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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES
AND THE FINANCING OF TERRORISM
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON MONTENEGRO

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

SUMMARY[1]

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

[1] Adopted by MONEYVAL at its 29th Plenary Meeting (Strasbourg, 16-20 March 2009). For further information on the examination and adoption of this report, please refer to the Meeting Report (ref: MONEYVAL(2009)16 at www.coe.int/moneyval)

EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Montenegro as at the date of the on-site visit from 15 to 20 September 2008 or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Montenegro's levels of compliance with the FATF 40 plus 9 Recommendations (see Table 1). The evaluation also includes Montenegro's compliance with *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (hereinafter "3rd EU AML Directive") and the *Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis* (hereinafter "Implementing Directive 2006/70/EC"). However, compliance or non-compliance with the 3rd EU AML Directive and the Implementing Directive 2006/70/EC has been described in a separate Annex but it has not been considered in the ratings in Table 1.

2. Montenegro formed part of the state union of Serbia and Montenegro before it declared independence 2006 following a referendum. As such this is therefore the first mutual evaluation of Montenegro as an independent state.

3. As a newly formed state, Montenegro has needed to develop its own legal framework. Inevitably this has meant that there have been a lot of changes and amendments in order to refine the legal framework. The evaluators were impressed by the fact that the Montenegrin authorities were open to suggestions for improvements and, in particular noted that a number of criticisms that were raised during the on-site visit in September 2008 had been addressed by the time of the pre-meeting in February 2009.

4. At the same time as establishing the basic legal framework the Montenegrin authorities have also needed to establish law enforcement agencies, including an FIU, and supervisory bodies together with their relevant powers and authority. The fact that many of the law enforcement and supervisory bodies are relatively newly formed and were still in the process of recruiting at the time of the on-site visit meant that it was difficult for the evaluators to form a view of their effectiveness and this is reflected in the ratings. As previously stated, the evaluators were impressed by the fact that the Montenegrin authorities were open to suggestions for improvements to the law enforcement and regulatory framework.

5. Turning to the money laundering situation, during the on-site visit, the evaluation team were not provided with any precise statistics on crimes believed to be the main source of illegal proceeds. The Montenegrin authorities are of the opinion that organised crime as a concept is not particularly common in Montenegro. There have only been a few cases with organised crime groups. It is the view of the Montenegrin authorities that crimes related to drugs, including illegal production and trading in drugs constitute the most serious proceed generating crime problem in Montenegro. Montenegro is a part of the transit corridor for drugs being smuggled from East to West. In addition, the authorities also mentioned goods smuggling, fraud, tax evasion, corruption and abuse of office, including the privatisation process as constituting serious crime problems. Money laundering is criminalised under the Criminal Code although, at the time of the on-site visit, there had been only one conviction involving two persons on money laundering charges.

6. Concerning terrorist financing, the evaluation team was informed by the Montenegrin authorities that they do not consider Montenegro to be exposed to terrorism or financing of terrorism.

Terrorist financing is criminalised under the Criminal Code in Montenegro although from 2004 up to the time of the on-site visit there were no legal proceedings for the criminal offence of terrorist financing.

2. Legal Systems and Related Institutional Measures

7. As stated above, money laundering is criminalised under the Criminal Code. The scope of the criminal offence of money laundering is not fully consistent with the Vienna and Palermo conventions and the definition in the Criminal Code of the commission of the criminal offence of money laundering is limited to conduct, which falls within "*banking, financial or other business operations*". Furthermore, with regard to "business operations", there is no explicit definition of such conduct in the Criminal Code; it appears that informal contracting among natural persons who are not individual entrepreneurs (private purchasing, exchanging, etc.) would not fall within this scope. The requirement in both Conventions for incrimination of "conversion or transfer" as such is met, because the incrimination in the Criminal Code applies to *any kind* of use of the banking, financial or other type of business operations. However, despite the incrimination of conversion and transfer, the definition is not entirely in line with the convention due to the limitation to "business operations". With regard to concealment, the criminalisation in the Criminal Code only covers "concealment" of the means of obtaining the property.

8. The Montenegrin authorities expressed the opinion that, with adequate interpretation by the courts, all the requirements of both conventions regarding these issues would be meet and that such interpretation would be applied in Montenegro. There is, however, no relevant court practice to confirm such statements.

9. The prior conviction of a predicate offence is not a requirement for the money laundering offence or for the proving of the existence of the proceeds of crime. It is, however, standard practice that prosecution for the money laundering offence and the predicate offence are conducted simultaneously. Identification and proof of a specific predicate offence is required by the jurisprudence.

10. The incrimination of money laundering clearly reflects the "all crime" approach, where all criminal offences, which generate proceeds, can be predicate offences to money laundering. The evaluators noted, however, that insider trading and market manipulation are not covered as predicate offences.

11. Extraterritoriality of predicate offences generally does not present a problem, because the Criminal Code is applicable for criminal offences committed abroad by Montenegrin citizens. A limitation to this principle concerns offences committed abroad by the foreigners against a foreign country. In this case the Criminal Code only applies to offences punishable by minimum of 5 years imprisonment by the law of that country.

12. Self-laundering is specifically incriminated and all ancillary offences to money laundering are sufficiently covered. Except for negligent money laundering, which is expressly provided for, the mental element is wilfulness ("knowledge") and the intent to conceal and disguise the illegal origin of the proceeds. This mental element is extrapolated from the factual circumstances of the case based on a principle of free evaluation of evidence, which is one of the basic principles of Code of Criminal Procedure.

13. Liability of legal persons is provided for in the Law on Criminal Liability of Legal Entities for Criminal Acts and defined criminal offences for which legal entities are liable includes both money laundering and terrorist financing. With regard to sanctions for legal entities, two types of punishments may be imposed, a fine and dissolution of the legal entity and may only be imposed as a principal punishment. Furthermore, legal persons also have liability for individuals acting on

their behalf. Parallel litigation or administrative proceedings in respect of legal entities is not excluded.

14. The penalty for money laundering is up to 5 years imprisonment for natural persons. Self-laundering is punished by up to ten years imprisonment. If the amount of the money or property laundered exceeds €40,000 the punishment is imprisonment from one to ten years. If committed by more persons they shall be punished by imprisonment of three to twelve years. In cases of negligence the punishment is imprisonment of up to three years.

15. The financing of terrorism offence is also criminalised under the Criminal Code. The definitions of providing and collecting, as well as the definition of funds are broad enough to meet the requirements of the Terrorist Financing Convention. It should, however, be noted that no definition of "funds" exists in law. The Montenegrin authorities consider that the courts will normally give a broad interpretation of funds but as there are no judicial findings currently relating to this definition of funds this has therefore yet to be tested.

16. The financing of terrorism offence does not require the funds to be used to carry out or attempt a terrorist act. But at the same time, due to its referring to specific criminal offences from other Articles of the Criminal Code, the definition of terrorist financing requires the funds to be linked to the specific terrorist activity. This is not is not in line with the convention and could be an important limitation for effective use in the practice. By referring to the commission of specific criminal offences, rather than by providing a general and more flexible description of terrorism, the scope of terrorist activity misses the funding of terrorist organisations and individual terrorists.

17. The attempt of committing the offence of financing terrorism itself is punishable under the general incrimination of attempt and ancillary offences to the terrorism financing offence are sufficiently covered. Following the "all-crime" principle terrorism financing is a predicate offence for money laundering. As already noted in relation to money laundering, extraterritoriality of the terrorism financing offence would normally not be a problem. The mental element for terrorism financing is intent and the intent is in practice extrapolated from factual circumstances of the case. Liability of legal persons is provided for and parallel litigations or administrative proceedings are not excluded. The penalty for financing of terrorism offence is 1 and up to 10 years imprisonment for natural persons and for legal persons can result in dissolution or a fine up to 100-times the amount of the material damage caused or illicit material gain obtained. At the time of the on-site visit, there had been no cases of terrorist financing offences in Montenegro.

18. The Criminal Code provides for the confiscation of money and property subject to money laundering and such confiscation is mandatory. The Criminal Code also provides for confiscation of funds intended for terrorism financing with such confiscation being mandatory. Instrumentalities are subject to confiscation in principle if they belong to the perpetrator. But instrumentalities can be confiscated even if they do not belong to the perpetrator in cases of public safety or morality and when there is a danger of them to be used for criminal offence again. Equivalent value confiscation is applied when the confiscation of the proceeds itself is not possible. The general confiscation regime applies to all proceeds of crime, irrespective of the fact if generated directly or indirectly and form any criminal offence. The authorities are obliged by the law, to ex-officio determine whether such proceeds have generated or not and, if so, to confiscate them. The definitions of instrumentalities and proceeds of crime are broad enough to encompass both direct and indirect proceeds. The rights of *bona fide* third parties are fully established in the law and they are to be actively included in the decision-making procedure regarding confiscation.

19. Only the court is authorised to make decisions on recovery of property subject to confiscation and confiscation is conviction based and is imposed together with the guilty verdict. Law enforcement authorities have the option of court-controlled provisional and conservatory measures in all cases where evidence need to be secured and whenever confiscation is mandatory or possible, such

initial measures are applied ex-parte and without prior notice. In cases of organised crime, seizure of objects and property gain is possible even regardless of the general conditions. There is, however, no requirement for an offender to demonstrate the lawful origin of the property and there seems to be no authority to take steps to prevent or void actions where the person involved knew or should have known that as a result the authorities would be prejudiced in their ability to recover property subject to confiscation

20. The freezing of funds used for terrorist activities is covered by the Criminal Procedure Code. The State Prosecutor may issue an order by which a competent authority or institution shall be requested to suspend temporarily the payment and issuance of suspicious money, securities or objects for a period of three months but no longer than six months. However, no laws or procedures appear to be in place in Montenegro which specifically relate to the freezing of terrorist funds or other assets of persons designated by the United Nations Al-Quaida and Taliban Sanctions Committee. Furthermore, Montenegro has not designated any persons who should have their funds or other assets frozen in accordance with S/RES/1373 (2001) and Montenegro does not examine or give effect to actions initiated under the freezing mechanisms of other countries. General guidance on freezing of funds has been issued but there is no specific guidance on the freezing of terrorist finances.

21. The Administration for the Prevention of Money Laundering and Terrorist Financing (APMLFT) is the central authority for combating money laundering and terrorist financing. It has been a member of the Egmont Group since July 2005 and operates according to the Egmont Group Documents. Its powers and duties are confirmed in Montenegro's AML law. APMLTF is an independent body whose administrative work is supervised by the Ministry of Finance. Otherwise, it has full operational autonomy. APMLFT is an administrative type of FIU.

22. APMLTF is responsible for the AML/CFT supervision of reporting entities that have no other supervisory authority (e.g. lawyers, NGOs, etc.). The evaluators are concerned that APMLTF is not staffed sufficiently to supervise the very large number of reporting entities. It was noted, however, that APMLTF had conducted a risk analysis in order to devote its resources to the sector which was considered to present the highest risks and had initially decided to concentrate on the real estate and construction sectors. The evaluators were also concerned that there was no database or register concerning the reporting entities being supervised by APMLTF.

23. APMLTF issued a List of Suspicious Transactions Indicators in March 2007. It is the view of the evaluators that this list should be revised and reissued. APMLTF does give training to reporting entities and law enforcement agencies and participates in seminars where examples of ML cases are provided although no typologies are provided to reporting entities. Feed-back is provided to reporting entities although, in general, it is on a case-by-case basis.

24. APMLTF has the legal authority to gain access to other agencies' information as well as having full access to publicly available databases maintained by government departments. APMLFT may also exchange information with foreign authorities having similar functions and which have equivalent secrecy rules, if such an information exchange is made with the purpose of preventing and combating money laundering and terrorist financing. Data held at APMLFT is securely protected and only disseminated in accordance with the AML law.

25. At the time of the on-site visit, the number of staff with the APMLTF was 27 employees, out of 34 budgeted. APMLTF is equipped with modern high-capacity equipment and appropriate software, enabling it to collect, analyse, store and disseminate a large number of STRs on an ongoing basis. Staff are provided with adequate and relevant training for combating money laundering and terrorist financing and have participated in numerous training sessions targeting the fight against money laundering and terrorism financing, both locally and abroad.

26. The main law enforcement bodies concerned with the fight against money laundering and terrorism financing are the Police Administration and the Prosecution Authority. These bodies together with their relevant powers and the scope of their activities have all been established by law. A special department for the investigation of money laundering has also been established within the Police Administration which also investigates terrorism financing. A special department for combating organised crime, corruption, terrorism and war crimes has also been established within the Supreme State Prosecution of Montenegro. The evaluators considered that measures are in place that provide law enforcement and prosecution authorities with an adequate legal basis for the use of a wide range of special investigative techniques when conducting investigations of money laundering and terrorist financing. However, due to the relatively low number of cases investigated and prosecuted, it was not possible to form a conclusion on the effectiveness of these provisions.

27. The State Prosecution maintains a regular education programme for the State Prosecutors and Deputies and the Centre for Education of Judges and Prosecutors of Montenegro has arranged a number of seminars on topics of fight against money laundering and financing of terrorism. A Police Academy has been established within the organisation of the Police Administration and training on AML/CFT matters is included as part of the programme.

28. The Customs Administration is responsible for cross-border cash movement control together with the Border Police. The Customs Administration detects and investigates customs offences and customs felonies. It collects, systematises and analyses its own data, as well as data obtained through intelligence activities or by other means and, based on analysis and assessment, conducts planned customs investigations or controls. The competence of the State Border Police is mostly related to the volume of passengers and documents and it is not involved in investigations. In addition to their primary functions, the Border Police detect perpetrators of criminal offences and criminal offences with elements of cross border crime.

29. Administrative sanctions are available to deal with non-compliance of Customs' currency rules. The evaluation team were, however, advised that customs officers cannot withdraw or seize undeclared or false declared currency or other BNI. In cases of suspicion the Customs Administration are not permitted to stop or restrain currency, except in cases where the suspicion is supported by additional evidence. Taking into consideration the growing number of cases, the evaluators believe that more specialised staff should be hired to deal with AML/CFT through cross-border transportation of currency. Staff members from the Customs Administration have attended relevant training seminars although the evaluators were not advised of any relevant training programmes arranged for the Border Police.

3. Preventive Measures – Financial Institutions

30. Turning to preventative measures, most of the provisions dealing with AML/CFT issues are set out in the Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF). The LPMLTF, which entered into force in January 2008, appears to be robust and is generally in line with applicable international standards. The fact that the LPMLTF only came into force relatively recently and the securities and insurance supervisors were recently formed meant that it was not always possible for the evaluators to form a comprehensive view of the effectiveness of implementation of the law. The evaluators did, however, note that generally those supervisors and financial institutions which they met with during the on-site visit all appeared to be aware of their obligations under the law, with the exceptions noted in this the.

31. The evaluation team did not see any formal national assessment of risk regarding money laundering and the financing of terrorism. The Government of Montenegro did, however, adopt a Program for the Fight Against Corruption and Organised Crime in July of 2005 and a subsequent Action Plan was approved in August of 2006. The LPMLTF has identified additional categories of obligor and, as stated above, APMLTF has focussed its activities on the real estate and

construction industries. In spite of these initiatives, the evaluators were of the opinion that a more formal risk assessment of the country's vulnerabilities to the threats posed by money laundering and the financing of terrorism should be conducted.

32. The main elements concerning customer due diligence appeared to be well covered in the LPMLTF although some of the Essential Criteria were not fully covered. Financial institutions are expected to conduct full due diligence on all business whether it comes through face-to-face contact or is introduced by a third party. The main concern is on the actual implementation of the legal provisions, such as beneficial owner identification. The evaluators were concerned that insufficient attention had been given to the identification of "ultimate" beneficial owners of legal persons. The evaluators also considered that there needs to be a specific requirement for obligors to assess and consider the risks of technological developments as part of their risk analysis and to verify that the persons has the relevant authority to act. There was also a concern that, with regard to non-face-to-face business, there was no requirement to establish the obligation to obtain information on the purpose and intended nature of the business relationship.

33. The evaluators were concerned that, although adequate legal provisions were in place with regard to PEPs, financial institutions did not appear to be fully aware of their obligations and had not instituted proper procedures to address the risk.

34. With regard to secrecy and confidentiality within financial institutions, all of the supervisory bodies had powers to gain access to all confidential information held by licensed businesses and individuals. Although the basic record keeping requirements as set down in the LPMLTF exceed the requirement of the recommendations there is no requirement that transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Furthermore, it was noted that there are no provisions concerning wire transactions in the LPMLTF, internationally accepted SWIFT standards are implemented, but this is merely a business requirement and is not required by law or other enforceable means.

35. There are no enforceable requirement for financial institutions to examine the background and purpose of unusual transactions and to set forth the finding of such examinations in writing. Furthermore, there are no enforceable requirements for financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations or to examine as far as possible the background and purpose of such business relationships and transactions.

36. The reporting obligation in the LPMLTF provides an obligation to report suspicious transactions before the execution of the transaction. The reporting obligation does not, however, appear to cover the money laundering reporting obligation if the transaction has already been performed. The evaluators noted that reporting entities in practice seem to be reporting suspicions arising after the execution of the transaction and it was noted that there were no reports on financing of terrorism. The low number of STRs which were filed by a limited number of financial institutions did raise concerns about the effectiveness of the reporting requirement.

37. Adequate legal provision was made for the protection of employees and officers making suspicious transaction reports and "tipping off" was effectively prohibited. The LPMLTF requires obliged entities to provide APMLTF with data on any transaction carried out in cash in the amount of €15,000 or more.

38. The LPMLTF sets out requirements for financial institutions to develop programmes against money laundering and financing of terrorism. In particular, obligors that have more than three employees are required to designate an authorised person and his/her deputy for the affairs of detecting and preventing money laundering and terrorist financing which includes responsibility for implementing and monitoring the effectiveness of AML/CFT controls. The only concern

raised by the evaluators was that there is no requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees. These requirements are extended to cover business units or companies in majority ownership of the obligor in foreign countries.

39. The Montenegrin financial market consists of the banking sector (11 banks), capital market (8 Investment funds, 29 stock exchange dealers, 5 of which are brokerage-dealers organisations and over 300 companies that are listed or traded on a free market), the insurance sector (7 insurance companies), as well as leasing companies (4 leasing companies and 3 banks that provide leasing services). The banking sector forms the largest part of the financial services sector although the insurance sector has been developing rapidly as has the capital markets sector.

40. The Central Bank of Montenegro is the regulator of the banking sector, the Securities Commission supervises the capital market and the Insurance Supervision Agency is responsible for the regulation and supervision of insurance companies. Each of these supervisors is established and empowered by a specific law which, in all cases, appears to provide adequate powers and scope of responsibility. The evaluators are of the view that the financial supervisors appear to have been granted sufficient powers and available sanctions to ensure compliance by financial institutions of AML/CFT regulations.

41. All of the supervisors have detailed requirements concerning the criteria for granting and revoking licences to entities and for authorising and removing staff in key positions. With regard to ongoing monitoring and supervision, the evaluators were satisfied that not only were there adequate powers in place but they also considered that the relevant supervisory bodies were aware of their responsibilities and had adequate resources to meet these. Overall the evaluators were satisfied that, not only were there adequate powers in place, but they also considered that the relevant supervisory bodies were aware of their responsibilities and had adequate resources to meet these.

42. One area of weakness which was identified concerned guidance issued to financial institutions. At the time of the on-site visit no sector specific guidance had been made available to financial institutions on AML/CFT issues.

43. Money transmission services are normally carried out through banks; only one money remittance company is currently operating independently in Montenegro. There is no registration or licensing regime or any legal provision for the supervision of those who perform money or value transfer services. The same concerns apply to currency exchange services.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

44. The LPMLTF specifies those individuals and legal persons who have obligations under the law. These individuals and entities are referred to as "obligors" and they include most of the designated non-financial businesses and professions. Trust and company service providers are not designated as obligors or otherwise obligated or mentioned as Montenegrin law does not recognise such entities. In general, the DNFBPs in Montenegro (excluding lawyers and notaries) are subject to the same requirements as financial institutions with regard to conducting customer due diligence and maintaining records. The obligations of lawyers and notaries are circumscribed in that there are a limited number of activities of these professions that invoke the anti-money laundering and counter-terrorist financing obligations of the law.

45. Since the core obligations for both DNFBPs and financial institutions are set out in the LPMLTF, the obligations (and the deficiencies) in the AML/CFT framework as set out in the LPMLTF apply in the same way as set out in the previous section. In particular, the requirement to identify the beneficial owner does not seem to be understood nor met, recognition on the part of DNFBPs of their obligations with respect to politically exposed persons was lacking and there was no

obligation to have policies in place to prevent the misuse of technological developments in ML/TF.

46. Although there were clear requirements in place to report suspicious transactions, no suspicious transaction reports had been filed by DNFBPs which raised concerns about the effectiveness of the system. Overall the evaluators were of the opinion that an awareness raising initiative needed to be undertaken across the whole of the DNFBP sector. One specific area of concern was the fact that lawyers were excluded from the prohibition against tipping off.

47. The DNFBPs do have designated competent authorities for supervision and regulation, however, effective systems for monitoring and ensuring compliance with AML/CFT requirements were not operational at the time of the on-site visit. In terms of feedback, there was a supervisory deficiency in both general input on techniques, methods and trends, and on specific and case-by-case feedback. Guidelines to assist DNFBPs in implementing and complying with respective AML/CFT requirements are, at best, in early stages of development and not widely disseminated.

48. During the course of the on-site visit, there was no empirical evidence was provided to the evaluators by the authorities in Montenegro of any type of study undertaken to consider whether or not these or any other non-financial businesses were at risk of being misused for money laundering or terrorist financing.

5. Legal Persons and Arrangements & Non-Profit Organisations

49. Joint stock companies and limited liability companies acquire the status of a legal person upon registration with the Central Registry of the Commercial Court. The Central Registry is a public registry, with public inspection of the database, index and documents possible. This information is also made available through electronic means including a web site on the internet. All securities are issued, transferred and kept in dematerialized form in the computer system of the Central Depository Agency and can only be traded on stock exchanges. No bearer shares can be issued in Montenegro, but the existing legal framework does not clearly exclude the possibility of use of such shares if they are issued abroad and brought to Montenegro.

50. There is no general obligation to disclose the relevant information on beneficial ownership of companies to the Central Registry. The evaluators were concerned that, despite a clear definition of beneficial owner and the obligation to establish such owner in the LPMLTF, practically none of the institutions (especially casinos and real estate agencies) conducted such identification. As a general rule, obligors appeared to be satisfied with the data on ownership filed at the Central Registry and did not request further documentation to establish the identity of the natural person who is ultimately the beneficiary.

51. As previously stated, trusts cannot be established in Montenegro and contracts involving trusts cannot be legally enforced in Montenegro. Montenegro has not signed the Convention on the Law Applicable to Trusts and on Their Recognition. Furthermore, foreign trusts may not carry out business operations in Montenegro; if they do wish to carry out business they are required to register as a company with the Central Register of the Commercial Court.

52. In Montenegro non-governmental organisations (NGOs) are regulated by the Law on Non Governmental Organisations (LNGO). The LNGO regulates the procedure of founding, registering, operating, joining and cessation of non-governmental organisations. The LNGO does not apply to political parties, religious communities, trade unions, sports associations, employers associations, foundations and associations established by the state, as well as to non-governmental organisations which are established by separate laws. There are no special provisions concerning terrorism financing in the LNGO.

53. Although NGOs are obliged to submit annual data to the Ministry of Finance, no audit is required and control concerning whether the funds of the organisation are used in line with its objectives, is left to the supervisory bodies of NGOs. The Central Register of NGOs holds no other data with respect to financial activities of NGOs and it maintains the index of all NGOs only by name and not by their objectives, therefore, the register gives no indication of any risk analysis or threat assessment regarding the financing of terrorism by NGOs. Thus, while there is some financial transparency of NGOs, there is no real oversight, in particular in respect of programme verification, which addresses any potential threat to this sector from the point of view of terrorism financing.

54. At the time of the on-site visit, there had been no review of the adequacy of domestic laws and regulations that relate to NGOs for the purpose of identifying features and types of NPOs that are at risk of being misused for terrorist financing by virtue of their activities or characteristics. Furthermore, no outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse, for example through raising awareness in the NPO sector about the terrorism financing risks, had been undertaken.

6. National and International Co-operation

55. The legal basis for cooperation between APMLTF and law enforcement authorities and supervisory bodies regarding the exchange of information is set out in the LPMLTF. A tripartite commission between the police, prosecution authorities and the courts has been established for the purpose of elaborating a methodology of statistical analyses of data regarding organised crime and corruption and providing recommendations for the promotion of inter-institutional cooperation in this area. Although the Montenegrin authorities claim to have excellent cooperation at the operational level, it appeared to the evaluators that this was generally conducted on an informal basis.

56. The overall implementation of the relevant international instruments regarding money laundering is quite compliant with international standards, the only exceptions being the partially imperfect incriminations of money laundering where incrimination is limited to actions, defined as "business operations", which is narrower than the convention.

57. In addition to the narrower definitions of the financing of terrorism offence, there are shortcoming in implementation of UN Resolutions, primarily S/RES/1267 (1999); the criminalisation on financing of terrorism is limited to concrete terrorist offences and, the definition of criminal offence does not include the funds intended for terrorist organisations or individual terrorists. Laws and mechanisms for immediate freezing of the funds belonging to or intended for the designated terrorist organisations or individuals as defined by Resolution S/RES/1267 (1999) also need to be put in place.

58. The mutual legal assistance framework in money laundering and terrorist financing cases is generally comprehensive and offers all the necessary solutions for rapid and effective legal assistance. There are some issues regarding the efficient application of the system in practice (half of the requests received in 2006 and 2006 are still not served) but this statistical data should be interpreted with caution due to overall small numbers of cases involved.

59. Somewhat narrow definitions of money laundering and terrorist financing offences, together with the lack of incriminations of some predicate offences leave some space for the possible denials of mutual legal assistance (which would not be in line with international standards) as well as requests for extradition. However, the evaluators were not aware of any such situations and the Montenegrin authorities have asserted that mutual legal assistance would be performed provided that there is reciprocity or, even where there is no reciprocity, if it can be anticipated that the foreign state would execute a letter rogatory for international legal. The establishment of an asset forfeiture fund is still under consideration. With regard to other forms of international cooperation

(including sharing of information), adequate arrangements appeared to be in place at a FIU, law enforcement and supervisory level, however, the lack of statistical data undermined the assessment of effectiveness.

7. Resources and Statistics

60. Overall the evaluators considered that law enforcement agencies and supervisors had been provided with adequate financial, human and technical resources. The one exception was APMLTF as the evaluators were concerned that there were not sufficient staff to supervise the very large number of reporting entities. The various legal provisions appeared to give all of the agencies sufficient operational independence and autonomy to ensure freedom from undue influence or interference. The only other concern was that, as all of the relevant agencies were expanding their AML/CFT capability, there was inevitably a lack of practical experience although the evaluators did note that there was a strong emphasis on training, much of which was provided by foreign agencies.

61. Overall there was no systematic maintenance of statistics which would enable an assessment of the effectiveness of the system of confiscation, freezing and seizing of proceeds of crime. Furthermore, the evaluators were concerned that many of the statistics which they did receive were produced specifically for the evaluation rather than for day-to-day evaluation and assessment purposes.

TABLE OF RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

For each Recommendation there are four possible levels of compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC). In exceptional circumstances a Recommendation may also be rated as not applicable (N/A).

	Rating	Summary of factors underlying rating
Legal systems		
1. Money laundering offence	**Partially Compliant**	• Limitation to "*banking, financial or other business operations*" is not fully consistent with the Vienna and Palermo Conventions. • Insider trading and market manipulation are not covered as predicate offences. • Relatively low number of prosecutions and only 1 conviction (effectiveness issue). • Simultaneous prosecution for money laundering offence and the predicate offence appear to be an effectiveness problem.
2. Money laundering offence Mental element and corporate liability	**Compliant**	
3. Confiscation and provisional measures	**Largely Compliant**	• No convictions for ML or TF implies no confiscation (conviction based), additionally, the effectiveness of the general confiscation system remains unproved. • No measure to allow the voiding of contracts or actions.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**Compliant**	
5. Customer due diligence	**Partially Compliant**	• In practice, heavy reliance on certificates from commercial register for CDD purposes introduces doubts about the effectiveness of the system. • No provisions covering criteria 5.15 and 5.16 about the failure to satisfactorily complete CDD measures. • There is no specific requirement to undertake CDD in respect of all wire transfers of EUR/USD 1,000 or more. • No requirement to verify that persons purporting to act on behalf of a customer have the authority to act on behalf of the customer and no requirement to obtain provisions regulating the power to bind the legal person or arrangement.

		• Cash reporting threshold does not include transactions over €15,000. • Definition of beneficial owner does not refer to "ultimate" beneficial owner. • Risk guidelines have not been issued to the financial sector.
6. Politically exposed persons	**Partially Compliant**	• Reporting entities lacked awareness of obligations concerning PEPs. • Lack of appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person in reporting entities.
7. Correspondent banking	**Largely Compliant**	• Scope limited to outside the EU.
8. New technologies and non face-to-face business	**Partially Compliant**	• No specific requirements in law or secondary legislation for financial institutions to have policies and procedures to address the risk of misuse of technological developments in ML/TF schemes • No requirements to obtain information on the purpose and intended nature of the business relationship for non-face to face operations.
9. Third parties and introducers	**Not applicable**	• There is no provision in Montenegrin law to allow financial institutions to rely on intermediaries or other third parties to perform specified elements of the CDD process.
10. Record keeping	**Largely Compliant**	• No requirement that transaction records should be sufficient to permit reconstruction of individual transactions
11. Unusual transactions	**Non Compliant**	• No enforceable requirement for financial institutions to examine as far as possible the background and purpose of unusual transactions. • No enforceable requirements to set forth the finding of such examinations in writing. • No specific enforceable requirement for financial institutions to keep such findings available for authorities and auditors for at least five years.
12. DNFBP – R.5, 6, 8-11	**Partially Compliant**	• Company Service Providers are not obliged parties. • Similar deficiencies relating to R5 that apply to financial institutions also apply to DNFBP. • For casinos, CDD is not required above the €3,000 threshold. • No adequate implementation of R.6 on PEPs to ensure that the obligations are adhered to by DNFBPs. • Need of a comprehensive program of outreach to DNFBP to raise awareness of CDD requirements and to introduce effective compliance practices. • Although most DNFBPs are subject to the provisions of the LPMLTF, practical applications are still developing.

		• For casinos, not all elements of CDD are required above the €3,000 threshold.
13. Suspicious transaction reporting	**Partially Compliant**	• No explicit requirement in law or regulation to cover money laundering and terrorist financing if the suspicious transaction has been performed. • Insider dealing is not listed as a predicate offence. • Low number of reports outside the banking sector raises issues of effectiveness of implementation.
14. Protection and no tipping-off	**Compliant**	
15. Internal controls, compliance and audit	**Largely Compliant**	• There is no requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	**Non Compliant**	*Applying Recommendation 13:* • Requirement to broaden the reporting obligation to also cover money laundering and terrorist financing if the suspicious transaction has been performed. • Some DNFBP appear to lack awareness of their vulnerability partly due to lack of outreach to the sector, this in turn has contributed to the fact that no STRs have been submitted by DNFBPs. (effectiveness). *Applying Recommendation 14:* • There is no prohibition against tipping off specifically applicable to lawyers. *Applying Recommendation 15:* • No internal checking (internal audit) within DNFBPs. • Lack of awareness in some areas of DNFBPs • Reliance on banks to identify suspicious transactions. *Applying Recommendation 21:* • No enforceable requirements for DNFBPs to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations.
17. Sanctions	**Partially Compliant**	• Absence of final decisions on imposed sanctions rises doubts regarding the effectiveness of the proceedings • Lack of appropriate sanctions for less severe violations
18. Shell banks	**Compliant**	
19. Other forms of reporting	**Compliant**	
20. Other DNFBP and secure transaction techniques	**Largely Compliant**	• Extension of the application of the LPMLTF to an overly wide range of non-financial businesses (other than DNFBPs) without undertaking a risk assessment appears to be counterproductive with regard to effective implementation. Furthermore, no supervisory regime for AML/CFT purposes appeared to be in place.

21. Special attention for higher risk countries	**Non Compliant**	• No enforceable requirements for financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations. • No enforceable requirement to examine as far as possible the background and purpose of such business relationships and transactions, to set forth the findings of such examinations in writing and to keep such findings available for competent authorities and auditors for at least five years.
22. Foreign branches and subsidiaries	**Compliant**	
23. Regulation, supervision and monitoring	**Largely Compliant**	• Although the main supervisory system elements are in place, the recent establishment of the Securities Commission and the Insurance Supervision Agency did not allow the evaluators to reach a conclusion as to their effectiveness.
24. DNFBP - Regulation, supervision and monitoring	**Partially Compliant**	• Effective systems for monitoring and ensuring compliance are not in place and there is a general lack of knowledge among DNFBPs of their AML/CFT responsibilities. • Need of a register on reporting entities to be supervised by APMLFT.
25. Guidelines and Feedback	**Largely Compliant**	• APMLFT does not provide general feedback containing statistics on the number of disclosures, information on current techniques and sanitised examples. • No guidelines tailored to particular sectors • Need of ongoing guidance on trends and typologies of AML/CFT for DNFBP.
Institutional and other measures		
26. The FIU	**Largely Compliant**	• Need to expand APMLFT's direct access to other authorities' databases. • No update of the List of Suspicious Transactions Indicators to reflect the LPMLTF which came into force at the end of 2007. • Due to relatively recent formation of APMLTF there was insufficient overall output to allow the evaluators to assess effectiveness. • Need of an explicit prohibition (without any time limit) for APMLFT employees to disseminate information after the cessation of working with APMLFT.
27. Law enforcement authorities	**Largely Compliant**	• Need to extend the special investigative techniques to all forms of money laundering. • Only one conviction of ML (effectiveness issue) • Corruption may have an impact on effectiveness of the system.
28. Powers of competent authorities	**Compliant**	

29. Supervisors	**Compliant**	
30. Resources, integrity and training	**Largely compliant**	• APMLTF not staffed sufficiently to supervise the very large number of reporting entities • Many of the relevant bodies are still in the process of recruiting and establishing their operating practices (effectiveness). • Enhancing of the training for the staff of APMLFT and for reporting entities to increase awareness and understanding of money laundering and terrorism financing schemes which may be used. • More training needs to be provided to law enforcement, prosecution and other competent authorities in order to have specialised financial investigators and experts.
31. National co-operation	**Largely Compliant**	• In the AML field mechanism of operational coordination of the key stakeholders should be further developed.

32. Statistics	**Partially Compliant**	• Overall lack of comprehensive and structured statistics. Including lack of statistics on:
		  • confiscation cases
		  • STRs that result in investigation, prosecution and conviction.
		  • international cooperation
		• There was no differentiation between ML cases and predicate offences.
		• No differentiation of cases of declined assistance and granted assistance.
		• No mechanism in place to use statistics to measure the effectiveness of the system of confiscation, freezing and seizing of proceeds of crime.

33. Legal persons – beneficial owners	**Partially Compliant**	• Insufficient implementation of obligation of establishing beneficial owners, particularly regarding foreign legal entities.
34. Legal arrangements – beneficial owners	**Not Applicable**	• Montenegro does not permit the establishment of foreign or domestic trusts and trusts are not recognised in law. Recommendation 34 is not applicable.
International Co-operation		
35. Conventions	**Largely Compliant**	• Implementations of Vienna and Palermo Conventions are not fully adequate due to narrower incrimination of money laundering offence.
36. Mutual legal assistance (MLA)	**Compliant**	
37. Dual criminality	**Largely Compliant**	• Narrow incriminations of MLA/FT offences facilitate potential absence of double criminality condition.
38. MLA on confiscation and freezing	**Largely**	• Reservations remain with respect to enforcing foreign confiscation orders related to insider

	Compliant	trading and market manipulation, as these offences are not properly criminalised in the national legislation. • No asset forfeiture fund established.
39. Extradition	**Largely Compliant**	• Narrow incriminations of ML/TF offences facilitate potential absence of double criminality condition.
40. Other forms of co-operation	**Largely Compliant**	• Lack of statistics on cooperation undermines the assessment of effectiveness
Nine Special Recommendations		
SR.I Implement UN instruments	**Partially Compliant**	• Implementation of the Convention for Suppression of financing of Terrorism is not fully adequate due to narrower incrimination of the terrorist financing offence. • Resolution S/RES/1267 (1999) is not implemented.
SR.II Criminalise terrorist financing	**Partially Compliant**	• Funds are not defined in accordance with the essential criteria • Not all types of activity which amount to terrorism financing, so as to render all of them predicate offences to money laundering, are included. • No autonomous criminalisation for financing of terrorist organisations or an individual terrorist for any purpose unless linked to a specific criminal act.
SR.III Freeze and confiscate terrorist assets	**Non Compliant**	• No laws and procedures in place for the freezing of terrorist funds or other assets of designated persons in accordance with S/RES/1267 and 1373 or under procedures initiated by third countries; • No designation authority in place for S/RES/1373; • No effective and publicly known procedures in place for, or guidance to, considering de-listing and unfreezing, authorising access to frozen funds for necessary expenses and for challenging such measures; • No specific measures to protect the right of bona fide third parties; • No practical guidance to financial institutions and DNFBP concerning their responsibilities; • No legal structure or mechanisms in place for immediate freezing of terrorist funds which are not related to specific offences, especially in the light of S/RES/1267 (1999)
SR.IV Suspicious transaction reporting	**Largely Compliant**	• No explicit requirement to cover terrorist financing if the suspicious transaction has been performed. • Lack of any reports, even "false positives" on financing of terrorism raises question of effectiveness of implementation.

SR.V International co-operation	**Largely Compliant**	• Lack of statistics on cooperation undermines the assessment of effectiveness
SR.VI AML requirements for money/value transfer services	**Partially Compliant**	• No system in place for registering and/or licensing MVT service providers. • MVT service providers are not subject to applicable FATF recommendations. • There only exists indirect monitoring of MVT service providers. • There are no sanctions applicable to MVT service providers. • No enforceable licensing or registration requirements for informal MVT service providers.
SR.VII Wire transfer rules	**Non Compliant**	• the requirements of Special Recommendation VII have not been implemented
SR.VIII Non-profit organisations	**Non Compliant**	• Not yet carried out a review of domestic legislation that relate to NPOs vis-à-vis terrorist financing. • No adequate access to information in order to identify the features and types of NPOs at risk for terrorist financing purposes. • No measures implemented to ensure that terrorist organisations cannot pose as legitimate NPOs, or to ensure that funds/assets collected or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations. • No measures in place to require and maintain information on NPOs purposes and objectives in relation to their activities. • No measures or procedures in place to respond to international requests for information regarding particular NPOs that are suspected of TF or other forms of terrorist support. • The system is further weakened by the fact that R 5 has not been implemented with regard to beneficial ownership.
SR.IX Cross Border declaration and disclosure	**Partially Compliant**	• No clear powers to stop or restrain cash in case of suspicion of money laundering and terrorist financing. • Currency and BNI cannot be restrained in cases of an administrative offence • The sanctions available for false declaration and failure to declare are not dissuasive and effective. • Failure under SRIII has a negative impact • Effectiveness has not been demonstrated.