



NEGOTIATING POSITION OF MONTENEGRO

FOR THE INTERGOVERNMENTAL CONFERENCE ON THE ACCESSION

OF MONTENEGRO TO THE EUROPEAN UNION FOR CHAPTER

4 - FREE MOVEMENT OF CAPITAL

Podgorica, February 2014.

I. NEGOTIATING POSITION SUMMARY

Montenegro accepts the *acquis* with respect to Chapter 4 Free Movement of Capital as of 21 February 2013, and does not expect any difficulties in implementing the European legislation under this chapter by the date of the accession to the EU.

Montenegro does not request derogations or transitional periods for implementation of the *acquis* under this chapter.

II. LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

Chapter *Free movement of capital* includes three key areas: 1) capital movements and payments; 2) payment systems and 3) fight against money laundering and terrorist financing.

1. Capital movements and payments

Montenegrin legislation that regulates capital movements and payments are the following:

- Law on Foreign Current and Capital Operations (OGM 45/05 and OGM 62/08, 40/11);
- Decision on the Amount of Cash that can be Brought into or Take out from Montenegro Without Declaring (OGM 38/10);
- Foreign Investment Law (OGM 18/11);
- Law on Ownership Rights (OGM 19/09);
- Law on State Property (OGM 21/09 and 40/11);
- Law on State Surveying and Cadastre of Immovable Property (OGM 29/07; OGM 73/10, 32/11, 40/11);
- Law on Securities (OGM 59/00, 10/01, 43/05, 28/06; OGM. 53/09, 73/10, 40/11);
- Insurance Law (OGM 78/06, 19/07; OGM 53/09, 73/10, 40/11, 45/12);

- Rulebook on restrictions related to depositing and investing technical reserve funds and guarantee funds of insurance companies (OGM 38/09, 43/09);
- Voluntary Pension Funds Law (OGM. 78/06,14/07,73/10,40/11).

Important issues in the field of capital movements in relations between Montenegro and the European Union are regulated by the Article 63 of the Stabilization and Association Agreement (SAA).

Furthermore, Montenegrin Constitution from 2007 prescribes that foreign natural person can be the subject of ownership in accordance with the law. Law on Ownership Rights from 2009 prescribes certain limitations in acquisition of ownership rights, but these limitations do not apply to citizens of EU Member States, because according to the provisions of SAA, article 63, point 3, citizens of the European Union have national treatment when it comes to acquiring real estate in Montenegro. Regarding ownership rights of persons from third countries, the principle of reciprocity applies.

In Montenegro, there is an appropriate institutional framework for the implementation of the *acquis* in this area and it is not necessary to establish new institutions, but only strengthen the existing ones. The Ministry of Finance, the Central Bank of Montenegro, the Securities Commission, the Insurance Supervision Agency and the Ministry of Foreign Affairs and European Integration are competent for the implementation of *acquis* in this field.

In order to achieve full compliance and implementation of the EU *acquis*, Montenegro will continue with further legislative alignment and administrative capacities strengthening.

2. Payment systems

The Law on National Payment Operations (OGM 61/08 and 31/12) presents a valid legal basis for the execution of the payment transactions in Montenegro, while Law on Foreign Current and Capital Operations (OGM 45/ 05 and OGM 62/08, 40/11) regulates international payment transactions.

The Law on National Payment Operations regulates transfer of assets, settlement of interbank transfers, electronic payment instruments, payment systems and out-of-court resolution of disputes in the national payment system, while Law on Foreign Current and Capital Operations regulates regime of international payment transactions and deadlines for the execution of these payments.

On the basis of these laws, the Central Bank, being the regulator of the payment system, adopted implementing regulations which, in more detail, regulate certain issues of payment system functioning, as follows:

- 1) Decision on the Structure of the Transfer Execution Account and Detailed Conditions and Manner of the Account Opening and Closing (OGM 24/09 and 15/11);
- 2) Decision on the Unique Structure for Identification and Classification of the Accounts by IBAN Standard for Cross border Payments (OGM 74/06);
- 3) Decision on the Contents of the Central Registry of Accounts (OGM 24/08 and 15/11);
- 4) Decision on Keeping Records for Performing International Payment System Transactions (OGM 24/09 and 15/11);
- 5) Decision on the Minimum Elements of Credit and Debit Orders (OGM 24/09 and 41/09);
- 6) Decision on Conditions and Manner on Performing of Individual Operations in Execution of Transfer of Assets by an Agent (OGM 24/09);
- 7) Decision on Issuing and Use of Remote Access Payment Instruments and the Manner and Deadlines for Reporting (OGM 24/09);
- 8) Decision on Detailed Conditions for Issuing and Revoking Payment System Working Permits (OGM 24/09);

- 9) Decision on the Minimum Value of Interbank Transfers of Assets to be processed in RTGS System (OGM. 24/09);
- 10) Decision on Payment System Oversight (OGM 24/09);

- 11) Decision on Manner and Procedure of National Payment System Supervision (OGM 15/11);
- 12) Decision on Mandatory Elements of the Payer Transfer Order (OGM 15/11);
- 13) Payment System Rules for Interbank Transfers (OGM 24/09 and 15/11).

The Central Bank of Montenegro and 11 banks present the institutional framework for payment operations.

3. Prevention of Money Laundering

Government adopted the Strategy for the prevention and suppression of terrorism, money laundering and terrorist financing on 30 September 2010, for the period 2010 - 2014. Also, the Government established the National Commission for Implementation of Strategy for the prevention and suppression of terrorism, money laundering and terrorist financing on 30 September 2010. The main objective of the Strategy is to identify priorities based on the need to develop efficient and functional mechanisms of relevant institutions and improving the procedures for prevention and suppression of terrorism, money laundering and terrorist financing. The Strategy expresses the commitment of Montenegro to jointly operate via European and Euro-Atlantic Integration with other countries and international organizations in order to strengthen the national, regional and global security.

In accordance with the main objective, the Strategy defines a general framework of action and response of Montenegro to the current and future challenges and threats, through the improvement of the existing, and development of new measures, mechanisms and instruments, aimed at achieving stability and security, which includes the establishment of coordinated and efficient system for the prevention of terrorism, money laundering and terrorist financing in Montenegro based on international standards and cooperation among relevant institutions.

In this sense, the strategic directions of Montenegro are the following:

- Improvement of cooperation and information exchange with regional and international partners in the fight against terrorism, money laundering and terrorist financing;
- Adoption and implementation of international standards;
- Definition of principles and procedures of improving cooperation between competent institutions.

In order to implement the Strategy, the Government adopted the Action Plan for the period 2010-2012, which lays down specific measures, the competent authorities, deadlines, performance indicators. Government adopted the Action Plan for the period 2013-2014 on 25 July 2013.

Law on Prevention of Money Laundering and Terrorist Financing (OGM 14/07, 04/08 and 14/12) and implementing regulation present the current legal framework for undertaking measures and actions to detect and prevent money laundering and terrorist financing in Montenegro.

Law on Prevention of Money Laundering and Terrorist Financing is largely compliant with international standards in the field of fight against money laundering and terrorist financing, i.e. the recommendations of the Financial Action Task Force (FATF), Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Commission Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC and Regulation (EC) No 1781/2006/EC of the European Parliament and of the Council on information on the payer accompanying transfers of funds.

The Law on Prevention of Money Laundering and Terrorist Financing regulates measures and actions to be taken to detect and prevent money laundering and terrorist financing. These statutory definitions of money laundering and terrorist financing define reporting entities who are required to perform activities and tasks set out in this Law, competences of the Administration for the Prevention of Money Laundering and Terrorist Financing to prevent money laundering and terrorist financing, the obligations of the state authorities involved in

the fight against money laundering and terrorist financing, as well as record keeping, protection and preservation of data obtained on the basis of this Law.

Secondary legislation that regulates certain issues in this area in more detail was adopted on the basis of the aforementioned Law.

1. The Ministry of Finance adopted the following:
 - Rulebook on developing guidelines for risk analysis in order to prevent money laundering and terrorist financing (OGM 20/09);
 - Rulebook on the manner of work of the compliance officer, the manner of implementation of internal control, data storage and protection, record keeping and employees training (OGM 80/08);
 - Rulebook on the manner of reporting of cash transactions in the amount of EUR 15,000 and more and suspicious transactions to the Administration for the Prevention of Money Laundering and Terrorist Financing (OGM 79/08);
 - Rulebook on indicators for identifying suspicious clients and transactions (OGM 26/12);
 - The Rulebook on Content and Type of Payer's Data accompanying Electronic Funds Transfer (OG, MNE, 60/12).
2. The Administration for the Prevention of Money Laundering and Terrorist Financing on 25 September 2009 adopted the "Guidelines for the preparation of risk analysis for the prevention of money laundering and terrorist financing;"
3. The Central Bank on 25 February 2010. adopted the "Guidelines for risk analysis in banks to prevent money laundering and terrorist financing;"
4. The Administration for Games of Chance on 25 December 2009. adopted the "Guidelines on the preparation of risk analysis for the prevention of money laundering and terrorist financing" for the organizers of games of chance;
5. The Securities and Exchange Commission on 9 February 2012. adopted "Guidance on the preparation of a risk analysis for the prevention of money laundering and terrorist financing" in the securities market;

6. The Insurance Supervision Agency on 7 March 2011. adopted the "Guidelines for the risk analysis of money laundering and terrorist financing in the insurance companies."

III. ALIGNMENT OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE ACQUIS

1. Capital movements and payments

With regard to capital movements and payments, Montenegro has achieved a high level of harmonization with the EU *acquis*, including the relevant provisions of the Treaty on the Functioning of the European Union (Articles 63-66, 49, 54, 56, 75, 143, 144) and Council Directive 88/361/EEC on the implementation of Article 67 of the Treaty.

In order to achieve full alignment and implementation of the EU *acquis* Montenegro will implement the following changes to the national legislation:

- Amend the Insurance Law in the part referring to the principle of territoriality, that is, insurance of property and persons which will ensure the abolition of restrictions related to insurance of residents only with domestic insurance companies. The deadline for alignment is until accession to the EU;
- Amend the Foreign Investments Law, which will cancel the restriction related to foreign investments in the companies for the production and sale of arms and military equipment. The deadline for the adoption of the amended Law is the first quarter of 2014;
- Adopt a new Capital Market Law (instead of the existing Law on Securities) that shall be in compliance with the directives in this field. The deadline for the adoption is the first quarter of 2015.

In addition, Montenegro will implement changes to the laws governing the operations of financial institutions related to preferential access of the public sector to financial institutions and different treatment of investments by institutional investors as follows:

- The Insurance Law and Rulebook on the deposit limitations and investment of technical reserves and reserve funds of the insurance company;
- The Law on voluntary pension funds.

After the amendments, these laws shall not contain provisions related to preferential access of the public sector to financial institutions, which could be implemented after the accession of Montenegro to the EU. The deadline for alignment in this area is the date of accession to the EU.

The Law on Ownership Rights will be aligned with EU *acquis*, in accordance with SAA provisions, by the date of accession to the EU.

2. Payment systems

The applicable Montenegrin payment system regulations are partially in line with the most important legal acts of the EU in this field, namely, the Directive 2007/64/EC on payment services in the internal market and the Directive 98/26/EC on settlement finality in payment and securities settlement systems. It is necessary to be in compliance with the Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of the electronic money institutions, the Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community, and the Regulation (EC) No 260/2012 of the European Parliament and of the Council on establishing technical and business requirements for credit transfers and direct debits in euro. Pursuant to the abovementioned, the key issues that are yet to be achieved in order to comply with the EU *acquis* are the following: the introduction of payment institutions as providers of payment services, the introduction of electronic money institutions as issuers of electronic money and providers of payment services, improving information providing of the users of payment services and the introduction of new entities that, in addition to banks, may act as payment system operators.

The Parliament adopted a new Payment System Law (OG, MNE, 62/13) on 23 December 2013, and it came into force on 8 January 2014. Its implementation will begin after the expiration of a one-year following the effective date of the Law, on 9 January 2015. Meanwhile, the Central Bank of Montenegro is obliged to adopt the necessary secondary legislation for its implementation. In this way it will be ensured that the implementation of all new regulations in this area – laws and secondary legislation – will start at the same time.

With the enactment of the new Payment System Law and the pertinent secondary legislation, the Montenegrin regulatory framework on the payments operations will be fully aligned with the EU *acquis* in this field. The exceptions are the Regulation (EC) No 924/2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001, and the Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009, which will be implemented by the date of accession to the EU.

3. Fight against money laundering and terrorist financing

The current Montenegrin legislation on fight against money laundering and terrorist financing is largely aligned with the EU *acquis*.

In accordance with the recommendations given on the basis of the Second Report of 3rd Round of evaluation on Montenegro's progress in the field of fight against money laundering and terrorist financing, appropriate amendments to the Criminal Code (OGM No 40/13) and the new Capital Markets Law were made.

In order to align the Law on Prevention of Money Laundering and Terrorist Financing with new international standards in the field of money laundering and terrorist financing, i.e. FATF recommendations, a new Law on Prevention of Money Laundering and Terrorist Financing has been drafted taking into account and implementing majority of the provisions of the proposal of the Fourth Directive¹.

¹ A proposal for a new Directive on prevention of use of the financial system for the purpose money laundering and terrorist financing published on the EC webpage.

Public consultations regarding the draft Law on Prevention of Money Laundering and Terrorist Financing completed in mid-October 2013. And it is expected that the Parliament will adopt this Law in fourth quarter of 2014. Necessary secondary legislation for its implementation will be made within six months following the date of entry this Law into force.

With the adoption of the new Law on Prevention of Money Laundering and Terrorist Financing and its secondary legislation, the anti-money laundering regulation will be further aligned with the relevant EU *acquis*. Amendments to the new Law on Prevention of Money Laundering and Terrorist Financing which will implement remaining provisions of Fourth Directive will be adopted in II quarter 2016.

Also, the forming of the Working body that will be responsible for the preparation of the National risk assessment of money laundering and terrorist financing has been already started.

Montenegro intends to take steps in order to strengthen the administrative capacity of the Administration for the Prevention of Money Laundering and Terrorist Financing and other stakeholders as well as to organise training courses for the staff of the obligated sector. Montenegro also intends to implement its IT strategy and the Strategy for the development of the Administration for the Prevention of Money Laundering and Terrorist Financing.

3.1. Strengthening inter-institutional cooperation in the field of fight against money laundering and terrorist financing

Montenegro implements the recommendations of the European Commission regarding the strengthening of inter-institutional cooperation between the authorities and bodies dealing with the prevention of money laundering and terrorist financing. In accordance with recommendations of the European Commission, the following agreements on cooperation between institutions were signed:

- Memorandum of Understanding between the Administration for the Prevention of Money Laundering and Terrorist Financing and Ministry of Interior Affairs of Montenegro – July 2004;

- Memorandum of Understanding between the Administration for the Prevention of Money Laundering and Terrorist Financing and Tax Administration, October 2004;
- Memorandum of Understanding between the Administration for the Prevention of Money Laundering and Terrorist Financing and Customs Administration, October 2004;
- Memorandum of Understanding between the Administration for the Prevention of Money Laundering and Terrorist Financing and the Basic Court in Podgorica, May 2005;
- Memorandum of Understanding for the exchange of information and mutual assistance on matters of supervision of the securities market between Administration for the Prevention of Money Laundering and Terrorist Financing and Securities and Exchange Commission was signed in March 2006;
- Memorandum of Understanding in the field of banking supervision between Administration for the Prevention of Money Laundering and Terrorist Financing and the Central Bank was signed in June 2006;
- Memorandum of Understanding between Administration for the Prevention of Money Laundering and Terrorist Financing and the State Audit Institution of Montenegro was signed in 2009;
- In February 2010, Supreme Public Prosecutor's Office, Police Administration, Tax Administration, Administration for the Prevention of Money Laundering and Terrorist Financing and Customs Administration signed the Agreement on establishing of joint investigation team to act in cases of organized crime and the most severe forms of corruption;
- Agreement on the promotion of cooperation in the field of crime prevention between the Ministry of Interior Affairs and Public Administration, the Ministry of Justice, Police, Administration for the Prevention of Money Laundering and Terrorist Financing and Tax Administration was signed in December 2010;

- Memorandum of Understanding and exchange of information in the field of prevention of money laundering and terrorist financing was signed for the first time in December 2011 between the Ministry of Finance, the Administration for the Prevention of Money Laundering and Terrorist Financing, the Central Bank of Montenegro, the Securities and Exchange Commission, the Insurance Supervision Agency, the Ministry of Interior, and in May 2013 the Police Administration became a signatory to this Memorandum.

Within Chapter 24 – Justice, Freedom and Security Montenegro will ensure efficient and effective implementation of the provisions of signed agreements by signatories within the framework provided by laws and implementing regulation, as well as by certain jurisdictions. The aim is to strengthen cooperation between state authorities, in order to make the system more efficient.
