1 Database for harmonisation fully operational 1.2 Reporting and monitoring mechanisms developed 1.3 Existence of clear procedures for communication among all legal approximation actors 1.4 Translation of the acquis available 1.5 Increase of internal expertise and knowledge of EU acquis	1.1 Number of quantitative and qualitative data available in the database 1.2 Reporting and monitoring reports show an increased knowledge of EU acquis 1.3 Number of pages of acquis translated 1.4 Number of staff trained (20 to 50)	EC reports Independent reports/verification of level of compliance with EU Legal database Publications of translated acquis in national language Training reports	Government commitment to provide the Secretariat for European Integration with sufficient operational budget
2.1 Selected legislative working groups established and fully operational 2.2 A prioritised list of legislative instruments drafted (primary and secondary legislation) 2.3 Impact assessment carried out 2.4 Increase of internal expertise and knowledge of EC Law in line ministries and in the Secretariat for Legislation	2.1 Number and structure of working groups 2.2 Number of drafts law harmonised with main EU directives and regulations 2.3 Number of staff trained (50 to 80)	EC reports Reports verifying the level of compliance of draft laws with EU acquis Training reports	Government commitment to make relevant staff available for the capacity building exercise
3.1 Control function of the Legislative committee and Committee for International and European Integration increased 3.2 Internal guidelines for parliamentary committees work on legal approximation drafted	3.1 Members of the Committees trained in EC law and procedures (20 to 50) 3.2 Internal guidelines manual published 3.3 Number of law adopted in line with the aquis	EC Reports Official Gazette Parliament internal publications	
Activities	Means	Costs	Assumptions
Activity 1: Supporting the Sector for European Integration to strengthen its co-coordinative role of the legal approximation process Activity 2: Supporting line Ministries - working groups and Secretariat for Legislation Activity 3: Supporting relevant Parliamentary Committees to strengthen their role in the legal approximation process	Activities 1,2 and 3: Twinning	Activities 1,2 and 3: 1.1 M Euro	

ANNEX 2: amounts (in million €) Contracted and disbursed by quarter for the project

Contracted	2007 Q4	2008 Q1	2008 Q2	2008 Q3	2008 Q4	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1
Contract 1					1.1					
Cumulative					1.1	1.1	1.1	1.1	1.1	1.1
Disbursed										
Contract 1.1					0.660		0.330			
Cumulative					0.660	0.660	0.990	0.990	1.100	1.100

ANNEX 3: Reference to laws, regulations and strategic documents

- Reference list of relevant laws and regulations

- Decree on state administration organization and operations

(Official Gazette 54/04 dated 9 Aug 2004, 78/04 dated 22 Dec 2004, 06/05 dated 11 Feb 2005, 61/05 dated 19 Oct 2005, 06/06 dated 3 Feb 2006, 32/06 dated 17 May 2006, 42/06 dated 7 July 2006, 56/06 dated 7 Sep 2006, 60/06 dated 29 Sep 2006, 72/06 dated 24 Nov 2006);

- Internal Rules of Government of Montenegro;

- Information on necessity for establishment of temporary joint bodies with European Union for implementation of Interim Stabilisation and Association Agreement;

- Rules of Procedures of the Parliament.

- Reference to EP and SAA

In line with the EP of 2007, Montenegro has to meet the following priorities in short-term period (1-2 years):

- *to strengthen the European Integration structures at all levels (including in the relevant ministries and in the parliament) and the mechanisms of coordination on EU matters.*
- *Strengthen the overall legislative and control capacity of the parliament in particular through the implementation of the newly adopted rules of procedure.*
- *Strengthen the functioning of the Committee on European Integration and provide appropriate administrative and expert support.*

The following priority related to the Parliament should be met by Montenegro in the medium-term period (3-4years):

- *Continue the strengthening the capacity of the parliament in all areas, in particular in relation to the adoption of the EU acquis.*

The SAA states under Article 72, title VI (Approximation of Laws, Law Enforcement and Competition Rules), that Montenegro shall ensure the compatibility of existing and future laws with the Community acquis as well as their proper implementation and enforcement (p.36):

Article 72

1. *The Parties recognise the importance of the approximation of the existing legislation in Montenegro to that of the Community and of its effective implementation. Montenegro shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community acquis. Montenegro will ensure that existing and future legislation will be properly implemented and enforced.*

- Reference to MIPD

Main objectives and priorities under the section 2.2.3. European Standards of the MIPD 2007-2009 include the following:

- *Preparing Montenegrin public administration, in particular the Ministries of International Economic Relations and European Integration (now Secretariat for EU integration) to deal successfully with the European integration process and with the implementation and enforcement of the SAA (p.24);*

Among the expected results the MIPD lists the following:

- *An upgraded and more efficient system of coordination on European integration issues including on implementation of the European partnership priorities; existence of a functioning system for the implementation of the SAA (p.24).*
- *Existence of an efficient system for IPA coordination; ability to prepare good-quality, mature projects for funding; a working system of coordination of approximation of legislation; road map to DIS accreditation developed and implemented, including appropriate support programmes (p.24).*

MIPD recommends the following programmes to be implemented:

- *Capacity building to European integration structures; support to overall coordination of European integration tasks, to the implementation of the SAA and to the preparation of the Montenegrin administration to assume responsibilities under the IPA instrument including for donor coordination, inter-ministerial coordination; preparation for DIS; translations where appropriate; equipment related to the implementation of such projects (p.25).*

- Reference to National Development Plan

Not applicable.

- Reference to national / sectoral investment plans

The project directly links to the two key strategies and action plans in the sector:

- a) Action Plan for the implementation of the SAA
- b) The Action Plan for the implementation of the European Partnership

Both documents are being revised and should be presented to the Commission in the course of May 2007.

Annex 4: Details per EU funded contract

Twinning covenant:

Under the twinning covenant Member States expertise will be mobilised to assure that the legal approximation process takes place in a co-ordinated, synchronized and organized manner.

Profile of the resident twinning advisor

- a) A solid legal background and professional experience in policy advice
- b) Sound knowledge of part of the *acquis* in relevant sector/s for Montenegro
- c) Strong written, oral and inter-personal communication skills
- d) Experience in legal drafting
- e) Sound knowledge of regulations and policies of the European Union, in relation to latest EU developments in domain of institutional requirements and best practice in EU Member States
- f) Excellent oral and written English
- g) Experience in similar technical and legal assistance assignments in third countries will be considered an asset.

In addition to the RTA, the Members State Partner (MSP) must have quick and flexible access to a pool of short and medium-term experts from the EU MS. These experts shall either work as advisors and trainers or perform specific studies or assignments within the scope of the twinning project.

Profile of short and medium term experts

- a) Relevant University degree
- b) Sound knowledge of EU regulations and policies related to their specific tasks
- c) Relevant experience in at least one of the area and subjects covered under activities 2 and 3
- d) Good written and oral command of English
- e) Sound background in drafting and/or implementing policies and regulations
- e) Proven contractual relation to public administration or mandated body
- d) Experience in organizing and providing training preferably for civil servants and/or parliamentarian.

For the experts to be assigned to work with the Parliament, experience in working with Parliamentary committees will be a mandatory requirement.