



Government of Montenegro

**NEGOTIATING POSITION OF MONTENEGRO
FOR THE INTERGOVERNMENTAL CONFERENCE ON THE ACCESSION OF
MONTENEGRO
TO THE EUROPEAN UNION
FOR CHAPTER 10 INFORMATION SOCIETY AND MEDIA**

Podgorica, 10 October 2013

I NEGOTIATING POSITION SUMMARY

Montenegro accepts the *acquis* with respect to Chapter 10 **Information Society and Media** as of 21 January 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 under this chapter.

II LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

Montenegro will work continuously on improving the capability of high speed broadband Internet access, according to the Information Society Development Strategy for the period 2012-2016, adopted in December 2011, and in line with the objectives defined in the Digital Agenda for Europe. The Strategy plans improvement of broadband access capability for access to a high speed to ensure symmetric and guaranteed broadband access of at least 10 Mbps to 50% of the population by 2014, and 10 Mbps for 100% of the population and 30 Mbps for 50% of the population in 2016. The Strategy also plans the achievement of mass acceptance of ICT and the Internet at the level of 70% use of the Internet by 2014. and 80% by 2016.

The Information Society Development Strategy covers electronic communications and broadband.

Montenegro delegated a representative for the High level Working Group for the Digital Agenda for Europe in July 2013.

II.a. Electronic communications and information-communication technologies (ICT)

Legislative framework

The basic law in the area of electronic communications is the Law on Electronic Communications, adopted on 30 July 2013. This law regulates the manner of managing and using of electronic communication network, conditions and manner of performing activities in the area of electronic communication, as well as the other issues of significance for electronic communications. The Law introduces substantial changes which simplify the regulation and encourage further liberalization of the electronic communication market, defines higher independence of regulators and improves the area of the protection of users and confidentiality

and secrecy of their data in electronic communications. Among other things, it provides that the power of appointment and dismissal of the Council of the Agency for Electronic Communications and Postal Services (EKIP) goes completely from the executive to the legislative authority - the Parliament. Furthermore, the power authority of the Ministry as supervisor of the Agency has been excluded, regarding the independence of the Agency. The Ministry is not the second instance anymore in the process of appeals against decisions of the Agency. The Law on Electronic Communications defines introduction of quality of services and responsibility of service providers. The Law emphasizes the issue of protection of consumers in provisions dealing with exact calculation of provided services.

According to the Law on Electronic Communications, management of radio frequency (RF) spectrum comprises planning, allotment, coordination, monitoring and control of use of RF spectrum are prescribed. Radio frequency spectrum is managed by EKIP in accordance to international agreements and to this law. Government adopts Allocation Plan of the RF spectrum which is prepared by EKIP. The Allocation Plan defines radio frequency bands for individual radio communications services. Following the process of public consultations, EKIP adopts The Radio Frequency Allotment Plan which defines assignment of bands to radio-frequency channels, detailed conditions, manner of use and assignment of individual radio frequencies pertaining to particular radio frequency bands. Natural and legal persons can use radio-frequencies based on decision on authorization of use of radio frequencies issued by EKIP. As an exception to this, there are radio frequencies that can be used without authorization and under conditions of their use provided by the rulebook of the MIST. EKIP keeps the register of authorized radio-frequencies, controls and monitors the RF spectrum.

The Law on Electronic Communications was prepared and adopted to be aligned with the EU *acquis*, transposing the following EU directives and regulations: *Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services (Framework Directive)*; *Directive 2002/20/EC on the authorization of electronic communications networks and services (Authorization Directive)*; *Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)*; *Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)*; *Directive*

2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on Privacy and Electronic Communications); Directive 2002/77/EC on competition in the markets for electronic communications networks and services; Decision 676/2002/EC of the European Parliament and of the Council on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision); Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (Data Retention Directive)¹; Directive 2009/140/EC Better Regulation Directive; Directive 2009/136/EC Citizens' Rights Directive; Directive 98/84/EC of the European Parliament and of the Council on the legal protection of services based on, or consisting of, conditional access; Regulation (EC) No 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (BEREC Regulation).

Institutional framework/Administrative capacity

The Ministry for Information Society and Telecommunications (MIST) is the administration body with the competencies of the electronic communications and the radio spectrum. Directorate for Electronic Communications, Postal Services and radio spectrum, as the division within Ministry, covers this area. The Directorate has 10 employees, of which 6 works in electronic communications.

Montenegro is the member of the ITU and representatives of MIST participate in the ITU working and experts groups.

The Agency for Electronic Communications and Postal Services (EKIP) is a regulatory body which regulates the electronic communications market and it is functionally independent from legal and natural persons who provide electronic communications networks, equipment or services.

EKIP employs 65 persons. Activities in the field of electronic communications and information technologies are covered by the organizational units: Legal Affairs Department, Finance Department, Electronic Networks and Services Department, Radio communications Department, Section for General Affairs and Inspection

¹ Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (Data Retention Directive) is covered in Chapter 24 Justice, Freedom and Security

Department. Within the Legal Affairs Department there are Section for Regulation and Dispute Settlement and Section for Users Protection. Within the Finance Department there are Section for Relevant Market Analysis and Section for Economic Aspects of the Market Regulation. Section for Information Technologies is the part of the Section for General Affairs.

Representatives of EKIP participate as observers in the work of steering and working bodies within BEREC from September 2011, as well as in the work of ITU.

II.b. Information society services

Legislative framework

The e-business system in Montenegro is regulated by:

- the Law on Electronic Signature (Official Gazette of the Republic of Montenegro 55/03, 31/05 and Official Gazette of Montenegro 41/10) which regulates the use of electronic signatures in legal system, administrative, judicial and other proceedings, as well as the rights, obligations and responsibilities of legal and natural persons in relation to electronic certificates;
- the Law on Electronic Commerce (Official Gazette of the Republic of Montenegro 80/04 and Official Gazette of Montenegro 41/10) regulating the provision of services on distance, for a fee, by electronic equipment for the processing and storage of data on the user's personal request, the liability of providers of information society services and the rules regarding the signing of the contract in the electronic form;
- the Law on Electronic Document (Official Gazette of Montenegro 5/08) which regulates the use of electronic documents in legal system, administrative, judicial and other proceedings, as well as the rights, duties and responsibilities of companies, entrepreneurs, legal and natural persons, national authorities, administration bodies, local self-government units and bodies and organizations exercising public authority in relation to the electronic document;
- the Law on Information Security (Official Gazette of Montenegro 14/10) regulating the application of the measures and standards of information security, as well as by bylaws adopted in line with the Law on Electronic Signature.

Directive 98/84/EC of the European Parliament and of the Council on the legal protection of services based on, or consisting of, conditional access has been transposed in the Law on Electronic Media (Official Gazette of Montenegro, No. 46/10, 40/11, 53/11, 6/13), in the part related to the radio and television services, while the information society services are covered by the new Law on Electronic Communications. In the Law on Electronic Communication conditional access means any technical measure that provides access to a protected service.

The Law on Electronic Signature is aligned with the Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures. The Law on Electronic Commerce is currently in the amendment procedure with the aim of full alignment with the Directive 2000/31/EC of the European Parliament and of the Council of on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

A strategic approach to the information society development in Montenegro was recognized in 2003 when the *Information Society Development Strategy 2003-2007* was adopted. After the *Information Society Development Strategy 2009-2013*, Montenegro adopted the *Information Society Development Strategy for the period 2012-2016, in December 2011*. Other relevant adopted strategic documents are the *Program for Information Security, the Strategy for establishment the certification body in Montenegro, the Strategy for the use of Open Source Technologies, the National Information Security Program and the National Interoperability Framework*.

The Government adopted the Strategy for Establishment of the Certification Body in Montenegro in 2009. Two certification bodies were established in Montenegro: GOV CA (certification body for administration bodies and national authorities) and POSTACG-CA (certification body at the national level). Posta CG-CA issues qualified certificates to natural and legal persons who use them through the use of country public services.

The Government of Montenegro adopted the *National Interoperability Framework in December 2011* as a strategic document that defined the rules and manner of setting up interoperability in Montenegro.

Institutional framework/Administrative capacity

The Ministry for Information Society and Telecommunications (MIST) prepares laws and other regulations in the field of information society and manages and

coordinates projects in the area of information society for national authorities. MIST covers the activities of establishing the technologic and secured IT infrastructure in the national authorities and of joint procurement of IT resources and Internet services for administration bodies. MIST analyzes the conditions and resources that are necessary for the e-government development and planning of the overall architecture of e-government system. Central Electoral Register and the Central Register of Population are operated in MIST, as well as the Internet domain management policies in line with international standards. Measures for promotion and stimulation of research in the field of information society are proposed too, along with the other activities defined as competences of the Ministry.

Departments of MIST with responsibility of information society services are: the Directorate of IT infrastructure with 20 employees, the Directorate for Development of Electronic Government with 9 employees and the Department for Electronic Registries with 5 employees.

Since the establishment of the CIRT, as the unit of the Directorate of IT infrastructure, that is in charge of information security, administrative capacity has been strengthened from 3 to 4 employees. CIRT is a member of the following international institutions relevant for the field of information security: FIRST; Trusted Introducer (FIELD, TF-CSIRT), ITU-IMPACT coalition. Through the membership in these organizations, CIRT establishes contacts and cooperation with other CERT/CIRT teams all over the world.

Through the IPA 2010 program, project "Strengthening of Administrative Capacities in the Information Society" was realized, with the aim of rising quality of information society services and increasing use of Internet and on line services. This project is consisted of the following components: *Strengthening of the Information Society Legal Framework*; *Raising the level of awareness about Information Society Services among the most relevant stakeholders*; *Framework and Standards for defining e-Government services* and *Strengthening the infrastructure capacity and Interoperability Framework procedures*. The main activities were strengthening the administrative capacity of MIST through the workshops, trainings, study visits etc, and documents and guidelines for further information society development were prepared.

The realization of the IPA project "Introduction of European Computer Driving License (ECDL) standards in Montenegro" started in December 2012, with the plan for education of 3500 civil servants based on standard ECDL. The aim of the Project is strengthening of administrative capacity in ICT through the training of public

service employees and teachers. Two test Government centers were established in the Human Resources Management Authority and in the Examination Center in June 2013.

II.c. Audio-visual policy

Legislative framework

The base of the legislative framework related to the audio-visual media services consists of: the Law on Media (Official Gazette of the Republic of Montenegro, No. 51/02, 62/02, Official Gazette of Montenegro, No. 46/10, 73/10, 40/11), the Law on Electronic Media, the Law on Ratification of the European Convention on Cross-Border Television (Official Gazette of Montenegro, No. 01/08), the Law on Digital Broadcasting (Official Gazette of Montenegro, No. 34/11, 31/12), the Law on Ratification of the Convention on Protection and Promotion of the Diversity of Cultural Expressions (Official Gazette of Montenegro, No. 03/08). The Law on Electronic Media ensures a high level of alignment with the Audiovisual Media Services (AVMS) Directive (2010/13/EU) of the European Parliament and Council of 10 March 2010. The Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro, No. 79/08, 45/12) regulates the rights and obligations of the national public service broadcaster, the Radio and Television of Montenegro (RTCG), appointment, dismissal and competences of the Council of the RTCG and the Director of the RTCG, structures of the sources of financing, guarantees of its programme and financial independence. This Law is aligned with the Council of Europe Recommendation No. (96) 10 of the Committee of Ministers to Member States on the guarantee of the independence of public service broadcasting, Council of Europe Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states and with other relevant international documents in the field of media.

The legislative framework of Montenegro in the area of film heritage is fully aligned with the EU *acquis*. The area of film heritage is regulated by the Law on Culture (Official Gazette of Montenegro, No. 49/08, 16/11, 40/11, 38/12), the Law on Cinematography (Official Gazette of Montenegro, No. 14/08, 40/10, 40/11), the Law on Ratification of the European the Convention on Protection of the Audiovisual Heritage (Official Gazette of Montenegro, No. 14/11), the Protection of Cultural

Property Act (Official Gazette of Montenegro, No. 49/10, 40/11), the Law on Archival Practice (Official Gazette of Montenegro, No. 49/10, 40/11) and the Law on Copyright and Related Rights (Official Gazette of Montenegro, No. 37/11).

Institutional framework/Administrative capacity

Within its competences, the **Ministry of Culture** drafts the laws and provides expert opinions on implementation of the laws. These issues fall within the competence of the **Directorate for Media** with 5 employees.

The Film Archives of Montenegro is a public institution competent for the protection, collection and valorization of the film heritage. The Film Archives of Montenegro is under the supervision of the Ministry of Culture.

The Agency for Electronic Media of Montenegro was established in 2003 as an independent regulatory body in the field of audiovisual media (AVM) services, with power according to the Law on Electronic Media. It acts in the best public interest and it is functionally independent from any national authority and from any legal and natural person dealing with production and broadcast of radio and television programmes or providing of other AVM services. Within its jurisdiction the Agency proposes program of development of the AVM services sector; issues authorizations for providing AVM services; determines fees for issuing and using of authorizations of AVM services; keeps records of the AVM services providers and electronic publications; decides on complaints of natural and legal persons in relation with the work of the AVM services providers, supervises the implementation of the Law on Electronic Media and makes and implements bylaws on enforcement of this law. There are 20 employees in the Agency. The Agency Council is appointed and dismissed by the Parliament of Montenegro. The Director of the Agency is appointed and dismissed by the Agency Council.

The clear rules were prescribed on preventing and combating of conflict of interest of the members of the Council by the Law on Electronic Media (Article 17), the Statute of the Agency (Articles 40 and 41), the Rules of Procedure of the Agency

Council (Articles 4, 9 and 10) and the Code of Conduct of the Agency for Electronic Media.

The Agency improved technical capacity for continuous monitoring of all TV programs and majority of Radio programs in the territory of Montenegro by purchase of hardware and software solutions for monitoring in 2013.

Public services broadcasters of Montenegro are Radio of Montenegro and Television of Montenegro.

The Law on Public Broadcasting Services (Official Gazette of Montenegro, 79/08, 45/12) defines that the basic activity of the the **Radio and Television of Montenegro** (RTCG) is production and broadcasting of two programs of Radio of Montenegro, two programs of Television of Montenegro and transmitting and broadcasting of the Parliamentary Television. The the Law on Public Broadcasting Services defines internal organization, managing, decision-making, program orientation, financing and other questions related to operations of RTCG regulated.

The RTCG was established by the state. The Council of RTCG performs the founder's rights, according to the Law on Public Broadcasting Services of Montenegro. The RTCG Council represents the public interests and it is independent from the national authorities and from all the organizations dealing with production and broadcast of radio and television programmes or related activities (advertising, telecommunications and others).

The RTCG Council is appointed and dismissed by the Parliament of Montenegro. Article 26 of the The Law on Public Broadcating Services prescribes clear rules on preventing and combating of conflict of interests of the members of the Council.

The RTCG adopted the RTCG Development Strategy 2011 – 2015 in July 2011. The implementation of the Strategy is underway. The strategic goals of the RTCG comprised by this document are: synergy of TV, Radio and Portal; digitalization of program production and broadcasting; financial stability and financial independence, transparency, modernization and adaptation of the organizational structure to the modern challenges. The Strategy deals with methods for reaching the mission of a public broadcaster; economics of the public broadcaster; program

strategy, legislation functional strategy related to the technical and technological area and human capacities.

The RTCG adopted the Rulebook on Amendments of the Rulebook on internal organization and systematization of job positions in July 2013, which defined 650 job positions. According to this, the administrative and technical capacity of RTCG will be improved in order to fulfill the mission of public services broadcaster.

The representatives of Montenegro participate as observers in the work of the Contact Committee of the European Commission for the Audiovisual Media Services Directive, from October 2012.

III ALIGNING THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE ACQUIS

Montenegrin legislation in the field of **electronic communications** is largely aligned with EU *acquis*, through the compliance of the basic Law on Electronic Communications with the „2009 Telecom Package“

Montenegro's legislation is largely aligned with the *acquis* on **information society services**.

In the field of **audiovisual policy**, Montenegro's legislation is largely in line with the Audiovisual Media Services (AVMS) Directive (2010/13/EU). With the aim of full alignment with the European media standards, notably the relevant recommendations and declarations from the OSCE, the Council of Europe and the European Commission, as well as with the AVMS Directive, Montenegro will adopt amendments of the Law on Electronic Media.

Montenegro has the institutional framework and administrative capacity to implement the *acquis* in the areas of electronic communications, information society services and audiovisual policy. Montenegro will continue to strengthen its administrative capacity in these areas.

III.a. Electronic Communications

Legislative framework

The Law on Electronic Communication prescribes the adoption of bylaws within one year from the date of entry into the force of this Act, i.e. until August 2014. These bylaws will ensure transparency of proceedings before the Agency, keeping of registers, consumers' protection, quality services, networks planning, access and interconnection, matters of universal services use, etc. Bylaws are passed by MIST, relevant institutions and regulator (EKIP).

The digitalization project in Montenegro was launched in cooperation with the EU through co-financing the project from IPA 2009. Due to delays of the equipment supplier in performing the contract obligations, the deadline of transition to digital broadcasting is set to 17 June 2015. A call for the purchase of equipment for the second phase of digitalization process, financed by the Government of Montenegro, is planned for November 2013. Montenegro will adopt an Action Plan in December 2013. with the aim of quality and planned implementation of this project. The Action Plan will enable participants in this process to coordinate the activities in order to ensure a timely and efficient transition from analogue to digital broadcasting, no later than the date defined by the Law on Digital Radio-Diffusion.

Administrative capacity

MIST is continuously committed to the strengthening of administrative capacity in electronic communications through advanced training of employees. Montenegro will continue to apply for assistance through the TAIEX and Twinning, with the aim of strengthening the capacities.

EKIP representatives will participate in the training course "Technological, economic and legal principles of electronic communications" that will be organized from October 2013 to April 2014. The organizer is the Florence School of Regulation (FSR) - Communication and Media.

In order to strengthen the administrative capacity of the Broadcasting Centre, the training on DVBT2 software planning tool will be organized until the end of 2013.

III.b. Information society services

Legislative framework

Draft Law on amendments of the Law on electronic commerce has been prepared, in accordance with previous comments from EC, for the full alignment with the 2000/31/EC 'Directive on electronic commerce'. Changes have been done to complete transposition of the articles: 4 - Principle excluding prior authorization, 7- Unsolicited commercial communication and 18-20 - Court actions, Cooperation and Sanctions. The Draft Law is in the Parliament procedure, after approval by the Government on 27 June 2013.

Drafting of the Law on e-Government has been started. This law will regulate, in more details, the organization of development of information society, electronic registers, exchange of electronic data etc. Plan for adoption of the Law is till the end of 2013.

In the Strategy for the Development of Information Society 2012-2016 Montenegro envisaged establishment of the system for electronic data exchange as a basis for technical interoperability. The system will be established in 2015.

The new action plan on e-Government which treats interoperability with the focus on cross-border cooperation as one of the important activities is being drafted. The action plan will be adopted by the end of 2013.

In order to define the re-use of public sector information, the working group was established 28 February 2013, with the task of drafting a legal solution on the re-use of public sector information with the aim of legislative alignment. This legal solution, which is planned to be adopted by the end of 2014, will more closely regulate this area, and also fully transpose the Directive 2003/31/EC of the European parliament and of the Council on the re-use of public sector information.

The Strategy of Cyber Security 2013 – 2017 was adopted by the Government on 12 September 2013. The aim of the Strategy is to define institutional and organizational structure in the area of information security in the country and to develop the local CIRT teams in the national authorities and administration bodies. It is planned to establish the Council for information security by the Government, till the end of 2013.

According to the Law on Data Collections in the Field of Health Care, the drafting of the bylaw prescribing conditions and manner of data access in health information

system and electronic data exchange between health care providers and database administrators started. Drafting of the rulebook on the system registers started too, relating to registers of resources in the health system: the registry of health care personnel and registry of medical institutions, as well as the preparation of IT support for electronic forms. These rulebooks will be adopted by the end of 2013.

Montenegro will continue activities for the full implementation of the Law on Health databases, as well as the activities in the area of the e-health through the further development and improvement of integrated health information system, with dominant strengthening of health statistics information system of the Public Health Institute as administrator of health databases.

Administrative capacity

MIST will continue to work on strengthening administrative capacities and education of staff through professional trainings in the area of information society services. Montenegro will continue to apply for assistance through the TAIEX and Twinning, with the aim of strengthening the capacities.

Through the ECDL project, in addition to further training of public administration employees and teachers, the promotional activities are planned to raise awareness of the importance of the ECDL standards.

The key activities for strengthening the administrative capacity in the fight against cyber-crime, in addition to improvement of CIRT team of MIST, are planned for the period up to the end of 2017. These are: strengthening the specialized units for the fight against cyber-crime in the Police, in the Army of Montenegro, in the Agency for National Security, in the Prosecution in the area of cyber-crime and electronic evidence.

III.c. Audiovisual policy

Legislative framework

Montenegro will adopt the amendments to the Law on Electronic Media at the latest by 2016, in order to release the Agency for Electronic Media from the obligation to submit operational and financial plans and reports to the Parliament for approval.

By the end of 2013, the Agency for Electronic Media will adopt necessary bylaws to complete the regulatory framework for efficient implementation and monitoring respecting the conditions prescribed by Audiovisual Media Services Directive (referring to quotas for European works and for independent productions).

Administrative capacity

Improvement and strengthening of the administrative capacities of the Agency for Electronic Media for program monitoring will be developed in accordance with further needs for prompt and high-quality monitoring, analysis and reporting on implementation of the program standards. Special emphasis will be on monitoring of the realization of obligations relating to participation of European audiovisual works and works of independent producers in the national TV programs, as well as in the AVM services offers on-demand.

Improvement of technical capacities for monitoring and analysis of broadcasted program will be continued during 2014. Related to this, it is planned to mobilize assistance through TAIEX projects, cooperation with the OSCE and Council of Europe, through experiences and good practice of neighboring countries and the EU member states primarily in the field of protection of minors, media pluralism, standards for the advertising etc.

The drafting of the new Restructuring Plan of the RTCG was initiated in September 2013. The Plan will contain key priorities aiming at sustainability and stability of the public service broadcaster. Deadline for the adoption of the Plan is April 2014.

The RTCG prepared the Draft Digitalization Plan with regard to the time line defined by the Law on Digital Broadcasting. The Draft Digitalization Plan envisages digitalization of radio, television – First Program, Second Program, Satellite Program and establishment of Parliamentary Television of HD Standard and digitalization of program archives. This document envisages purchase and integration of digital systems in radio and television with the aim of better quality of sound and picture, greater program possibilities, greater accuracy, quality presentation of information and presence of multiplatform. The document is planned to be completed by the end of 2014.

Montenegro is interested in the signing of the Memorandum of Understanding with the European Commission regarding the participation in the programme *Creative Europe 2014-2020*.

On 5 February 2013, Montenegro launched the initiative for accession to the Support Fund of the Council of Europe *Euroimages*.