

TAIEX Expert Mission on Storing, keeping and destruction of seized evidence – drugs (Montenegro)

Mission timeframe: from 23 – 26 October 2023

Disclaimer

The views articulated and expressed in this report are purely those of the author and may not in any circumstances be regarded as stating an official position of the European Commission.

Contents

1.	Background	1
2.	Introduction	2
2.1.	Mission's Objective	2
2.2.	Methodology of the Evaluation	2
3.	Executive Summary	4
4.	Findings	4
5.	Assessment and recommendations	12
6.	Annexes (2)	18

1. Background

The present report is developed at the request of the European Commission's TAIEX assistance programme (JHA IND/EXP 84907).

The **Expert Mission on Storing, keeping and destruction of seized evidence – drugs** was organised by the European Commission's DG Neighbourhood and Enlargement Negotiations within the framework of the TAIEX Instrument and it was considered a high priority mission due to the latest developments in Montenegro.

As it stands, based on the *TAIEX application form*, "Montenegro is currently facing the challenge of insufficient storage capacities when it comes to seized drugs. Current premises used for storage are not in compliance with EU/safety standards.

The Criminal Procedure Code stipulates that all items which can be used as evidence in criminal proceedings, at the proposal of the state prosecutor, shall be temporarily confiscated and handed over to the court for safekeeping.

Currently, large amounts of seized drugs are stored in courts and prosecutor's offices, often in the hallways of these facilities, because no adequate space has been found to store the evidence.

The EU Progress Reports (2019, 2020, 2021, 2022) state that "insufficient storage capacity for seized drugs has yet to be addressed. Montenegro has yet to amend the relevant legal provisions in the criminal procedure code, to make it possible to keep only a sample of psychoactive substances as evidence for court proceedings, and not the entire amount, as it is the case now".

The amendments to the Criminal Procedure Code have been adopted at the Government session, but Parliamentary procedure is still awaited."

2. Introduction

2.1. Mission's Objective

The objectives of the expert mission cover the **assessment of the compliance of the legal framework of Montenegro on keeping and destruction of seized evidence – drugs**:

- ✓ review of the draft amendments to the Criminal Procedure Code (*hereinafter, CPC*), based on EU acquis and EU Member States' best practices;
- ✓ review of other relevant legislation that might need to be aligned to the CPC, once it is amended (on the topic of drug storage and destruction);
- ✓ recommendations on secondary legislation (or rulebook) to regulate the way to collect, transport, store seized drugs;
- ✓ recommendations on operational tools to improve the practical process: SOPs, data collection methods, national registry, transport and storage security standards, etc.
- ✓ review of the legislation, secondary legislation on drug destruction, including the compliance with EU environmental standards;
- ✓ recommendations on operational tools to improve the efficiency, safety, health and environmental standards during the destruction process.

It was emphasized (*TAIEX application form*) that solving this issue would significantly contribute to addressing the challenges stated in Progress Reports and would ensure the compatibility with the EU acquis under Chapter 24.¹

The authors were requested to provide technical assistance on behalf of the Ministry of Interior of Montenegro for the TAIEX Expert Mission on Storing, keeping and destruction of seized evidence – drugs (JHA IND/EXP 84907) and, with this objective, to:

- ✓ Conduct a field mission to Montenegro to meet with all relevant interlocutors (*organised between 23 – 26 October 2023, in Podgorica, Montenegro*);
- ✓ Draft an assessment report after the mission assessing the legal, institutional and operational framework with a view to provide recommendations for the way forward.

The experts involved in the mission are *Mr Nico GEYSEN*, Asset Recovery Specialist, Local Police Antwerpen, Belgium, and *Mr Radu GEAMANU*, Legal Advisor, Drafting Legislation Department, Criminal Law Unit, Ministry of Justice, Romania.

2.2. Methodology of the Evaluation

(1.) Principles. The report was drafted based on the following principles:

- ✓ objectivity and impartiality;
- ✓ confidentiality;
- ✓ no conflict of interest.

(2.) Criteria and methodology. The assessment of the amendments to the Criminal Procedure Code (as proposed by the competent authorities of Montenegro) regarding the storing, keeping and destruction of seized evidence – drugs is based on the following *criteria*:

- a.) the comparison between the current national legislation and the solutions comprised in the new draft law;
- b.) EU best practices, including the Belgian, Italian and Romanian legislation;
- c.) the United Nations (UN) regulations in the specific area;
- d.) the EU *acquis* in the specific area of storing, keeping and destruction of drugs (in the context of a criminal trial).

¹ The EU Progress Reports (2019, 2020, 2021, 2022) state that "insufficient storage capacity for seized drugs has yet to be addressed. Montenegro has yet to amend the relevant legal provisions in the criminal procedure code, to make it possible to keep only a sample of psychoactive substances as evidence for court proceedings, and not the entire amount, as it is the case now".

As to the *methodology*, it encompasses desk research of the new amendments to the Criminal Procedure Code regarding the storing, keeping and destruction of seized evidence – drugs, considering the UN regulations in the specific area, together with best practices.

The methods used to reach the aim of the TAIEX mission and to elaborate the assessment report consist in:

- ✓ *a dynamic overview* of all relevant documents provided to the experts, observing especially the new additions comprised in the new draft law amending the Criminal Procedure Code as opposed to the current state of play. The analysis of the legislation observes both the legislation from *lex lata* perspective and, mainly, the *lex ferenda* (the amendments) while raising awareness on some provisions that could prove to be problematic in practice;
- ✓ *legal proofreading* of the new draft law in order to observe the full compliance with the accessibility, clarity and predictability criteria. *The comparative method* of assessment compares the provisions of the new draft law with the relevant international regulations in the specific area of drugs. The present assessment seeks to compare key-elements of the international regulations and with some EU member states legislation with the national draft law provisions subject to review.

The criteria and methodology used strive to:

- ✓ provide holistic and objective information on the provisions of the amendments to the Criminal Procedure Code regarding the storing, keeping and destruction of seized evidence – drugs;
- ✓ raise awareness of the national authorities on some key provisions contained in the said amendments;
- ✓ provide the national authorities with some recommendations on the future steps regarding the legislative procedure and the content of the amendments.

(3.) Content of the assessment report. The report's first part contains an extensive presentation of the current state of play.

Then, the report presents the international and regional instruments on drugs that need to be observed when drafting in this domain.

The third part contains the experts' assessment and recommendations, each problematic domain being analysed separately.

To conclude with, the report will present the experts' concrete recommendations.

The annexes contain some technical comments to the draft texts on drug sampling (annex no. 1) and the relevant texts on sampling from certain EU member states legislation – Belgium, Italy and Romania (annex no. 2)

(4.) Disclaimer. Please note that the assessment mission was based on the research and analysis of the English translation of the Criminal Procedure Code of Montenegro and of the amendments to the Criminal procedure Code of Montenegro (*as provided by TAIEX, October 2023*).

Also, TAIEX provided an English version of the current Law about preventing drugs abuse and of the current Law on seizure and confiscation of material benefit derived from criminal activity (*October 2023*).

3. Executive Summary

Based on TAIEX application form, "Montenegro is currently facing the challenge of insufficient storage capacities when it comes to seized drugs."

The present expert mission provides technical input to the national authorities of Montenegro to tackle the problem of safekeeping the drugs during the criminal trial and, also, to improve the current legal framework.

As it stands, the Criminal Procedure Code of Montenegro stipulates that all items (including seized drugs) which can be used as evidence in criminal proceedings, at the proposal of the state prosecutor, shall be temporarily confiscated and handed over to the court for safekeeping (at the beginning of the trial phase), until a final decision is rendered in each criminal case.

The national authorities of Montenegro drafted a new piece of legislation, which amends the Criminal Procedure Code aimed to the national authorities to secure evidence by sampling (thus allowing for the seized drugs to be destroyed, all but the retained samples).

Although the objectives of the expert mission tackled the following topics: review of the draft amendments to the CPC; review of other relevant legislation that might need to be aligned to the CPC; recommendations on secondary and on different operational tools, the experts undertook the mission to assess the whole legislation regarding the seizure of drugs, the storing, keeping and destruction of such substances.

To this extent, supplementary (on-line) meetings were organised in order to better understand the legal framework, especially the shortcomings and the ad hoc solutions, that seem to be the “permanent” solution that everyone calls upon.

The present expert report contains the assessment of the draft texts on sampling and, also, all the other relevant pieces of legislation, namely: the Criminal Procedure Code of Montenegro, the Criminal Code of Montenegro, the Law on preventing drugs abuse and the Law on seizure and confiscation of material benefit derived from criminal activity.

a.) Regarding the **current state of play**, the report briefly presents all the relevant pieces of (primary) legislation that were provided to the experts.

Also, the most important shortcomings on the current situation in Montenegro are presented, emphasizing the difficulties of all relevant stakeholders to apply the legal provisions (which, in the experts’ view, lack clarity), hence, giving way to *ad hoc* solutions, different from each institution to another in many situations.

Summaries of each meeting are presented in the same section.

b.) The next section introduces the **international and regional instruments** regarding drugs, the most relevant ones being the UNODC, Guidelines on Representative Drug Sampling, 2009 and the EU Regulation 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.

c.) The following section - **assessment and recommendations** - contains specific observation on all problematic domains that prevent the existence of a coherent management system of seized drugs:

- ✓ legal framework;
- ✓ storage facilities;
- ✓ lack of procedures/No designated competent authority.

To conclude with, **concrete recommendations are made in this report**, especially regarding the 2-step approach. Thus, the report then provides for some urgent recommendations (nos. 1 to 3) and some follow-up recommendations (nos. 4 to 6), to be implemented in the second stage of the reform.

The **urgent recommendations** cover: 1.) Appoint an authority responsible for managing evidence; 2.) Need for storage facility for drugs/evidence; 3.) Need for new legal provisions.

The **follow-up recommendations** cover: 4.) Install appropriate legislation for sampling/destruction of seized drugs; 5.) Database of seized items; 6.) Ways of destruction of drugs.

d.) Finally, the report is accompanied by **2 annexes**, containing some technical comments to the draft texts on drug sampling (annex no. 1) and the relevant texts on sampling from certain EU member states legislation (annex no. 2).

4. Findings

(1.) Current state of play. a.) The present mission is based on a certain state of play in Montenegro regarding the storage capacities for seized drugs.

As it stands, the **Criminal Procedure Code of Montenegro** stipulates that all items (including seized drugs) which can be used as evidence in criminal proceedings, at the proposal of the state prosecutor, shall be temporarily confiscated and handed over to the court for safekeeping (at the beginning of the trial phase), until a final decision is rendered in each criminal case.

But no legal provisions could be identified regarding the procedure of safekeeping the drugs during the pre-trial phase. Hence, different (ad-hoc) practices of the prosecutor’s offices were advanced (as presented below – see *Section 4. Findings, no. (2) and (3)*).

Only **Criminal Code of Montenegro**, in articles 300² para. (7) states that *"Narcotic drugs and the means used for their production shall be confiscated and destroyed."* and article 301³ para. (3) provides the same rule: *"(3) Narcotic drugs shall be confiscated and destroyed."*

This particular provision is based on the general rules regarding seizure, in art. 75, particularly paras. (3) and (4): *"(3) Compulsory confiscation of objects and the requirements to for their confiscation may be laid down by law. (4) Mandatory destruction of confiscated objects may be laid down by law."*

The consequence of such an incomplete and incoherent legal framework, together with the fact that criminal cases take a long time to be solved by a final decision, is that large amounts of seized drugs are stored in courts and prosecutor's offices, in rooms/facilities that are not adequate for safe keeping.

As mentioned above (Section 1. Background) the EU Progress Reports (2019, 2020, 2021, 2022) state that "insufficient storage capacity for seized drugs has yet to be addressed. Montenegro has yet to amend the relevant legal provisions in the Criminal Procedure Code, to make it possible to keep only a sample of psychoactive substances as evidence for court proceedings, and not the entire amount, as it is the case now".

b.) The Criminal Procedure Code does not contain any provisions on sampling of drugs. The only references that could be found are in article 85⁴ para. (1): *"(1) Objects which have to be seized according to the Criminal Code or which may be used as evidence in the criminal procedure, shall, at the proposal of a State Prosecutor, and by way of a court ruling, be provisionally seized and delivered for safekeeping to the court or their safekeeping shall be secured in another way."*

Also, according to article 477⁵ para. (1): *"Objects which may be seized according to the Criminal Code shall also be seized when the criminal proceedings are not terminated with a conviction provided that this is required by reasons of safety of people and property or by ethical reasons or if there is still danger that they would be used to commit criminal offences."*

The national authorities **drafted** a new piece of legislation, which **amends the Criminal Procedure Code** (*pending adoption by the Parliament*) that aims to put in place new provisions that would allow the national authorities to secure evidence by sampling (thus allowing for the seized drugs to be destroyed, all but the retained samples). According to the MoJ, these texts are based on judicial securing of evidence, which is not new in Montenegrin criminal legislation.

The texts of the proposed amendments are as follows:

"Article 269a. Securing Evidence by Sampling

(1) If there is a danger to general safety or health, or the preservation of evidence is impossible or difficult, or the costs of preservation are high, or there are other justified reasons, the court shall, on a proposal from the State Prosecutor or ex officio, by an order, order the procedure of securing evidence by sampling to be carried out.

(2) In the order referred to in paragraph 1 of this Article, the court shall determine a person, or an institution that shall carry out the procedure of securing evidence by sampling, as well as the time and place of sampling.

(3) In addition to the persons performing the sampling, the procedure referred to in paragraph 1 of this Article shall be attended by the investigating judge or the Chair of Panel referred to in Article 24 paragraph 7 of the present Code, the State Prosecutor and the defence attorney.

(4) The procedure referred to in paragraph 1 of this Article may be attended by the accused person and expert witness appointed by the accused person or his defence attorney.

(5) A record on the carrying out of the procedure of securing evidence by sampling shall be kept and signed by the persons who attended the procedure.

(6) The court shall not issue an order referred to in paragraph 1 of this Article when the perpetrator is unknown at the time of obtaining the evidence, even though there are circumstances referred to in paragraph 1 of this Article.

(7) If the perpetrator has remained unknown within one year from the date of obtaining the evidence, the court shall, on a motion from the State Prosecutor or ex officio, issue the order referred to in paragraph 1 of this Article

² Regarding unauthorized production, possession and distribution of narcotic drugs.

³ Regarding facilitating the use of drugs.

⁴ Regarding provisional seizure of objects and property gain.

⁵ Regarding proceedings for the imposition of the security measure of seizure of objects.

and ex officio appoint a person to control the procedure of securing evidence from among the lawyers from the list of the Bar Chamber and, if necessary, an expert witness.

Article 269b. Ruling on the Securing of Evidence by Sampling

(1) After the procedure of securing evidence by sampling has been carried out, the court shall issue a ruling on the securing of evidence by sampling.

(2) The ruling referred to in paragraph 1 of this Article shall contain in particular: an indication that the securing of evidence was carried out by sampling with a description of the evidence secured by sampling; structure of the sample and sample storage time; a list of documentation set out in the annex to the decision (record, photo report and other documentation made during sampling); an indication that the remaining evidence will be destroyed after the ruling becomes final, as well as the time and method of destroying of that evidence.

Article 269v. Appeal against Ruling on the Securing of Evidence by Sampling

(1) An appeal may be filed against the ruling referred to Article 269b paragraph 1 of the present Code within three days from the date of service of the ruling.

(2) The ruling on the appeal referred to in paragraph 1 of this Article shall be made by the Panel referred to in Article 24 paragraph 7 of the present Code.

(3) The Panel referred to in Article 24 paragraph 7 of the present Code may dismiss or reject the appeal or remand the case to the court for a new decision.

Article 269g. Method of Carrying out the Procedure of Obtaining Evidence by Sampling

The method of carrying out the procedure of securing evidence by sampling, as well as the actions taken in the procedure of securing evidence by sampling, the method of preservation of the sample and the method of destroying the remaining evidence shall be prescribed by the Ministry, unless otherwise regulated by a separate law."

To the day, the **amendments to the Criminal Procedure Code have not yet been finalized**; input from the EU institutions is expected, as the draft law was sent to the Commission in December 2022.

After receiving the said comments, the draft law will be finalized, approved by the Government and then sent to the Parliament in order to be adopted.

In the expert's opinion the draft law will enter into force in 6 months at the earliest, which will only aggravate the problem of storing seized drugs.

c.) Complementary to the planned amendments to the Criminal Procedure Code, the special legislation from Montenegro (namely, the **Law on preventing drugs abuse**) provides for a certain procedure for the destruction of specific drugs⁶, but in the understanding of the experts this special procedure is only applied in administrative procedures, not in criminal ones.

d.) **Law on seizure and confiscation of material benefit derived from criminal activity** contains some provisions regarding the seizure and confiscation of items in the course of criminal proceedings.

The subject matter of the Law is prescribed in article 1: "This Law shall govern the conditions for seizure and confiscation of material benefit derived from criminal activities, seizure and confiscation procedure and other

⁶ "Art. 48. Drugs which are seeded, planted, grown, produced, circulated, but in the way it opposes the regulations of this law, will be deprived.

If the deprived drugs can be used for further manufacturing or production, the administrative unit that was in charge of depriving those drugs will, once the process of investigating is completed, hand in the drugs to legal individuals from the article 25 of this law, without any cost on their own expense.

After the specimen of deprived drugs are protected, the unit which is in charge of investigation will decide whether the drugs from paragraph 1 of this article are to be stored for further time without any damage, if they are to be sold or destroyed in front of a special commission even before the process of investigation is completed.

The commission from the paragraph 3 of this article is named by the administrative unit who is in charge of depriving drugs.

The commission is obliged to report to the Ministry every 6 months about the quantity of deprived and destroyed drugs.

Financial means, obtained by selling these drugs from paragraph 2 of this article, belong to the budget of Montenegro.

If the deprived drugs cannot be used according to this law, they will be destroyed.

Financial means for destroying these drugs are obtained from the budget of Montenegro.

Art. 49. The unit in charge of depriving drugs is to keep the evidence about the amount of deprived drugs.

The unit in charge of criminal investigation is to supervise the activities of storing these drugs.

The means of destroying drugs and keeping the evidence about the deprived and destroyed drugs, from the article 46 of this law, are determined by the Ministry, alongside professional opinion of the Agency for environment protection.

All information from the evidence from paragraph 3 of this article is reported to the Agency or the Ministry on a quarter period basis, no later than 15 days from the day a quarter period ends."

matters of importance for the seizure and confiscation of such material benefit, as well as the management of seized and confiscated material benefit derived from criminal activities and seized and confiscated material benefit acquired by a criminal offence (hereinafter referred to as "the seized material benefit"), of **instrumentalities of crime and items seized in criminal** and misdemeanour proceedings, as well as of property pledged to the court as bail."

According to article 4 paras. 1 and 2, *"The procedures of seizure and confiscation of material benefit derived from criminal activities may be conducted before, during and after the finalization of criminal procedure. The seizure and confiscation of material benefit derived from criminal activities shall be deemed to mean seizure of such material benefit (Provisional Measures to Secure Assets and seizure of movables) or confiscation of such material benefit. The procedure of seizure and confiscation of material benefit derived from criminal activities shall be conducted in accordance with this Law and with the Criminal Procedure Code."*

According to the provisions of article 5 para. 3, *"The tasks of management of seized and confiscated material benefit, instrumentalities of crime and items seized in criminal and misdemeanour proceedings, as well as of property pledged to the court as bail shall be performed by the administrative body in charge of state property management (hereinafter "the competent body")."* – now, Administration for Cadaster and State Property.

The destruction of seized and confiscated material benefit is regulated through article 74 para. 1, which states that *"Seized and confiscated material benefit that has to be destroyed in view of protecting the lives and health of humans and animals and the environment, due to security related or other reasons shall be destroyed under the supervision of competent authorities and in accordance with law."*

Finally, according to article 76 on relevant application, *"The provisions concerning the management of property confiscated in accordance with this Law shall apply accordingly to the management of confiscated instrumentalities of crime and items seized in criminal and misdemeanour proceedings, and to property pledged to the court as bail."*

Subject to unitary terminology used in the English versions, it is not clear if the Law on seizure and confiscation of material benefit derived from criminal activity covers only seizure or, also, provisional seizure of objects and property gain (article 85 and the following CPC).

Moreover, the competence of the Administration for Cadastre and State Property seems to be disputed among the professionals and the prosecutors' offices seem to adopt a rather *ad hoc* solution to ask this agency to receive all the seized drugs (solution which only emerged when the prosecutors' offices developed logistical problems generated by the need to safekeep large quantities of drugs).

Also, if one would agree that indeed the Administration for Cadastre and State Property is the competent authority, then why the draft texts on sampling do not specify that, but rather leave the designation of a competent authority by means of a ministerial order?

e.) Mention should be made of the independent reports on drug crime in Montenegro, to better set the stage for the above-mentioned reform of the legal framework regarding seized drugs.

The *Overseas Security Advisory Council (OSAC)*⁷ states that *"There is a significant organized crime element, with numerous criminal gangs involved in loan sharking, **drug smuggling**, money laundering, and human trafficking. Violence among members of these groups or their affiliates is common, with car burnings and the use of improvised explosives devices (IEDs) to eliminate or intimidate rival groups or regular citizens."*

The same approach is presented by the *Central Intelligence Agency of the US (CIA)*⁸ - Montenegro: *"**drug trafficking groups** are major players in the procurement and transportation of large quantities of **cocaine** destined for European markets"*.

(2.) Field mission. The mission covered 3 days, with a preparatory meeting with the EU Delegation in Montenegro.

a.) Day 0: Monday 23 October 2023 (afternoon).

The experts meet in a briefing at EU Delegation other experts involved in different EU projects (the HF and Eurol III).

⁷ Available at: <https://www.osac.gov/Content/Report/34b08450-6a22-4d92-932e-1d5002320f68>, from 17.12.2021.

⁸ Available at: <https://www.cia.gov/the-world-factbook/field/illicit-drugs/>.

The EU Delegation informed the experts about the general situation in Montenegro, the political situation and the current state of play regarding the activity of the law enforcement and the judiciary.

Also, some preliminary information was shared about the pending amendments to the CC and CPC (blocking issues etc), capacities in the police, forensic laboratory, coordination between institutions, state of play in the High Court, prevalence of drug smuggling cases in the criminal case flow.

b.) Day 1: Tuesday 24 October 2023.

✓ The day began with a **kick-off meeting**, stating the objectives of the mission and the state of play.

From the part of Montenegro representatives of the following institutions were present: Ministry of Interior (Mol), different Police Departments, including the one in charge of the fight against drug smuggling, Forensic Centre, Ministry of Health, Cadastre and State Property Administration, High Prosecutor's Office, High Court.

There were no representatives present from the Minister of Justice (which, as explained to the experts, drafted the amendments to the CPC), Prison Administration and Revenues and Customs Administration.

Also, no judges from the High Court (only the secretary of the Court and an advisor), no public prosecutors High Prosecutor's Office and Special Prosecutor's Office (only one advisor from the High Prosecutor's Office) were present.

There is no appointed authority responsible for the storage and safekeeping of the evidence.

The current procedure is that the seized (*temporary confiscated, in the terminology of the CPC*) items are under the responsibility of the prosecutor's service or Court which handles the case. The items that are seized are also brought to this service (either the prosecutors' office or court). Items can only be destroyed after final confiscation. This means that all services are saturated with seized items (especially drugs) with no suitable storing facilities.

There is no law in which this practice is arranged.

The representative of the Mol explained about the **Inter-departmental working group** (in place since 2019), that deals with the problem of seized drugs.

As it was mentioned before, the current state of play does not allow for the destruction of seized drugs until a final judgment is rendered in a case. As a consequence, large quantities of drugs (about 9 tons) are deposited in inadequate spaces/facilities within police, prosecutors' office and the courts.

All the representatives of the institutions present at the meeting insisted on the shortcomings of the current system and the urgent need to intervene both at legislative level and in terms of capacity building - there is an urgent need for clear legal provisions, for procedures, secondary guidelines, efficiency and safety regulations.

In the meeting it is pointed out that the Administration for Cadastre and State Property is responsible for the storage and handling of seized items. As legal basis the Law on seizure and confiscation of material benefit derived from criminal activity was mentioned, but no common understanding of that legal provisions between the participants at the meeting. There is an urgent need for clear legal provisions, for procedures, secondary guidelines, efficiency and safety regulations.

There is no appointed authority responsible for the storage and safekeeping of the evidence. The current procedure is that the seized items are under the responsibility of the prosecutor's service or Court which handles the case. The items that are seized are also brought to this service (either the prosecutors' office or court). Items can only be destroyed after final confiscation. This means that all services are saturated with seized items (especially drugs) with no suitable storing facilities.

There is no law in which this practice is arranged.

Higher prosecution service in Podgorica stores 3 tons narcotics in their building. Also a major problem is that there are lots of cases without suspects. In these cases the evidence needs to be stored without possible solution. All facilities are fully used. The problem started from 2011 when the criminal procedure changed to prosecutorial investigations.

At the High court a large number of items are stored. A total of 9 tons of drugs are in storage of which 4 tons is already confiscated. Decision to destroy 3 tons is made by a special commission. But because of the tunnel incident an investigation is still going on to determine what is missing as evidence. There is in general inadequate

storage. The smell of the seized drugs are unbearable and there is a serious security risk (suspects need to pass the seized items when they are under interrogation).

✓ After lunch, the experts were taken to **visit a facility of the Ministry of Interior – the Complex in Zagorič** (at the outskirts of Podgorica).

These premises are currently used for storage of guns ready for the procedure of destruction. The premises are a former prison. Recently some investments were made to renovate some of the former prison cells as storage facility for weapons. There are some other prison cells available at the premises that need to be renovated so they can possibly be used for storage of other seized items. The authorities are assessing the possibility to use the current storage surface for storing seized drugs. No final decision is made.

There are also 2 warehouses/garages separate from the former prison, located within the complex but near the public road. So, they are not suitable for storage of seized weapons or drugs.

✓ Finally, the **last meeting of the day was with the representatives of the NGOs** specialised in the rule of law sector and some of the EU Delegation experts.

Only one NGO was represented – namely the *Institute Alternative - Institut alternativa*.

The discussions covered the general judicial context, the administrative capacities of law enforcement and the procedures regarding the scrutiny checks of the police officers in order to "clear" them for working in the police force.

Also, the issue of seized drugs was discussed, the representative of the NGO stating that there is a problem with seized drugs and clear procedures must be put in place in order to deal with large quantities of seized drugs.

c.) Day 2: Wednesday 25 October 2023

✓ The day began with a visit to the **Forensic Centre**. The security of this facility seems well organized. There is access control at entry and building, video surveillance system. The forensic center meets up to the standards of EU forensic centers. The center works according standard procedures.

There is a database installed which registers all items that enter for analysis. Every item is barcoded and followed up until it is analyzed. This system is only used at the forensic center.

There is a **great potential in this system** if used during the whole process from seizure by the police until final destination. If used during the whole procedure from seizure until final destination, the system gives the possibility to find out where the object is located at any time, provide statistics and follow up after conviction. Each item arrives in a paper back and is sealed by special tape.

As to the activity of the Forensic Center, in 2022, 7.039 samples were processed and 20.082 analyses/tests were performed.

✓ The following visit was made to the **High Court**. In the premises of the High Court large amounts of seized cannabis is stored (in the basement of the building).

The location of storage is far from optimal and is combined with the storage of casefiles (archives).

A destruction order had been issued by the intergovernmental commission for an amount of confiscated cannabis meeting the destruction criteria (i.e. relating to cases, i-in which final verdicts had been issued). but because of the tunnel incident the evacuation from the High Court and destruction of the cannabis was cancelled. Reason for this is that first an inventory check is needed of the items that are probably stolen because of the tunnel incident.

Another problem is that the inventory of all seized assets is still done in paper. No database exists for the moment in the High Court.

The exact place where everything is stored is only known by one employee (which is responsible for the archives).

Also a large volume of cocaine (2 tons of 3 cases in total) is stored at the High Court. For this an *ad hoc* solution was found: evacuation of an office of a judge and camera security and alarm system is installed. This solution is far from optimal.

There is no legal reason to store the seized items at the Court, but rather, as the president of the Court explained, the obligation is only that the judges when dealing with the cases can have access to the evidence of that particular cases (which can be stored in other premises and brought in court if the judges request it).

For the weapons an *ad hoc* solution was found at Zagorič. However, a number of weapons, ammunitions and explosives are also stored in the basement of the High Court, and sorted out per year. Papers taped on the shelves indicate seizures dating back to 2002.

The Court would prefer that the police is appointed as authority to safeguard and handle the seized goods.

✓ The final item of the agenda was a visit to the **Administration for Cadaster and State Property - ACSP**. Their role regarding destruction of drugs is not clear in the legislation. From their own perspective they cooperate from the principle of good will (although this is disputed by some juridical authorities which insist on the existence of specific legal provisions giving competence to the ACSP – *see below*).

They are the only administration that can legally manage real estate for the State. So, providing a building for storage is their responsibility. But first there needs to be a clarification on who will be responsible for managing seized items. For the moment there are no exact provisions on who is in charge for managing evidence. This needs to be clarified first.

Their role regarding confiscated assets is mentioned in the Law on confiscation of proceeds of crime of 2015. Their role is to sell proceeds of crime after confiscation.

A short overview of their results (in 8 years): 80 confiscated vehicles were handled (30 were auctioned, 30 were given to state authorities and 20 are being dealt with); 2 vessels are sold; real estate (3 flats, 1 villa, 1 land are in process of selling).

As the presidency of the commission for destruction of confiscated drugs they arranged the destruction of confiscated drugs in the past in three different occasions – in 2018, 2020 and 2022. All members of the commission are present at destruction and follow whole process.

Regarding their role in the new proposition regarding the destruction of seized assets, their opinion is that if the law will designate them as competent authority, then they will act accordingly. They state as well that they see no role in this process as a public service, not linked to the public enforcement or judiciary sectors and they favor the idea that police should store seized items.

They also have a database of all seized and confiscated assets that fall under their jurisdiction. So, all assets that are seized that can be legally sold.

They get data for their database on seized and confiscated assets from 2 sources: Courts and police departments. In urgent cases they also sell seized perishable goods.

In the law there is a possibility to sell seized assets, but because of the high demanding conditions for selling during seizure this provision is not used.

Since 2018 they have an extra task regarding the transfer of weapons to Zagorič for destruction. They also organize this commission for destruction.

According to the legislation they are responsible for destruction of dangerous goods (art 74 – confiscated proceeds). So, the working group was extended to drugs.

There was a visit organized after the meeting to an atomic shelter which is out of use.

The site is located in the center of the city near apartment buildings. The site is made inaccessible for public by metal fences and a simple lock. The nuclear shelter has enough space to store large volumes, but there is a need to invest of this location is chosen for storing.

For the moment the infrastructure needs investments regarding light, safeguarding, air circulation, video surveillance and so on to make it functional for storage use. For the moment there is only a staircase to access the shelter (no elevator to transport high volumes) and no nearby police forces available.

d.) Day 3: Thursday 26 October 2023

✓ The day began with a visit to the **High State Prosecutor Office**. The head of the High State Prosecutor's office stressed out the basic infrastructure of the building, with little spaces for the prosecutors and with improper conditions for storing the seized items (including drugs).

As it is the case of the High Court, in the premises of the High State Prosecutor Office large amounts of seized cannabis is stored (in the basement of the building). Also, the location of storage is far from optimal and is combined with the storage of casefiles (archives).

The inventory of all seized assets is still done in paper. No database exists for the moment in the High State Prosecutor Office.

There is no legal reason to store the seized items at the High State Prosecutor Office, but rather, as the head prosecutor explained, there are some problems with the (lack) of unitary and proper legal framework and with lack of proper storage facilities for the seized drugs to be stored during the pre-trial stage.

✓ Finally, the field mission finished with a **debriefing meeting with all the stakeholders**. From the part of Montenegro representatives of the following institutions were present: Ministry of Interior, Ministry of Justice, different Police Departments, Forensic Centre, Ministry of Health, Cadastre and State Property Administration, High State Prosecutor's Office, High Court.

At this meeting the experts presented their preliminary findings and recommendations (to be presented in the special section on recommendations), followed by questions from the representatives of the authorities present at the debriefing and answers provided by the experts.

The discussion concluded with the next steps to be taken, including the necessity that some meetings to be organised on-line with the representatives of the institutions that were not present (although invited) at the meetings organised in the framework of the field mission.

e.) No (technical) meetings could be organised with Ministry of Justice (representatives from the MoJ were only present at the last meeting, at the debriefing) and with the Special Prosecutor Office.

(3.) Subsequent on-line meetings. In order for the experts to gather all relevant information, 3 on-line meetings were organised, following the field mission, as follows:

✓ With one prosecutor from the **Special Prosecutor Office - SPO**.

The conclusions of that meeting are the following: SPO has very limited own storage possibilities in their building, so no seized drugs are stored in their storage rooms.

The special police service that works for them is responsible for seizure and storing of evidence and other seized items. They will store the items until the case is brought to Court, then the items will be transferred to Court.

When large volumes are seized the special police service has no own possibility to store. In this case *ad hoc* solutions are found, which is far from ideal.

In the opinion of SPO the Administration for Cadastre and State Property is responsible for storing the seized items but they admit that for the moment this service is not ideally equipped for this job.

SPO also states that the proposed procedure for sampling and destruction during seizure does not fit into the criminal procedure of Montenegro. This will give more opportunities for the defence to tackle the case even when this possibility is introduced in the law.

For SPO the only way is to store and safeguard seized items until final conviction.

An ideal solution might be to appoint a separate service for this task but in practice it will be more feasible to appoint an existing service for this.

✓ With one representative of the **Ministry of Justice**.

During that meeting, the representative of the MoJ stressed out that the draft law amending the Criminal Procedure Code was elaborated by a special commission and no explanatory report could be advanced to the experts, in order to better understand the reasoning for the legislative solutions on sampling.

The draft law is still within the MoJ, as input from the EU institutions is expected (the draft law was sent to the Commission in December 2022). After receiving the input, the draft law will be finalized, approved by the Government and then sent to the Parliament in order to be adopted.

In the opinion of the representative of the MoJ, the sampling texts must be part of the Criminal Procedure Code. Also, the representative of the MoJ stressed that no discussions were held about the applicability in time of the texts on sampling (namely if the pending cases would fall under that provisions).

Regarding the specific questions of the experts, the representative of the MoJ requested them in writing, in order to discuss them with some of the members of the drafting commission. (*the questions and the answers provided by the MoJ are presented in the annex no. 1*)

✓ With **representatives of legal enforcement authorities** (3 representatives from the **Police Directorate**, of which one working with the Special Prosecutors Office).

The discussion was about the legal framework, as understood by the police forces and about the practical application of the Criminal Procedure Code and other regulations and guides regarding the seizure of drugs.

After describing the activities done by the police (discovering the drugs, seizing them, guarding the crime scene (avoiding contamination) and, finally, taking the drugs to the Forensic Centre, to be tested), the representatives of the Police stated that in their opinion, based on the provisions of the CPC and of the Law on seizure and confiscation of material benefit derived from criminal activity⁹, the competent body is the Administration for Cadastre and State Property (civil institution, with no links to justice or law enforcement sector), although they admitted that such an institution could not fulfil its tasks properly, given the fact that it has no security employees and nobody can ensure the safekeeping of the drugs. The police does not store and manage large quantities of seized drugs for the Prosecutors Office or Courts awaiting final confiscation.

Based on the provisions of article 300 para. (7) from the Criminal Code, the drugs and the means used for their production shall be confiscated and destroyed. The competence for organising the destruction of drugs (after a final judgement is rendered in a case) falls, also, within the competence of the Administration for Cadastre and State Property.

Although not in favour on the designation of the police as the competent body to safekeep the seized drugs, during the discussions it was admitted that if the Forensic Centre can fulfil its tasks from within the Police Directorate, then a similar structure can be imagined for the safekeeping of the seized drugs.

A national database regarding seized items does not exist for the moment. Every police service has their own practice on keeping track of seized items and there is no connexion between the different systems.

(4.) International and regional instruments on drugs.

a.) EU instruments (selection)¹⁰:

- ✓ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking;
- ✓ Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (recast);
- ✓ Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of 'drug' and repealing Council Decision 2005/387/JHA;
- ✓ Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances;
- ✓ Council Decision of 28 May 2001 on the transmission of samples of controlled substances;
- ✓ Council Decision (EU) 2021/3 of 23 November 2020 on the position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971;
- ✓ **Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders;**
- ✓ EU Drugs Action Plan 2021-2025, (2021/C 272/02), 08.07.2021.

⁹ "Article 53 Managing Seized and Confiscated Material Benefit

Management of seized and confiscated material benefit shall include: (...)

3) enforcement of decisions to seize and confiscate material benefit acquired by a criminal offence, instrumentalities of crime and items seized in criminal and misdemeanor proceedings and the decision on property pledged to the court as bail; (...)"

¹⁰ Available at: <https://eur-lex.europa.eu>.

b.) UN instruments (selection)¹¹:

- ✓ Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol;
- ✓ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;
- ✓ **UNODC, Guidelines on Representative Drug Sampling** (In cooperation with the Drugs Working Group of the European Network of Forensic Science Institutes), 2009.

c.) The European Network of Forensic Science Institutes (ENFSI)¹²:

- ✓ Best Practice Manuals on drugs;
- ✓ Forensic Guidelines and Supporting Documents on drugs.

5. Experts' assessment and recommendations

5.1. Legal framework

The current proposal for changing the CPC in this matter needs further finetuning. It needs to be robust so there are no loopholes or possibilities to prolong the process. Enough safeguards need to be build in to protect the rights of the suspect.

Mention should be made that there is no EU *acquis*, but there are some EU countries with legislation installed regarding the handling of the drugs during the criminal procedures (including sampling), as for example in Belgium, Italy and Romania.

All this legislation will be added to the report and can be used as an example to amend to current proposals.

We will also further develop some ideas about the proposed texts in the draft law in the annex.

The sampling and destruction of drugs is most urgent but also for other seized items this might bring a solution regarding the storage problem. For example large seizures of explosives, weapons, ammunition, hazardous materials may be considered.

It may be considered to change current legislation in that way that for all categories destruction is possible during investigation. By-laws will be needed to further develop practical issues per category.

As to the texts on sampling contained by the draft law, there is a need to clarify some aspects before adopting such a procedure:

- ✓ there are no clear provisions about the application of sampling – will this be applied only to new cases or to pending cases, also?;

Based on the comments from the MoJ, that the texts on sampling, being procedural in nature, cannot produce retroactive effects, hence the new provisions of the draft law will apply to new cases, this means, in the view of the national experts that the retroactive effects can be attached to a procedural law, or rather that the procedural law is of immediate application, including pending cases? If the procedural law only applies to new cases, this would mean that each case will be judged/solved by the procedural provisions in force at the time of the crime (or at the time the criminal procedure began in that specific case), the consequence being that all criminal cases at a certain moment in time will be prosecuted/judged by different procedural laws (*e.g.* if the cases of appeal or the appeal procedure is amended it will apply only to new cases or to pending cases, like a case in which a decision from the first instance court was rendered and the appeal is to be filed?)

- ✓ the procedure can give arguments to the defendants to prolong the criminal procedure;
- ✓ there is no competent authority designated; as we already emphasised in the above sections, there is an urgent need to appoint such an authority through a law, not a bylaw, as now there are some legal provisions in different laws that are not harmonised, contradict eachother and give the possibility to be interpreted and applied differently by the institutions involved;
- ✓ no explanations were provided as to why the drafters choose to create a separate procedure on sampling. It will be a much more swift procedure if the sampling is order at the same time as the provisional seizure order,

¹¹ UNODC, *The International Drug Control Conventions*, United Nations, New York, 2013, https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf.

¹² Available at: <https://enfsi.eu/about-enfsi/structure/working-groups/documents-page/documents/best-practice-manuals/>.

the possibility to challenge such a procedure (of sampling) being the same with the one already in place for challenging the provisional seizure order/temporary confiscation.

In any case, the best suitable solution should be based on best practices of EU states and with the consultation of relevant national authorities (justice, law enforcement, public health and environment).

5.2. Storage facilities

Based on the visit at a facility of the Ministry of Interior – the Complex in Zagorič (at the outskirts of Podgorica), in the view of the experts, if you look at this new storage possibility for storing drugs it is not optimal but a way forward to better storage compared with the current storage in the prosecutors' offices or court. So, it might be considered as a short-term solution (although other solutions, much more appropriate will be indicated below).

There are some remarks regarding the new possible storage for drugs at this complex (these remarks are only based on the short visit of this facility and need to be elaborated further):

- ✓ the outer fences are not suitable for guarding facilities that store seized drugs or weapons: they are too low, easy to breach or to open and not sufficiently guarded (both physical and by cameras);
- ✓ entry check at facility itself and storage facility should be upgraded;
- ✓ there is no 24/7 police presence at the premises;
- ✓ limited camera surveillance and the present cameras are not aimed at the storing facilities; also, the cameras need to be observed 24/7;
- ✓ doors of the storage rooms are only locked with a key (keys are guarded in a safe at night); there is a need for more access control to the storage area and individual rooms preferably by a badge system with logins;
- ✓ for the moment there is only a paper inventory available; there needs to be a national database of seized goods that follows the goods from seizure to final confiscation and / or destruction; so, this database will also serve for this facility;
- ✓ no alarm systems are installed, not at the entrance of the facility and doors of the storing facilities;
- ✓ the area is for the moment not suitable for storing drugs: climatization/air circulation/humidity regulation is not present.

If above mentioned remarks are dealt with, the premises can be suitable for storing seized goods.

There is also a need to optimize following procedures:

- ✓ facility for sampling on the spot by forensic division: for the moment this is not possible and needs to be further discussed (regarding the need for adequate room, adequate equipment and personnel);
- ✓ possible sample storage;
- ✓ set up uniform procedure for destruction.

5.3. Lack of procedures/No designated competent authority

Based on the visit to the **Forensic Centre**, we can conclude that:

- ✓ not only narcotics pose a problem for storage but also other evidence is a problem. There should be a general provision in CPC to be able to deal with all seized assets of which storing poses a problem (e.g. explosives, hazardous materials);
- ✓ the forensic center needed to find a *ad hoc* solution for explosives. The *ad hoc* solution was found with the directorate (search and rescue) sector for the emergent situations. The explosives are stored after analysis in a bunker which was made suitable with funding;
- ✓ in general, the problem is that it is not known who is legally responsible for storing;
- ✓ other problem is that if the offender in a criminal case is not known the Prosecutor refuses to store the seized items at the Prosecutor's in their facilities. The police brought the drugs for testing. The forensic center needs to store the goods;
- ✓ another problem was stated regarding the seized explosives. In the current system, where there is no follow up in a database of seized goods, it is impossible to know the current state of play of criminal files. The Courts

cannot give feedback of what items are already confiscated and can be destroyed. Consequence is that all explosives stay at the warehouse until further information is given;

✓ the forensic center does under certain conditions agree with the possibility to analyze and handle seized assets in another location than their premises if an appropriate location for storage is found. For example, appropriate own testing area at the premises and adequate testing equipment. This idea needs to be further discussed.

The report contains some main and urgent recommendations as comprised in the above sections and some follow-up/complementary recommendations, to be implemented in the second stage of the reform.

5.4. Urgent recommendations.

1.) Appoint an authority responsible for managing evidence (drugs)

For the moment there is no dedicated service which is responsible for the safekeeping of seized items during the entire process from seizure until final destination (destruction). The responsibility is therefore in the hands of the legal authority which deals with the case (prosecutor or Court), which is far from ideal. The prosecutor's and Court's offices are far from ideal to store seized items.

Because of the urgency of the problem preferably a service is chosen for this mission which already exists.

Following items need to be taken into account:

a.) Designated Seizure Management Unit: One way to streamline the process of managing seized items is to establish a specialized unit dedicated to this task. This unit would be responsible for the transporting and safekeeping, cataloging, and tracking of all seized items;

b.) Evidence Handling Training: All personnel involved in handling seized items should receive training on proper evidence handling and storage protocols. Regular training and certification can help maintain the highest standards of integrity and accountability;

c.) Budget and personnel: the service handling this task should be given adequate budget and trained personnel for this mission;

d.) Audit and Accountability: Conduct regular audits of the seized item management process. These audits should be thorough and include random checks to ensure that items are not mishandled, tampered with, or lost. Accountability measures should be in place to hold individuals responsible for any discrepancies;

e.) Legal Compliance: Ensure that all procedures align with legal requirements and chain-of-custody standards. The service should maintain meticulous records that can withstand legal scrutiny in court;

f.) Collaboration with Other Agencies: establish clear protocols for transferring custody of seized items between agencies to maintain the chain of custody;

g.) Transparency and Reporting: Maintain transparency by providing reports on the status and disposition of seized items to relevant parties, such as prosecutors, defense attorneys, and the courts. This transparency builds trust in the integrity of the process.

The optimal solution would be, in the experts' opinion, the designation of an already existing authority, namely the Police Directorate. In this sense, **a special unit should be set up within the Police** with the specific task of managing 'sensible' evidence (especially drugs, but, also, guns ammunition and explosives).

This special unit should be under the direct command of the head of police, with no links to the judicial police, in order to maintain its independent operational activity, with its own personnel, adequate means of transportation and a storage facility organised and equipped according to international agreed standards.

About this topic, based on the response of the MoJ (*see annex no. 1, II, Q4*), the experts encourage the initiative to begin (maybe together with all the relevant stakeholders) an analysis on the need to establish a Center for the preservation of evidence.

2.) Need for storage facility for drugs/evidence

Urgently create adequate storage for seized drugs. In a later phase this can be extended to storing other seized evidence (especially drugs, but, also, guns ammunition and explosives).

This is crucial to deal with the most urgent problem that occurs. Because the problem is so urgent an existing location is needed which meets most of the here under mentioned elements.

To select an adequate facility the following elements should be taken into account:

a.) Risk Assessment: Conduct a risk assessment to identify potential threats and vulnerabilities, including possibility of theft, unauthorized access, and environmental risks like temperature and humidity variations;

b.) Security Measures: Implement stringent physical security measures, including access control systems, surveillance cameras, alarms, reinforced doors (with access identification system and tracking) and windows, and security personnel on-site;

c.) Climate Control: Maintain proper environmental conditions, such as temperature, circulation of air and humidity control, to preserve the integrity of seized drugs over time and health;

d.) Proper physical location: the location should be central, easy to reach and protect and separate from other public functions;

e.) Chain of Custody: strictly adhere to the chain of custody procedures, documenting all interactions with seized drugs to ensure their legal admissibility in court;

f.) Regular Audits: Conduct routine audits and inspections of the storage facilities to identify vulnerabilities and ensure compliance with security protocols;

g.) Collaboration with Experts: Collaborate with forensic experts and legal professionals to establish best practices for drug storage, ensuring evidence admissibility in court. Also there should be an antenna of the forensic service to allow on site sampling / testing certainly for large seizures (to avoid the most vulnerable phase in the process: transport of the drugs – aim for only 2 transports for large volume seizure – 1 to the storage facility and 1 transport for destruction of the drugs);

h.) Legal Compliance: Ensure compliance with all relevant legal and regulatory requirements, including those related to evidence storage, to prevent legal complications;

i.) Budget Allocation: install adequate funding to ensure the proper construction, maintenance, and security of storage facilities for seized drugs;

j.) Continual Improvement: Regularly review and upgrade security measures to adapt to evolving threats and technology, ensuring that the storage facilities remain effective over time;

k.) Install scanning possibilities for the seized items;

l.) The premises have to have enough storing possibilities to be able to potentially store also other seized items.

In addition to those previously mentioned – *no. 1.)* - **the optimal solution** is that the state authorities (probably the Administration for Cadaster and State Property) must, as soon as possible, at the same time or immediately after the designation of the competent authority, find a proper storage facility to ensure the safekeeping of the drugs and other 'special' items.

A satisfactory solution would be identifying a **former military unit** which can be safely renovated and properly equipped. The advantages of such a location would be: the location outside the residential areas; multiple buildings to be renovated for each item (e.g. drugs in one building/room, one for guns and ammunition and one separate unit for explosives); large premises, that allow the possibility of proper surveillance; the possibility to set up a special unit for the forensic centre to do the sampling etc.

One other possibility can be the renovation of a nuclear shelter, if such a shelter is located outside residential areas (not as the one visited by the experts, which was located near lots of apartment block and houses).

The transport of such items to and from the storage facility, the guarding and securing the evidence is to be made by the special unit to be set up within the Police Directorate – *please see no. 1.) above.*

3.) Need for new legal provisions

The above recommendations must be implemented urgently and **the first step is amending the current legal framework**, as follows:

- a.) the appointment of an authority responsible for managing evidence, which should be done through a law – *please see below, 5.5. 4).*
- b.) the adoption of other laws or bylaws on finding a proper storage facility to be restored and given into the administration of the future competent authority - *please see above, 5.4. 2).*
- c.) the adoption of bylaws/regulations/procedure necessary to create procedures for the future unit competent for storing, keeping and destruction of seized evidence;
- d.) the adoption of bylaws/regulations/procedure necessary to ensure the proper functioning of the storage facility;
- e.) create procedures for the future unit competent for storing, keeping and destruction of seized evidence;
- f.) ammend, if needed, the legal framework on forensic services in order to organise an external bureau within the storage facility to ensure that the sampling is done there.

5.5. Follow-up recommendations

4.) Install appropriate legislation for sampling/destruction of seized drugs

Based on the assessment presented in this Report – *please see above, no. 5.1., the future legal interventions should:*

- a.) be made through a separate law (a) amending the CPC on sampling and other relevant provisions by appointing the national competent authority - *please see no. 5.4. 1) above;* (b) amending any other laws in order to designate the competent authority and organize such a special unit (e.g., law organizing the police, law on seizure and confiscation of material benefit derived from criminal activity);
- b.) bear in mind that such a law must be drafted and adopted urgently;
- c.) apply only to future cases;
- d.) integrate such a procedure into the existing procedure regarding temporary confiscation;
- e.) in any case, provide for the agreement of the defendant/defendants that the drugs can be destroyed or, in an absence of such an agreement, the decision of a court will be necessary.

Regarding the applicability of sampling to pending cases, this can only be done if transitory texts are elaborated, **after an in-depth analysis and after carefully consideration was given to the necessity for such texts. The** destruction of drugs during pending cases should only be allowed only if such drugs were kept in proper conditions and are not deteriorated (in such a care if sampling is done, then the defendant can ask for a second expertise only to prove that the drugs were not actually drugs or did not have such a large quantity of relevant substances – such as THC in cannabis, as in the first test); also, the transitory texts on pending cases should regulate the hypothesis in which if the sampling was done when the police/prosecutor only knew about one perpetrator, but the criminal investigation discovered 2 more, than what are the means of appeal (if any) of those persons against the ruling on sampling? Moreover, if new perpetrators are found (during the criminal investigation), and each of them requests a counter-expertise, then can it be that the sampling does not contain enough drugs to perform tests for each of the new discovered perpetrators?

5.) Database of seized items

Create a sophisticated, automated online database to streamline the tracking of the procedural chain, beginning from the point of seizure through to the ultimate destination of the items.

For establishing this database the following items need to be considered:

- a.) *Customized Database Solution:* it's crucial to create a database solution that is tailored to the specific needs of all concerned parties in the chain as there are: police, forensics, prosecutor and Court. Every authority needs to have access to the data it requires and must be able to add every necessary information;
- b.) *Integration with Existing Systems:* Consider integrating the new database system with any existing databases or software used in your operations. This integration can help reduce data duplication and streamline processes. For instance, integrate with already existing databases from Forensic Center and Administration for Cadaster and State Property;

- c.) *Real-time Tracking and Notifications*: As items move through the procedural chain, they should be scanned, logged, and updated in the database immediately. Stakeholders can then receive notifications or access the system to see the current status and location of these items, ensuring transparency and accountability. A Bar code system as already used by the forensic services is ideal;
- d.) *Mobile Accessibility*: Consider developing a mobile application or a responsive web interface for the database, allowing field agents or inspectors to easily input data and access the system while on the move. Mobile accessibility enhances efficiency and real-time data entry;
- e.) *Analytics and Reporting*: Incorporate data analytics tools within the database system. This enables the generation of reports and the extraction of valuable insights from the data collected. This will make it easier to deliver statistics as for example the number of cocaine seized, destroyed or confiscated per year;
- f.) *Data Security and Privacy*: Given the sensitivity of the information, security is paramount. Implement robust security measures, including encryption, user authentication, and access controls. Additionally, ensure compliance with data privacy regulations to protect the information stored in the database;
- g.) *Data Backups and Redundancy*: Implement regular data backups and redundancy measures to protect against data loss due to system failures or unforeseen events. Data integrity is critical, and these precautions are essential for ensuring it.

6.) Ways of destruction of drugs

Besides the burning of drugs there are other ways for destruction.

For example, compostation of cannabis can be considered.

In any case, clear procedures, through the adoption of bylaws/procedures must be set up, in order to ensure a clear and predictable procedure for the destruction of drugs, either after sampling or immediately after a final decision in a case.

5.2. Other findings:

The assessment of the draft amendments found some other key points that need to be addressed, as reflected in the **annex no.1 to the present report**.

The **annex no. 2** contains some relevant texts on sampling from certain EU member states legislation, that may be useful when drafting the changes in national legislation of Montenegro.

5.3. Timeline. Regarding the projected timeline for the adoption of the above-mentioned draft provisions, we advise on a swift adoption by the Parliament, after debates with the NGOs and representatives of academia within the parliament procedures.

Also, it is imperative that the main and urgent recommendations must be implemented as soon as possible, both in terms of adopting the proper legal framework and in designating a competent authority, with the setting up a proper structure/building where the items should be deposited for safekeeping.

6. Annex

See the annexes of the report (11 pages)

=====

*The present report has been written and submitted by Mr Nico GEYSEN and Mr Radu Florin GEAMĂNU
to the EU Commission on the 29th of November 2023.*

=====