

Council of Europe
Conseil de l'Europe



European Union
Union européenne

SUPPORT TO PROSECUTORS NETWORK IN SOUTH-EASTERN EUROPE

REGIONAL PROSECO PROJECT CARDS 2006

Monthly Activity Report – February 2009

Project title	Support to Prosecutors' Network in South Eastern Europe
Reference number	2008/153-650
Project starting date	17 April 2008
Project duration	17 April 2008-16 April 2010
Implementation	Council of Europe (Economic Crime Division, Technical Co-operation Department, Directorate General of Human Rights and Legal Affairs) and Ministry of Justice of Italy
Project budget	1 666 669 Euros
Date of report	17 March 2009
Reporting period	1-28 February 2009

Updated work plan

OUTPUT 1	Draft laws available aimed at making investigations and prosecutions of serious crime cases more effective and facilitating cross-border cooperation	
Activity 1.1 Ongoing	Assessment with aim of identifying legislation to be reviewed and improved	
Activity 1.2	Up to 2 legal reviews per project area (and continuous ad hoc advice) in order to review the existing legislation on investigation, prosecution and co-operation against serious crime	August 2008 – March 2010
1.2.1	<ul style="list-style-type: none"> ▪ Albania Review of Law on International Co-operation	
1.2.2	<ul style="list-style-type: none"> ▪ Bosnia and Herzegovina Review of Draft Law on International Co-operation in Criminal Matters	October 2008 Completed
1.2.3	<ul style="list-style-type: none"> ▪ Croatia Review of new provisions / amendments to the Law on International Co-operation	no information on when the draft will be available
1.2.4	<ul style="list-style-type: none"> ▪ Montenegro Review of amendments to the Criminal Code	first half of 2009
1.2.5	<ul style="list-style-type: none"> ▪ Serbia Review of draft Law on Mutual Legal Assistance in Criminal Matters	November – December 2008 Completed
1.2.6	<ul style="list-style-type: none"> ▪ “the former Yugoslav Republic of Macedonia” Review of Draft Law on International Co-operation	December 2008 – January 2009 Completed
1.2.7	<ul style="list-style-type: none"> ▪ “Kosovo under UNSCR 1244”¹ Review of Draft Law on Money Laundering	March – April 2009 (Subject to request from EULEX)
1.2.8	<ul style="list-style-type: none"> ▪ Assessment on compliance of legislation of project areas with CEST 182 and with the EU convention on MLA from 2000 	February – April 2009
1.2.9	<ul style="list-style-type: none"> ▪ Bosnia and Herzegovina Review of cybercrime provisions in national legislation	March 2009
1.2.10	<ul style="list-style-type: none"> ▪ Croatia Review of certain provisions of Criminal Code	October-December 2009
1.2.11	<ul style="list-style-type: none"> ▪ “the former Yugoslav Republic of Macedonia” 	

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

	Review of cybercrime provisions in national legislation	May 2009
1.2.12	<ul style="list-style-type: none"> ▪ Serbia Review of Revised Criminal Code	April 2009
Activity 1.3	2 roundtables per project area (follow up to the legal reviews) and 2 regional workshops October 2008-April 2010	
1.3.1	Albania	
1.3.2	<ul style="list-style-type: none"> ▪ Bosnia and Herzegovina Roundtable on Draft Law on International Co-operation in Criminal Matters	7 November 2008 Completed
1.3.3	<ul style="list-style-type: none"> ▪ Croatia 	
1.3.4	<ul style="list-style-type: none"> ▪ Montenegro 	
1.3.5	<ul style="list-style-type: none"> ▪ Serbia 	
1.3.6	<ul style="list-style-type: none"> ▪ "the former Yugoslav Republic of Macedonia" Roundtable on assessment of cybercrime provisions in national legislation	May 2009
1.3.7	<ul style="list-style-type: none"> ▪ "Kosovo under UNSCR 1244" 	
1.3.8	<ul style="list-style-type: none"> ▪ Regional Workshop 1 Workshop on Compliance of legislation of project areas with CETS 182 (2 nd Additional Protocol to MLA Convention) and with EU Convention on MLA from 2000	May 2009 in Durres, Albania
1.3.9	<ul style="list-style-type: none"> ▪ Bosnia and Herzegovina Roundtable on Compliance of Legislation of BiH with CEST 182 (2 nd Additional Protocol to MLA Convention) and with EU Convention on MLA from 2000	early May 2009
1.3.10	<ul style="list-style-type: none"> ▪ Bosnia and Herzegovina Roundtable on assessment of cybercrime provisions in national legislation	April or May 2009
1.3.11	Serbia	
1.3.12	<ul style="list-style-type: none"> ▪ Regional Workshop 2 Follow up to Regional Workshop 1 and its recommendations	January 2010
Output 2	Human capacities of prosecution services strengthened in view of more effective co-operation, investigation and prosecution of serious crime cases	
Activity 2.1	4 Regional thematic trainings (e.g. joint investigative teams, use of special investigation means, cybercrime, witness protection, confiscation and assets sharing)	
2.1.1	<ul style="list-style-type: none"> ▪ Regional Thematic Training 1 Financial Investigations and Confiscation of Proceeds from Crime	Dubrovnik, Croatia 25 and 26 September 2008 Completed

2.1.2	<ul style="list-style-type: none"> ▪ Regional Thematic Training 2 <p>Training for prosecutors and judges and Conference on Co-operation under the Cybercrime Convention</p> <p>Follow up activities:</p> <ul style="list-style-type: none"> ➤ Finalisation of country profiles ➤ Translation of training manual for judges and prosecutors ➤ Participation in the Octopus Cybercrime Conference in Strasbourg in March 2009 	<p>Ohrid, FYROM, 17-19 November 2008</p> <p>Completed</p> <p>March 2009</p>
2.1.3	<ul style="list-style-type: none"> ▪ Regional Thematic Training 3 <p>Practical implementation of measures foreseen by CETS 182: cross-border observations; controlled deliveries; video hearings and joint investigative teams</p>	September 2009
2.1.4	<ul style="list-style-type: none"> ▪ Regional Thematic Training 4 <p>Proposed topic 1: witness protection, levels and types of protection (proposal of BiH delegation)</p> <p>Proposed topic 2: money laundering (proposal of Montenegro delegation)</p>	January 2010
Activity 2.2	2 Thematic in-project area training sessions (on issues of priority interest)	August 2008 – March 2010
2.2.1	<ul style="list-style-type: none"> ▪ Albania <p>Training on cybercrime for law enforcement officers, prosecutors and judges</p>	April 2009
2.2.2	<ul style="list-style-type: none"> ▪ Bosnia and Herzegovina <p>Training for prosecutors and law enforcement officers on SIMS and international recognition of evidence collected by using SIMS</p>	5-6 March 2009
2.2.3	<ul style="list-style-type: none"> ▪ Croatia <p>Training on joint investigation teams</p>	
2.2.4	<ul style="list-style-type: none"> ▪ Montenegro <p>Training Seminar for prosecutors, accountants and auditors on inter-agency co-operation and data exchange on reporting corruption related offences</p>	<p>24-25 November 2008</p> <p>Podgorica</p> <p>Completed</p>
2.2.5	<ul style="list-style-type: none"> ▪ Serbia <p>Training on International Co-operation in international instruments</p>	<p>Belgrade</p> <p>18 September 2008</p> <p>Nis</p> <p>19 September 2008</p> <p>Completed</p>
2.2.6	<ul style="list-style-type: none"> ▪ "the former Yugoslav Republic of Macedonia" 	April 2009

	Training on SIMS	
2.2.7	<ul style="list-style-type: none"> ▪ "Kosovo under UNSCR 1244" <p>(to contact Kosovo Judicial Institute to obtain the list of planned training sessions and to see about possible co-organisation with the US donors)</p>	
2.2.8	<ul style="list-style-type: none"> ▪ Croatia <p>Training on money laundering</p>	
2.2.9	<ul style="list-style-type: none"> ▪ Montenegro <p>Training on prosecutor's role in leading investigations in cases of serious crime</p>	after the adoption of CPC
2.2.10	<ul style="list-style-type: none"> ▪ "the former Yugoslav Republic of Macedonia" <p>Training on new role of Prosecutor in investigations</p>	after the adoption of a new CPC
2.2.11	<ul style="list-style-type: none"> ▪ Montenegro <p>Training on money laundering</p>	after the adoption of CPC
Activity 2.3	Organisation of two-week internship programme (3 prosecutors per project area) to EU member States (Italy, Portugal and Slovenia)	
2.3.1	<ul style="list-style-type: none"> ▪ Internship 1 – Italy (Rome, Napoli and Bari) 	17-28 November 2008 Completed
2.3.2	<ul style="list-style-type: none"> ▪ Internship 2 <p>Portugal</p>	June 2009
2.3.3	<ul style="list-style-type: none"> ▪ Internship 3 <p>Proposal to replace Slovenia with Germany</p>	January 2010
Output 3	Co-operation manual and other tools available for more effective co-operation against serious crime	
Activity 3.1	Inventory of international instruments in the field of international co-operation ratified by project areas, and of bilateral and multilateral agreements enabling the international co-operation	October 2008-March 2009
Activity 3.2	<p>Translation and publication of explanatory reports of relevant conventions and other documents of priority interest in local languages</p> <p>Contact Persons to define what documents are to be translated and submit a list to the CoE by the end of February</p>	April 2009
Activity 3.3	<p>Update, translation and publication of PACO manual on judicial co-operation against corruption and organised crime</p> <p>Parts of the PACO Manual will be sent to the Contact Persons from MoJ for revision and update</p>	January 2009 – June 2009
Activity 3.4	Creation of web sites on judicial co-operation to be hosted on the existing web sites of prosecutor offices	December 2009-April 2010

	and/or Ministries of Justice and Ministries of Interior / Security	
	<ul style="list-style-type: none"> ▪ A link to PROSECO Project to be made at the existing sites of the MoJ and PO ▪ Contact Persons to inform the CoE on exact needs ▪ Add a link to the UNODC tool with an electronic form of the MLA request 	
Output 4 Contact points for judicial co-operation strengthened		
Activity 4.1	Assessment of existing co-operation networks, contact points and legal frameworks.	April 2008 – January 2009
Activity 4.2	Organisation of 2 regional meetings to review the competences of contact points and resources available with aim of improving and strengthening their capacities	
4.2.1	<ul style="list-style-type: none"> ▪ Regional Meeting 1 5 th Meeting of Prosecutors’ Network with SEEPAG contact points	16 January 2009 Strasbourg Completed
4.2.2	<ul style="list-style-type: none"> ▪ Regional Meeting 2 6 th Meeting of Prosecutors’ Network - Effective channels of communication (Art 4 of CETS 182)	May 2009
Activity 4.3	Organisation of 2 regional meetings of contact points and members of prosecutorial network and heads of organised crime units from each project area to strengthen networking at regional level	
4.3.1	<ul style="list-style-type: none"> ▪ Regional Meeting 1 7 th Meeting of Prosecutors’ Network	October 2009
4.3.2	<ul style="list-style-type: none"> ▪ Regional Meeting 2 8 th Meeting of Prosecutors’ Network	January 2010
Activity 4.4	Organisation of a regional conference of Prosecutors’ Network with the aim of amending the Memorandum of Understanding for the Establishment of the Prosecutors’ Network	
	Date to be decided at the 6 th Meeting of Prosecutors’ Network	

1. PROJECT IMPLEMENTATION: 1 – 28 FEBRUARY 2009

1.1 Project Activities

Activity 1.2.8 – Assessment of compliance with CETS 182 and with EU MLA Convention from 2000

Mr Simon Regis², the Council of Europe expert was engaged to prepare a questionnaire for analysis of compliance of national legislation of project areas with the Second Additional Protocol to the CoE Convention on Mutual Assistance in Criminal Matters (CETS 182) and with the EU Convention on Mutual Legal Assistance from 2000. The questionnaire (enclosed in Annex 1) will be translated into the languages of project areas and sent to the project's contact persons for completion. With regard to this activity and with regard to the Activity 3.3 - Update of PACO Manual on Judicial Co-operation - the Project Management started identification of local short-term consultants (lawyers) who will be assisting the project's contact persons to complete the questionnaire and to update the PACO Manual.

Activity 3.1– Inventory of international instruments and of bilateral and multilateral agreements

During the month of February the project's contact persons were sending lists of bilateral and multilateral agreements in the field of international co-operation that their respective project have signed. Since not all the information was received in February this activity will continue in March 2009.

1.2 Working Meetings

On 10 and 11 February 2009, the Project Manager visited Pristina, Kosovo with an objective to discuss with relevant stakeholders from Kosovo institutions, as well as from international organisations about the activities to be organised in Kosovo. Please see minutes enclosed in Annex 2.

2. NEXT STEPS: MARCH 2009

Activity	Date	Venue
Activity 1.2.8 – Assessment of compliance with CETS 182 and with EU MLA Convention <i>Translation of questionnaire and its sending to the contact persons</i>	March –May	All project areas
Activity 2.2.2 – Training Seminar on SIMS	5-6 March	Sarajevo
Activity 3.1 – Inventory of bilateral and multilateral agreements	March	N/A.
Activity 3.3 – Update, translation and publication of PACO Manual	March – May	All project areas

² Mr Simon Regis, the Council of Europe expert on international co-operation from the United Kingdom. He is currently working as a legal advisor at the HM Revenue and Customs in London. Some of his previous working experience: resident expert on Project on International Co-operation in Criminal Matters in Ukraine; Head of the UK Central Authority / Deputy Head of Specialist Crime 3 (Judicial Co-operation) and lawyer at the Central Confiscation Branch, Crown Prosecution Service.

Annex 1

Council of Europe
Conseil de l'Europe



European Union
Union européenne

Support to Prosecutors' Network in South Eastern Europe Regional PROSECO Project

Mutual Legal Assistance in Criminal Matters - Country Profile

[Country Name]

This questionnaire seeks to provide information on the national law implementing the obligations of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and also the Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. This questionnaire commences with the Council of Europe Convention and then seeks to cover those aspects of the European Union Convention that do not form part of the Second Additional Protocol. The answers to the questionnaire should highlight the extent to which the national law implements the obligations set out in the respective international legal instruments. The relevant extracts of national law should be annexed at the end of the document; a brief summary of the provisions can be given directly in the questionnaire.

[When looking specifically at the EU Convention, the questionnaire provides an indication of the relevant text of provisions through the use of inverted commas.]

Comments may be sent to:

Vesna Efendic
PROSECO Project Manager
vesna.efendic@coe.int

Country:	
Signature of Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters:	
Ratification/accession:	
Provisions of the Convention	Corresponding provisions/solutions in national legislation <i>(please quote or summarise briefly; please attach relevant extracts as an appendix)</i>
Chapter I	
Article 1: Extension to administrative offences	
Extension to cover liability of legal persons	
Article 2: Presence of officials	
Article 3: Temporary transfer of prisoners (including safeguards)	
Article 4: Direct transmission between judicial authorities	
Direct transmission between different types of authorities e.g. administrative or competent	
Electronic or other type of tele-communicative transfer	
Article 5: Costs - transfer, video-conference, telephone-conference or extraordinary	
Chapter II	
Article 7: Postponed execution	
Article 8: Procedure of execution	

Article 9: Hearing by video-conference - witnesses (including safeguards)	
Hearing by video-conference - experts (including safeguards)	
Hearing by video-conference - Accused or suspects (including safeguards)	
Article 10: Hearing by telephone-conference - witnesses (including safeguards)	
Hearing by telephone-conference - experts (including safeguards)	
Article 11: Spontaneous transmission of information	
Article 12: Restitution	
Article 13: Transfer to the requested party (including safeguards)	
Article 14: Transfer for review of sentence (including safeguards)	
Article 15: Language of procedural documents	
Article 16: Service by post - direct transmission	
Article 17: Cross-border observations with authorisation (including safeguards)	
Cross-border observations without initial authorisation (including safeguards)	
Discretionary bilateral extension of scope	
Article 18: Controlled delivery	

Article 19: Covert investigations	
Article 20: Joint Investigation Teams	
Article 21: Criminal liability	
Article 22: Civil liability	
Article 23: Witness protection	
Article 24: Provisional measures	
Article 25: Confidentiality	
Article 25: Data protection	
COUNCIL ACT of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union	
Title I	
Article 4: Formalities and procedures "shall execute the request as soon as possible..." "deadline cannot be met"	
Article 5: Sending and service of procedural documents ³	
Article 6: Transmission ⁴	
Title III	

³ It is clear that there is an obvious difference in emphasis between the EU Convention and the Second Additional Protocol regarding this convention article. The EU Convention is much stricter in its application

⁴ Ibid.

Article 17: Competent authorities for interception of telecommunications	
Article 18: Requests for interception of telecommunications	
Article 19: Interception on national territory	
Article 20: Interception without technical assistance	
Article 21: Charges by service providers	
Title IV	
Article 23: Personal Data Protection "data not communicated but otherwise obtained" "conditions of use"	

Appendix 1 : **Solutions in national legislation**

Appendix 2:

Assessment of practical implementation of particular measures as defined in the table above

(to assess a level of applicability of measures in cases when they are incorporated in national legislation)

Annex 2

Council of Europe
Conseil de l'Europe



European Union
Union européenne

Support to Prosecutors' Network in South Eastern Europe

Project Manager's Mission to Pristina, Kosovo⁵ 10 – 11 February 2009

MINUTES

Objective:

To discuss with relevant stakeholders from Kosovo institutions, as well as from international organisations, about the activities to be organised in Kosovo within the joint project of the European Commission and the Council of Europe "Support to Prosecutors' Network in South Eastern Europe" – regional PROSECO project

Participants:

Meetings on 10 February 2009 were held with:

1. Mr Shkelzen Maliqi, Director of the Department of Legal Affairs, Ministry of Justice (MoJ);
2. Mr Hasan Preteni, Director, Kosovo Anti-corruption agency;
3. Mr Theo Jacobs, Chief Prosecutor, European Union Rule of Law Mission (EULEX);
4. Ms Kimberly Moore, Legal Advisor, United States Department of Justice (US DoJ);
5. Mr Enrico Visentin, Team Leader, Rule of Law Operations, European Commission (EC).

Meetings on 11 February 2009 were held with:

1. Mr John Manoj, International Prosecutor, United Nations Interim Administration Mission in Kosovo, Department of Justice (UNMIK DoJ);
2. Mr Lavdim Krasniqi, Kosovo Judicial Institute;
3. Mr Naim Shala, Legal Department, Ministry of Internal Affairs;

⁵ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

4. Ms Anna Castelli and Mr Ivan Marino, Italian Co-operation, Embassy of the Republic of Italy;
5. Mr Hilmi Zhitija, Prosecutor, Kosovo Prosecutor's Office, PROSECO Contact Person;
6. Mr Gianpiero Antonazzo and Mr George Mills, Anti-corruption and Money Laundering Department, EULEX.

Ms Orsolya Szekely, Deputy Head of CoE office in Pristina, attended the meetings with the representatives of US DoJ, UNMIK and EULEX.

Ms Ljuljeta Plakolli, Legal Officer of the CoE office in Pristina, attended the meetings with the representatives of Kosovo institutions.

Results:

The following issues raised during the meetings with representatives of Kosovo institutions could be underlined:

- Ministry of Justice (MoJ) would like that the training seminar on international co-operation is organised within the framework of the PROSECO project for officials from the MoJ, because the MoJ is just in the process of establishing the international co-operation department
- Director of the Kosovo Anti-corruption Agency expressed concern regarding the establishment of the Agency's Council composed of 9 members, whose mandate according to the Law on Anti-corruption agency is not clear, but whose President announced an intention to control the work of the Anti-corruption agency during its investigations. This is, according to director, damaging the Agency as it would lose independence in its work. The Anti-corruption Agency is supported through a few projects from the European Union and the United Nations, and has no needs for additional assistance currently.
- The Director of Kosovo Judicial Institute expressed readiness to co-operate with the Council of Europe on organisation of various PROSECO activities in Kosovo. He said that the Institute has already worked with the Council of Europe and is used to Administrative Arrangements that the CoE is using to cover the cost of its activities.

The following points could be underlined in relation to the meetings held with the representatives of the international organisations:

- The UNMIK Department of Justice (DoJ) has already significantly reduced its staff and role it becoming more and more limited. Kosovo Special Prosecutor's Office, part of the UNMIL DoJ, is in process of handing over the cases to the EULEX. After June the UN will establish a Rule of Law Office.
- EULEX Chief Prosecutor and EULEX representatives from the Anti-corruption and Money Laundering department expressed readiness to exchange information with the CoE regarding potential training needs of prosecutor's offices. The question of submission of requests for provision of legal opinion on draft laws was discussed, because the CoE can provide legal opinion only upon request of the EULEX. The request for legal opinion on Draft Anti-money laundering law should be sent soon, but it was not possible to precisely define a time frame for its submission. A possibility to organise a follow-up roundtable was discussed as well.
- The representative from the US DoJ presented information regarding the upcoming training seminars that the US DoJ organises for prosecutors in Kosovo. Potential co-operation and co-organisation of training seminars was discussed.