



Government of Montenegro

**NEGOTIATING POSITION OF MONTENEGRO
FOR THE INTERGOVERNMENTAL CONFERENCE ON THE ACCESSION OF
MONTENEGRO TO THE EUROPEAN UNION
CHAPTER 9 – FINANCIAL SERVICES**

Podgorica, October 2014

I NEGOTIATING POSITION SUMMARY

Montenegro accepts the EU *acquis* with respect to Chapter 9 Financial Services as in force on **11 June 2013** and it 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 9 – Financial services includes four key areas:

- a) Banks and financial conglomerates,
- b) Insurance and occupational pension provision,
- c) Financial market infrastructure, and
- d) Securities market and investment services.

Montenegro has an adequate institutional framework for the implementation of the EU *acquis* in this Chapter. Therefore, the establishment of new institutions is not needed, but the strengthening of the existing ones is required.

The Ministry of Finance, the Central Bank of Montenegro, the Securities and Exchange Commission, the Insurance Supervision Agency and the Deposit Protection Fund are institutions responsible for the implementation of the EU *acquis* in this area.

With a view to achieving full alignment and implementation of the EU *acquis* in the financial services area, Montenegro will continue to further align its legislation and strengthen its administrative capacities.

II a) Banks and financial conglomerates

The Banking Law (Official Gazette of Montenegro No. 17/08, 44/10), the Central Bank of Montenegro Law (OGM 40/10, 46/10, 6/13), the Bank Bankruptcy and Liquidation Law (OGM 47/01, 62/08, 44/10) and the Deposit Protection Law (OGM 44/10) represent the legal basis for the functioning of the banking system in Montenegro.

The Banking Law governs establishment, management, operations and the supervision of banks and micro-credit financial institutions and credit unions and it governs the conditions and the supervision of operations of parties involved in credit and guarantee operations with the purpose of establishing and maintaining safe and sound banking system that provides protection of interests of depositors and other creditors.

Pursuant to the Banking Law, the Central Bank, as a regulator of the banking system, has passed the following secondary legislation, which regulates in more detail individual issues of the banking system's functioning:

- Decision on Capital Adequacy of Banks (OGM 38/11, 55/12);
- Decision on Chart of Accounts for Banks (OGM 55/12);
- Decision on Reports to be submitted to the Central Bank of Montenegro (OGM 64/12);
- Decision on the Manner of Calculation Banks' Exposures (OGM15/12);
- Decision on Public Disclosure of Data and Information by Banks (OGM 2/12);
- Decision on Minimum Standards for Credit Risk Management in Banks (OGM 22/12, 55/12);
- Decision on Methods for Preparation of the Consolidated Financial Reports of the Banking Group (OGM 24/09);
- Decision on Minimum Standards for Operational Risk Management in Banks (OGM 24/09);
- Decision on Documents Supporting the Request for Granting Approvals under the Banking Law (OGM 57/08, 80/10);
- Decision on Minimum Standards for Liquidity Risk Management in Banks (OGM 60/08);
- Decision on Minimum Standards for Interest Rate Risk Management not Originating from Bank's Trading Activities (OGM 60/08), and
- Decision on Minimum Standards for Operations with Bank Related Parties (OGM 60/08).

The Central Bank of Montenegro Law prescribes, inter alia, the responsibility of the Central Bank for overseeing the maintenance of stability of the financial system as a whole and passing pertinent regulations and measures; issuing licenses and approvals to banks and financial institutions and supervising banks and financial institutions; and carrying out bankruptcy and liquidation proceedings against banks and financial institutions in line with the law.

The Bank Bankruptcy and Liquidation Law regulate the conditions and procedures of bank bankruptcy and liquidation.

The Central Bank of Montenegro (CBCG) issues licences and approvals to banks and financial institutions, it supervises banks and financial institutions and carries out bankruptcy and liquidation proceedings against banks and financial institutions in accordance with the Central Bank of Montenegro Law.

Twelve banks and five micro-credit financial institutions operate in Montenegro. No interest has been expressed for establishing credit unions or performing credit and guarantee operations in Montenegro.

There are no financial conglomerates in Montenegro.

The Deposit Protection Law regulates the deposit protection scheme covering deposits placed with banks having their registered offices in Montenegro, the competences and operations of the Deposit Protection Fund, and the guaranteed deposits pay-out aimed at protecting the interest of depositors and contributing to the maintenance of the banking system's stability.

Pursuant to the aforesaid law, the Deposit Protection Fund passed the following secondary legislation:

- Guide to informing depositors and potential depositors about the deposit protection scheme (OGM 16/12);
- Decision on detailed conditions, manner and procedure of the guaranteed deposit pay-out (OGM 16/12, 66/12);
- Decision on Bank Monthly Reports to be Submitted to the Deposit Protection Fund (OGM 66/12), and
- Decision on the Regular Premium Rate and the Manner of the Regular Premium Calculation in 2014 (OGM 55/13).

The Deposit Protection Fund (FZD) shall protect, in accordance with the Deposit Protection Law, depositors against a loss of a part of or all their deposits and to promote the deposit protection scheme. In exercising its competences, the Fund shall: 1) establish the rate for the premium calculation; 2) collect the premiums; 3) invest its funds; 4) calculate and perform the pay-out of the guaranteed deposits; 5) pass secondary legislation provided for under this law; 6) perform other activities in accordance with the law.

The **deposit guarantee scheme** has been implemented in Montenegro, and all the banks in the system participate in its financing. The guaranteed deposits amount to 50.000 euro since 1 January 2013 per single depositor in one bank. If the protected event occurs, FZD is obliged to make the guaranteed deposits available to all depositors no later than 20 business days.

II b) Insurance and occupational pensions

The applicable legislation, as a base for functioning of the Montenegrin insurance system, includes the Law on Insurance (Official Gazette of the Republic of Montenegro, No 78/06, 19/07; OGM 53/09, 73/10, 40/11, 45/12), the Law on Compulsory Traffic Insurance (OGM 44/12) and the Law on Bankruptcy and Liquidation of Insurance Companies (OGM 11/07).

The Law on Insurance regulates conditions and manner of conduct of insurance activities and supervision of insurance activities.

Pursuant to the aforesaid law, the Insurance Supervision Agency enacted the following secondary legislation that closely regulates insurance-related matters:

- Rulebook on decision-making procedure upon objections made by insured and third injured parties (OGM 38/13)
- Rulebook on conditions for taking exams, manner of examination and program for professional exams for conduct of activities of an authorised actuary (OGM 02/14)/
- Rulebook on the contents of the authorized actuary's opinion (OGM 17/13);
- Rulebook on detailed conditions for issuing license for conduct of insurance activities and manner for verification of their fulfilment (OGM 15/03);

- Rulebook on detailed criteria and manner of calculating mathematical reserves and special provisions for life insurance where the investment risk is borne by the insured person (OGM 01/13);
- Rulebook on characteristics of subordinated debt instruments that can be included in the additional capital of insurance company (OGM 01/13);
- Rulebook on detailed criteria and manner of calculating risk equalization reserves (OGM 70/08, 01/13);
- Rulebook on the content of reports, notifications and other data submitted to the Insurance Supervision Agency and the manner and deadlines for their submission (OGM 01/13);
- Rulebook on detailed conditions for conduct of insurance agency activities in banks (OGM 01/13);
- Rulebook on classification of types of risks by classes of insurance (OGM 01/13);
- Rulebook on the content and manner of keeping registers of data on insurance companies and other entities subject to control by the Insurance Supervision Agency (OGM 70/08, 06/13);
- Rulebook on detailed criteria and manner of calculating technical reserves for reserved damages (OGM 41/11);
- Rulebook on establishing operating results, distribution of realized profit, loss coverage and measures for loss coverage (OGM 70/08, 01/13);
- Decision on the manner for assessing the insurance company assets (OGM 77/10, 06/13);
- Rulebook on the charts of accounts for insurance companies (OGM 63/10);
- Rulebook on detailed criteria and manner of calculating unearned premiums (OGM 70/08);
- Rulebook on the manner of calculating solvency margin (OGM 14/13);
- Rulebook on the manner of determining and monitoring the insurance company liquidity (OGM 70/08, 87/09, 21/10);
- Decision on fees of the Insurance Supervision Agency (OGM 04/08, 42/12, 17/13, 49/13).

In accordance with the powers conferred by the Law on Insurance, the Ministry of Finance of Montenegro enacted the following rulebooks:

- Rulebook on depositing and investing technical reserve funds and capital funds of insurance companies (OGM 46/13);
- Rulebook on the content and manner of taking the professional exam for conducting insurance brokerage or agency activities (OGM 47/09, 40/12).

The **Law on Compulsory Traffic Insurance** regulates compulsory traffic insurance, as well as operations of associations of insurers, which include operations of the Guarantee Fund, whose funds serve primarily for payment of damages made to unknown and uninsured means of transport, or to means of transport insured with an insurance company against which bankruptcy or liquidation proceedings were initiated.

Pursuant to the aforesaid law, the Insurance Supervision Agency enacted the following secondary legislation that closely regulates matters related to the traffic insurance:

- Rulebook on the detailed content of book of claims (OGM 54/13);

- Rulebook on the content of reports, notifications and other data submitted by the Association – National Bureau of Insurers to the Insurance Supervision Agency and the manner and deadlines for their submission (OGM 02/13);
- Decision on the amount of border insurance (OGM 35/12);
- Rulebook on the uniform criteria for determining non-material and certain types of material damages (OGM 35/09);
- Rulebook on determining percentage of permanent loss of general work ability or reduction of general life activity of physical entities as a consequence of injury in traffic accident (OGM 35/09);
- Rulebook on uniform criteria for assessing the damage to vehicles and damages as a consequence of inability to use vehicle (OGM 35/09), and
- Rulebook on the content of insurance policy form for motor third party liability insurance (OGM 02/12).

The ***Law on Bankruptcy and Liquidation of Insurance Companies*** regulates conditions and procedures of bankruptcy, voluntary liquidation of insurance companies, as well as rights and obligations of participants in bankruptcy and liquidation proceedings.

Insurance Supervision Agency of Montenegro – ISA is authorised - in accordance with the Law on Insurance - for supervising operations of insurance companies in Montenegro, issuing licenses for their operations and monitoring fulfilment of prudential criteria, with the aim to protect the interests of the insured and to ensure stability and development of insurance activities, on the basis of principles of sound competition and equal operating conditions.

There are 11 insurance companies operating in Montenegro, whereof six insurance companies operate in life insurance and five in non-life insurance. Insurance agency activities are performed by 19 insurance agency companies (agents), whilst the insurance brokerage activities are performed by 6 insurance brokerage companies (brokers). The Agency implements professional exams and issues authorisations to physical entities for conduct of insurance brokerage and agency. Agency is also authorised for training and issuing of authorizations to the actuaries.

The legislation that is related to the occupational pensions is not implemented in Montenegro, which means that currently neither there exist an adequate regulatory framework based on the IORP Directive, nor a potentially defined institutional responsibility for regulating and supervising the operations of occupational pension funds.

II c) Financial market infrastructure

The current legal basis, that regulates financial market infrastructure in Montenegro, clearing of securities and financial collateral arrangements, includes the Law on Securities (OGRM 59/00, 10/01, 43/05, 28/06, OGM 53/09, 73/10, 40/11), the Law on Financial Collateral Arrangement (OGM 44/12) and the Law on Investment Funds (OGM 54/11).

The **Law on Securities** regulates clearing, settlement and registration of securities, and the scope of activities of the Central Depository Agency - the institution responsible for the registration of dematerialised securities, transactions and clearing and settlement of transactions concluded with these securities.

On the basis of the aforementioned law, the **Rules of the Central Depository Agency** were adopted, which more closely define the manner of carrying out the clearing and settlement of transactions with the securities.

The **Law on Financial Collateral Arrangement** regulates the manner and conditions of conclusion and execution of contracts for financial collateral arrangements. The law does not explicitly stipulate the body responsible for its implementation.

The **Law on Investment Funds** regulates conditions for establishment and operations of investment funds and management companies of investment funds, issuing and redemption of investment units, funds' transformation and other issues relevant to fund operations.

There are no alternative investment funds in Montenegro.

II d) Securities market and investment services

The current legal basis that regulates securities market and investment services in Montenegro is specified by the Law on Securities (OGRM 59/00, 10/01, 43/05, 28/06, OGM 53/09, 73/10, 40/11, 06/13).

The **Law on Securities** regulates the types of securities, issuance and trade of securities, the rights and obligations of entities on the securities market and the organization, the scope of work and responsibilities of **the Securities and Exchange Commission of Montenegro - SECMN**.

On the basis of the aforementioned Law, the SECMN has adopted the following bylaws, which closely regulate specific questions regarding the functioning of the securities market and investment services:

- Rules on control over securities business (OGRM28/07 and OGM 09/13);
- Rules on issuance of operating licenses to the Central Depository Agency (OGM 02/01);
- Rules on the content of prospectus for public issuing of equity and long term debt securities (OGRM 34/07);
- Rules on content of abbreviated prospectus and on the manner and procedure of recording closed offering of equity and long term debt securities (OGRM 34/07 and OGM 39/08);
- Rules on conduct of business of licensed participants at the capital market (OGM 78/09, 49/11);
- Rules of Montenegro Stock Exchange (adopted on August 20, 2012);
- Other bylaws.

The Securities and Exchange Commission is responsible for regulating and monitoring of issuance of securities and their trade and supervision in the area of providing investment services, securities markets and investment funds.

Eight investment funds and two voluntary pension funds operate in Montenegro.

The Investor Compensation Scheme has not been implemented in Montenegro.

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

Overall, Montenegro has already reached an advanced level of alignment and it partly implements the EU *acquis* in the areas covered by this Chapter.

Montenegro accepts the EU *acquis* covering the financial services area.

With a view to achieving full alignment and implementation of the *acquis* –resulting in a good level of preparedness for assuming the EU membership obligations, Montenegro will continue with further alignment of legislation and its accurate implementation, taking into account, in particular, dynamic changes of the EU *acquis* in the financial services area.

Montenegro has an adequate **institutional framework** for the implementation of the *acquis* in this Chapter, which will be additionally improved by strengthening of the existing bodies.

Overall, Montenegrin **administrative capacities** are currently satisfactory in all areas of the financial services. However, they should be strengthened with regard to the increasing responsibilities and future obligations of each supervisor arising from the implementation of the EU *acquis* in this Chapter. In addition to a possible increase in the number of employees, supervisory institutions will make further efforts to improve the existing professional quality of their employees and continuously improve their technical knowledge through targeted trainings. The same applies to the supervisory practices and IT systems used for providing efficient and reliable prudential supervision which should be improved in order to be in line with the evolving *acquis*.

Montenegro will initiate the procedure for appointing its representatives acting as observers in the work of the three European supervisory bodies – European Banking Authority (EBA), European Securities and Market Authority (ESMA), and European Insurance and Occupational Pensions Authority (EIOPA), as the time of the accession to the EU approaches.

III a) Banks and financial conglomerates

Montenegro has reached a moderately advanced level of alignment with the EU *acquis* in this area.

With a view to achieving full and efficient implementation of the *acquis* by the date of accession to the EU, Montenegro will pass the following laws: ***Banking Law, Law on Supplementary Supervision of Financial Conglomerates, Law amending Bank Bankruptcy and Liquidation Law, and Law amending Deposit Protection Law.***

a1) Montenegro has partly transposed the Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions. Montenegro will adopt provisions relating to the advanced measurement approaches for capital and it will align its legislation with the Directive 2009/111/EC when it comes to the banks affiliated to the central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management.

Montenegro has achieved a good level of alignment with the *acquis* relating to the capital adequacy for investment companies and credit institutions. Montenegro will pass the ***Banking Law*** in the last quarter 2016. This will enable the alignment with the new package relating to the capital requirements, consisting of the Regulation (EU) 575/2013 and the Directive 2013/36/EU which transposes Basel III - New Basel Standards for capital and liquidity, aimed at strengthening capital requirements for banks and establishing framework for new regulatory requirements concerning liquidity, as well as additional capital requirements for systemically important financial institutions (SIFIs).

The Central Bank will pass the following secondary legislation: ***new Decision on Capital Adequacy of Banks, Decision amending the Decision on Chart of Accounts for Banks,, Decision amending the Decision on Minimum Standards for Risk Management in Banks, Decision on Large Exposures in Banks, Decision amending the Decision on Public Disclosure by Banks, Decision amending the Decision on Minimum Standards on Operations with Bank Related Parties, Decision amending the Decision on Reports to be Submitted to the Central Bank of Montenegro and other regulation*** in the last quarter 2017.

a2) Montenegro will pass the ***Law on Supplementary Supervision of Financial Conglomerates*** in the last quarter 2017. This will contribute to the alignment with the Directive 2002/87/EC on overall framework for the supplementary supervision of **financial conglomerates**.

a3) Montenegro is at an early stage of the alignment with the EU *acquis* requirements concerning the level of coverage of **deposit-guarantee schemes**. Divergence with the *acquis* has been identified through the two issues:

- (i) the amount of guaranteed deposit (it is 50.000 euro in Montenegro, while the Directive 2009/14/EC prescribes the amount of 100.000 euro), and
- (ii) the term “unavailable deposit” has not been defined by the law.

(i) According to the provisions of the Directive 2009/14/EC, Article 3, the amount of guaranteed deposits amounts to 100.000 euro. In Montenegro, the amount of guaranteed deposit amounts to 50.000 euro. This coverage (50.000 euro) includes 99% of depositors in Montenegro that have the right to the guaranteed deposit pay-out. Considering such high percentage of depositors' coverage, the International Monetary Fund and the World Bank have proposed that the amount of coverage should be 10.000 euro, and/or 20.000 euro. Montenegro will align its legal solution on the amount of the guaranteed deposit to 100.000 euro as of the day of the accession to the EU;

(ii) Deposit Protection Fund pays funds only when CBCG passes a decision on instigating bankruptcy proceedings against the bank (Banking Law, Article 129 paragraph 1 and Deposit Protection Law, Article 4 paragraph 1). The Directive 94/19/EC Article 1 item 3 defines the term "unavailable deposit". As this category was not defined by the Banking Law or Deposit Protection Law, it is necessary to define this term in more detail. Unavailable deposits entail that a depositor may not have deposit at his disposal in the period longer than 5 business days, and therefore the obligation of the competent authority (CBCG) is to introduce measures once it is assured that deposits are "unavailable" so that the Deposit Protection Fund could make pay-out.

With regard to the payout deadline, Deposit Protection Law is currently fully aligned with the Directive 94/19/EC.

Montenegro takes note of the political agreement reached in December 2013 on a new DGS Directive which will recast and repeal the current text. The new Directive will, inter alia, progressively reduce payout deadlines to 7 working days by 2024 and introduce ex ante funding via bank contributions amounting to 0.8% of covered deposits within 10 years.

Montenegro will achieve full alignment in this area by passing the ***Law amending the Deposit Protection Law*** in the fourth quarter 2018.

a4) Montenegro's legislation is partly aligned with the Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions. Non-compliance exists in the part concerning the content of the forms for financial accounts of banks.

Montenegro will achieve full alignment in this area by passing the ***Banking Law*** and the relevant secondary legislation: ***Decision amending the Decision on Chart of Accounts for Banks, Decision on the Content, Deadlines and Manner of Compiling and Submitting Banks Financial Statements*** in the last quarter 2017.

a5) Montenegro's legislation is partly aligned with the Directive 2001/24/EC on the reorganisation and winding up of credit institutions. Non-compliance with the Directive 2001/24/EC exists in the part concerning universality in winding up and reorganisation of credit institutions with branches in other EU member states, mutual recognition of measures and procedures, cooperation between bodies and activities of the interim administration as a reorganisation measure.

In addition, Montenegro takes note of the new Bank Recovery and Resolution Directive (BRRD) on which a political agreement was reached in December 2013. This implies establishing a resolution authority, introducing the relevant early intervention, planning and resolution powers, and establishing resolution financing arrangement funded by risk adjusted bank contributions.

Montenegro will achieve full alignment in this area by passing *the Law od Recovery and Resolution of banks*, and by passing the *Law amending the Bank Bankruptcy and Liquidation Law* in the last quarter of 2017.

*

With regard to the part concerning the strengthening of the administrative and institutional capacities, the Central Bank will continue to make efforts on maintaining and increasing the quality of its technical capacity, supervisory systems and practices and information systems to ensure efficient and reliable prudential supervision in accordance with the Basel Core Principles for Effective Banking Supervision. Ongoing efforts will be continued in the part of securing and strengthening appropriate supervisory tools (e.g. gathering data from the supervised institutions, verification of data and professional assessment, frequency of on-site inspections, supervisory review process of the institutions, etc.), and establishing close cooperation with the regulatory bodies from the EU member states and the region.

III b) Insurance and occupational pensions

Montenegro has reached a good level of alignment in the insurance sector and partly applies the *acquis* in this area. Montenegrin legislation is to a great extent aligned with the Solvency I regime.

With the aim of reaching full and efficient application of the *acquis* before the accession to the EU, Montenegro will adopt the following laws:

Law on the amendments to the Law on Insurance (which will provide for the alignment with the missing provisions regarding the Solvency I area, that are necessary for the harmonisation of functioning of the insurance companies within the national framework until the date of the accession of Montenegro to the EU) **in the fourth quarter of 2015;**

Once having completed this stage, the elaboration will follow ***of the new Law on Insurance in the fourth quarter of 2018***, which will enable the transposition of the Solvency II into the national legislation framework.

Apart from that, in order to provide full alignment with the *acquis*, the following laws will be adopted:

Law on Bankruptcy and Liquidation of Insurance Companies, Law on Amendments to the Law on Compulsory Traffic Insurance and Law on Voluntary Pension Funds.

The amendments to the Law on Insurance will be performed in the following manner:

1. 01.06.2014.-31.12.2015. - the period necessary for drafting the provisions of the Law on Insurance transposing Solvency I (Law on the amendments to the Law on Insurance), including the following provisions:

- (i) The alignment of calculating risk equalization reserves,
- (ii) The amendments to the provisions on qualified participation,
- (iii) Provisions on Professional Secret,
- (iv) Provisions on reinsurance (deposits/investments).

The above-said provisions do not include:

- a) Provisions on supervision of the insurers within a group;
- b) The amount of minimum share capital for insurance and reinsurance companies;
- c) Validity of license within the entire EU territory (single license);
- d) Provisions on the branches of insurance companies with registered seat in the EU territory;
- e) Provisions on reporting to the European bodies and regulators, including the bankruptcy and liquidation procedures;
- f) Status of Swiss Confederation;

The reason for excluding these provisions (*from a) to f)*) lies within the fact that they remain unchanged within Solvency II; even if they were to be included in the first set of amendments, they would not whatsoever be effectively implemented until the date of the accession.

2. 01.01.2016.-31.12.2018 – the period necessary for the implementation of the provision of the Law on the amendments to the Law on Insurance (point 1). In the same time, there will be ongoing the elaboration of the new Law based on Solvency II. The elaboration of the new Law will also take into account the communitarian relations, i.e. the provisions that remain unchanged compared to Solvency I, and that refer specifically to the EU branches, the validity of the licence within the territory of the EU, as well as other provisions from point 1. The Law based upon the Solvency II would encompass a chapter regulating the status of the insurers being exceptions to the implementation of the new directive, in such manner that for these insurers the Solvency I regime will still apply.

Montenegro emphasizes that, when it comes to the Law on Bankruptcy and Liquidation of Insurance Companies and the Law on Amendments to the Law on Compulsory Traffic Insurance, the similar practice from the previous EU accession negotiations will apply, i. e. certain parts of the transposed *acquis* shall become applicable only upon the EU accession date, such as for example:

- Provisions on reporting to the European bodies and regulators, including the bankruptcy and liquidation procedures;
- Single premium of compulsory motor vehicle liability insurance (single premium),
- Amount of sum insured as compulsory motor vehicle liability insurance.

This does not diminish the degree of legislative framework alignment, considering that these are provisions that ensure equality in operations of both national and EU insurers. It is necessary to ensure equal conditions in business operations through freedom of establishment, as well as through freedom of providing services. These provisions relate also to obligations of regulators that are to come into effect / or are to be anticipated / from the moment Montenegro will become a member of the EU. Incorporating this part of the *acquis* into national laws in a manner which implies for such provisions to enter into force from the date of the accession on, represents a standard wording in regulations of countries applying for the EU membership.

b1) Montenegro has reached a good level of alignment with the requirements of life insurance related *acquis*. Before its accession, Montenegro will have commenced with preparations for full alignment with the Directive 2008/19/EC, replacing the Directive 2002/83/EC concerning life insurance, when it comes to the implementing powers conferred to the Commission.

Montenegro will reach full alignment in this regard by enacting the Law on Insurance, whose adoption is planned for the end of 2015, whereby the effective implementation of provisions regarding the Commission powers, the amount of minimum share capital of insurance companies, branches of insurance companies whose registered seat is within the EU territory, status of the Swiss Confederation, depositing and investing insurance funds and territorial principle, as well as provisions on single-license principle, will start from the date of the accession to the EU.

b2) Montenegro will complete in the following period the alignment with the Directive 98/78/EC on supplementary supervision of insurance companies within insurance group.

Full alignment in this regard shall be reached by enacting the Law on Insurance, whose adoption is planned for the end of 2015, whereby the effective implementation of one part of provisions regarding the cooperation among the competent bodies of the Member States shall start from the date of the accession to the EU.

b3) Montenegro has reached a good level of alignment with the *acquis* requirements on reinsurance by transposing to a great extent the Directive 2005/68/EC. Nevertheless, Montenegro needs to further align with the Directive 64/225/EEC on abolition of restriction on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession; Montenegro will have to align with the Directive 2008/37/EC on reinsurance regarding the implementing powers conferred to the Commission.

Montenegro will reach full alignment in this regard by enacting the Law on Insurance, whose adoption is planned for the end of 2015, whereby the effective implementation of provisions regarding the Commission powers, the amount of minimum share capital for reinsurance companies, branches of insurance companies with registered seat within the EU territory, depositing and investing insurance funds and territorial principle, as well as provisions on single-license principle shall start from the date of the accession to the EU.

b4) Montenegro has reached a high level of alignment with the *acquis* requirements on insurance intermediation by transposing to a great extent the Directive 2002/92/EC. The divergence exists in the part relating to the amount of sums insured for professional insurance against liability for damages caused by failure to perform activities of insurance intermediation.

Montenegro will reach full alignment in this area by enacting the Law on Insurance, whose adoption is planned for the end of 2015, whereby the effective implementation of the sums insured is to be aligned with the EU standards starting from the date of the accession to the EU.

b5) Montenegro has reached a good level of alignment with the *acquis* requirements regarding the motor vehicle liability insurance by transposing to a great extent the Directive 2009/103/EC. The divergence exists in the part regulating the validity of insurance policy throughout the entire EU territory (single premium) and amounts of sums insured for damages made to persons and their property.

Montenegro will reach full alignment in this area by enacting the Law on Amendments to the Law on Compulsory Traffic Insurance, whose adoption is planned for the end of 2016, whereby the amounts of sums insured are to be finally aligned with the EU standards starting from the date of the accession to the EU.

b6) Montenegro's legislation is aligned to a very limited extent with Directive 2003/41/EC (IORP) requirements for occupational pensions and the supervision of institutions for occupational pension insurance.

The legislation that is related to the occupational pensions has not been implemented in Montenegro, which means that currently neither there exist an adequate regulatory framework based on the IORP Directive, nor a potentially defined institutional responsibility for regulating and supervising the operations of the occupational pension funds.

Montenegro will take the necessary steps towards the full alignment with the *acquis* in the field of occupational pensions and supervision of institutions for occupational pension insurance, in particular through the implementation of Directive 2003/41/EC, via the adoption of the Law on voluntary pension funds in the fourth quarter 2018.

b7) Montenegrin legislation is partly aligned with the *acquis* requirements on annual accounts and consolidated financial reports of insurance companies. The divergence with the Directive 91/674/EEC exists, inter alia, when it comes to the form of balance sheets, as well as regarding the form of profit and loss statements.

Montenegro will reach full alignment in this area by amendments to the Law on Insurance, as well as by enacting the new Rulebook on annual reports of insurance companies, which shall, inter alia, prescribe new balance forms for the regulatory purposes, and also by amendments to the Rulebook on chart of accounts for insurance

companies. Montenegro plans to adopt the aforesaid documents before the end of 2015, reaching thereby a full alignment with the requirements of this Directive.

b8) Montenegro applies to a great extent the Directive 2001/17/EC on reorganisation and liquidation of insurance companies. Divergence exists in the part regarding the liquidation rules applicable within the Community, notices to competent authorities of other member states and branches of third countries.

Montenegro will reach full alignment in this regard by enacting the Law on Bankruptcy and Liquidation of Insurance Companies. The implementation of this plan has already commenced, considering the fact that the Insurance Supervision Agency submitted to the Ministry of Finance a proposal of the Law on Bankruptcy and Liquidation of Insurance Companies at the end of January 2014, which is aligned with the Directive 2001/17/EC, as well as the fact that the adoption of this Law has been envisaged by the Work Plan of the Government of Montenegro for IV quarter 2014. Hereby, the same applies as to the aforementioned cases, so that a part of its provisions related to the compulsory cooperation and disclosure of information to the European Commission and other supervisory authorities will come into effect starting from the date of the accession to the EU.

*

Regarding the strengthening of administrative capacities, Insurance Supervision Agency will, as a high priority task, continue the implementation of activities on further strengthening of administrative, professional and institutional capacities, particularly in the domain of full implementation of the EU standards, when it comes to the insurance supervision, development of supervisory practice and the new Solvency II requirements. Moreover, the Insurance Supervision Agency will perform activities on strengthening its capacities and knowledge in terms of developing an advanced and reliable IT infrastructure, which will be aligned with the EU supervision standards. The Insurance Supervision Agency applied for IPA 2015-2020 Programme, with the aim to implement the planned activities in this regard. The Insurance Supervision Agency will continue intensive cooperation with supervisors from the EU Member States and from the Region, aimed at a direct transfer of knowledge, experience, practice and information. The main responsibility of the Agency – control of the entities operating at the insurance market shall continue regularly, in accordance with the work plan and internal plans, the same as in the previous period.

III c) Financial market infrastructure

Montenegro has reached a moderate level of alignment in the field of financial market infrastructure and partly applies the *acquis* in this area.

In order to achieve full and effective implementation of the *acquis* until the accession to EU, Montenegro will adopt the ***Law on Capital Market***.

c1) Montenegro is partly aligned with the *acquis* requirements for settlement finality in payment and securities settlement systems. Legislative amendments will need to clearly define key concepts of the Directive 98/26/EC and include provisions regarding the insolvency proceedings against a participant in the system and the outcome of such proceedings towards the system.

Montenegro will achieve full compliance in field of settlement finality in securities settlement system, by the adoption of Law on Capital Market by the first quarter of 2015, with the application within six months from the date of adoption.

c2) Montenegro is largely aligned with the *acquis* on financial collateral arrangements by having almost fully transposed Directive 2002/47/EC. The EC recommendation is that authority in charge of overseeing the implementation and enforcement of the Law on Financial Collateral Arrangement needs to be defined.

Montenegro has considered a recommendation concerning the determination of the body that will supervise the implementation of the Law on Financial Collateral Arrangement. Bearing in mind that the Directive 2002/47/EC does not define obligation to establish supervision over the implementation of this law, it was very difficult to adequately resolve the issue of supervision over the implementation of this law. Since the law is governing the relationships between the various entities (financial sector, central banks, government, funds, etc.), it would be difficult to determine a supervisor, or several, which would conduct the supervision of the implementation of the law in such way to encompass surveillance to all entities to which this law applies. The law does not contain penalty provisions, so possible actions which may not be in compliance with this law would not be adequately sanctioned. From the analysis of the comparative solutions from other countries, including regulations of several EU members, we have not been able to find a regulation establishing the obligation of supervision over the implementation of this law and certain bodies that are bound to supervise that implementation.

We expect that, after the amendment of legislation in the field of banking and capital markets, there will be change in the range of entities in Montenegro that can implement the Law on Financial Collateral Arrangement, and in the case of the adoption of such changes, amendments of this law would be made possibly by the end of 2017.

c3) Montenegro will fulfil the requirements of Regulation (EU) No 648/2012 ("EMIR") by the time of accession to the EU. Despite the fact that the requirements on CCPs and trade repositories may not be directly relevant due to the lack of such infrastructure in Montenegro, the clearing obligation of OTC derivative contracts and the reporting obligations set out in this text are relevant for financial institutions such as credit institutions, investment funds, and insurance undertakings.

Montenegro will achieve full compliance in this area by the adoption of **Law on Capital Market** by the first quarter of 2015, with the implementation date within six months from the date of adoption.

III d) Securities markets and investment services

Montenegro has reached a moderate level of alignment in the field of securities markets and partly applies the *acquis* in this area.

In order to achieve full and effective implementation of the Acquis until the accession to EU, Montenegro will adopt the **Law on Capital Market, Law on investment funds and Law on alternative investment funds**.

d1) Montenegro's legislation is partly aligned with Directive 2004/39/EC on markets in financial instruments (MiFID). Further alignment is necessary in the area of licensing, categorisation of clients, types of markets and cross-border services.

Montenegro will achieve full alignment in this area, including the Directive 2006/73/EC and Regulation (EC) No 1287/2006 by the adoption of Law on Capital Market by the first quarter of 2015, with the implementation date within six months from the date of adoption.

Montenegro will take further steps towards full alignment in this area, including the transposition of the related directives (MiFID II) and regulations, in the period following the adoption of this Law, until the end of the fourth quarter 2018.

While respecting the commitments of the EU accession process, we consider that the provisions of the directive MIFID II should not be transposed within the aforesaid Law on the Capital Market, but that it should be done at a later stage – in the fourth quarter of 2018. We find it important to adopt the Law on Capital Market as scheduled, because of the alignment in other areas it regulates: Prospectus, Transparency, Market abuse, Investor compensation scheme, etc.

Further to that, the fact remains that a longer period necessary for the implementation of the directive MIFID II is expected, during which regulatory technical standards will be created by ESMA. In light of this, SECMN would avail itself of this period to receive the necessary expert assistance for the implementation of this directive, through an IPA II project.

d2) Montenegro is partly aligned with Directive 2003/71/EC on prospectuses. Lack of alignment exists in the part referring to the term "professional investor", as well as related to the elements of prospectus, the exemptions from the obligation to prescribe certain elements of the prospectus and the obligations of issuers and regulatory authorities in cross-border public offerings of securities.

Montenegro will achieve full alignment in this area, including the amending Directive 2010/73 /EU, by the adoption of Law on Capital Market by the first quarter 2015, with the implementation date within six months from the date of its adoption.

d3) Montenegro has reached a moderate level of alignment with the Directive 2003/6/EC on market abuse. Further progress is needed to close the identified

legislative gaps (obligation to notify suspicious transactions, exceptions for buy-back or stabilisation programmes).

Montenegro will achieve full alignment in this area, including the implementing legislation such as the Directive 2004/72/EC, by the adoption of the Law on Capital Market by the first quarter 2015, with the implementation date within six months from the date of its adoption.

The transposition of legislative changes in the area of market abuse, which are to be adopted at the EU level soon, will be performed in the period following the adoption of this Law, until the end of the fourth quarter 2018.

d4) Montenegro is partly aligned with Directive 97/9/EC on investor compensation schemes. The inconsistency with the *acquis* refers to the absence of an adequate guarantee fund for investors.

Montenegro will achieve full compliance in this area by the adoption of Law on Capital Market by the first quarter of 2015, with the implementation date within six months from the date of its adoption.

The transposition of legislative changes in the area of investor compensation scheme, which are to be adopted at the EU level soon, will be performed in the period following the adoption of this Law, until the date of accession of Montenegro to the EU.

d5) Montenegro is partly aligned with the *acquis* requirements for UCITS. Future legislative work towards full alignment with Directives 2007/16/EC and 2009/65/EC on the coordination of laws, regulations and administrative provisions related to UCITS will take place. Montenegro will ensure the alignment with Directive 2011/61/EC on Alternative Investment Fund Managers and requirements of Regulations 345/2013 and 346/2013 on European Venture Capital Funds and European Social Entrepreneurship Funds by the time of accession to the EU. Even though there are currently no such funds in the country, the fact remains that all these regulations allow for "passporting" rights into other EU Member States, and therefore Montenegro will have to meet its obligations, should it become a host Member State for any of these funds.

In 2014, SECMN will conduct an Analysis of the application of the Directive 2011/61/EC on Alternative Investment Fund Managers, which would also relate to the parallel adoption of the amendments to the Law on Investment Funds in order to complete the transposition of the UCITS Directive. Montenegro also takes note of the amendments to the UCITS Directive, i. e. UCITS V.

Montenegro will achieve full compliance in this area by the adoption of the Law on investment funds and the Law on alternative investment funds by the end of the fourth quarter 2018.

*

The SECMN will continue to strengthen its overall administrative and institutional capacity to account for the expanding responsibilities which the evolving *acquis* entails.

LIMITTE