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Montenegro

Fifth Compliance Report

Written analysis on progress in respect of FATF key and core recommendations

4th round evaluation

20 September 2017

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MONTENEGRO

Fifth compliance report

1. Written analysis of progress made in respect of the FATF core and key Recommendations

1.1 Introduction

1. Following adoption of its 4th round mutual evaluation report (“**MER**”) at MONEYVAL’s 47th Plenary in April 2015, Montenegro was placed under the enhanced follow-up procedure pursuant to Rule 13 of the revised Rules of Procedure, and Step 1 of the Compliance Enhancing Procedures (“**CEPs**”) applied. Since then, four compliance reports have been adopted.
2. The first compliance report was adopted at MONEYVAL’s 50th plenary in April 2016. This included an analysis by the Secretariat of the measures taken by Montenegro to address the factors/deficiencies in relation to the core and key FATF Recommendations rated PC or NC in its 4th round MER. Montenegro was requested to provide a further compliance report to the 51st Plenary in September 2016 to demonstrate that timely action was being taken to address the remaining deficiencies in order to avoid the application of Step 2 of CEPs.
3. The second compliance report was adopted at MONEYVAL’s 51st plenary in September 2016. This included an analysis by the Secretariat of progress since the adoption of the first compliance report. It was agreed that positive action was being taken to change legislation and implement procedures and, as a result, it deemed premature to apply Step 2 of CEPs. Accordingly, the Plenary agreed that progress would be considered again in December 2016 at the 52nd Plenary, by which time it was thought that: (a) the requirements of R.6 (which replaces SR.III) would have been implemented (or would be very close to implementation); and (b) the political commitment and revised timetable requested for other necessary legislative amendments¹ would have been provided.
4. At MONEYVAL’s 52nd plenary in December 2016 Plenary the third compliance report was adopted. MONEYVAL welcomed the adoption by the Government of Montenegro of an Action Plan on the Implementation of UNSCR 1373 (2001) since the second compliance report had been considered in September 2016. This Action Plan also deals with the application in Montenegro of UNSCR 1267 (1999). However, it was noted that the majority of implementation deadlines set in the Action Plan (some of which related to legislative amendments) were for the third quarter of 2017 which meant that there would be a further delay in the rectification of severe deficiencies related to Special Recommendation III. The Plenary also noted that the political commitment and revised timetable requested for other legislative amendments needed to address deficiencies highlighted in Montenegro’s 4th Round MER (in respect of core and key Recommendations 1, 3, 5, 13, 23, 26 and 40 and Special Recommendations I, II, IV and V) had not been provided. This

¹ Needed in relation to the Criminal Code, the Law Preventing Money Laundering and Terrorist Financing (“**LPMLTF**”), and a number of regulatory laws administered by the Central Bank of Montenegro, Insurance Supervisory Authority and Securities and Exchange Commission

raised significant concern. The Chair observed that deadlines set in April and September 2016 had not been met by the authorities, in part due to recent elections. However, it was important for the Plenary to take a consistent approach to the application of CEPs. In light of the foregoing, the Plenary decided to apply Step 2 of CEPs.

5. As a consequence of the application of Step 2 of CEPs, a high-level mission to Montenegro was arranged to meet relevant ministers and senior officials on 3-4 May 2017. The MONEYVAL delegation was composed of Mr Daniel Thelesklaf (Chair of MONEYVAL), Mr Jan Kleijssen (Director of Information Society and Action against Crime) and Mr Matthias Kloth (Executive Secretary to MONEYVAL). The delegation held meetings with the Minister of Foreign Affairs as well as senior officials (General Directors) from the Ministry of Justice and the Ministry of Finance. The delegation also met with representatives from the Montenegrin Parliament.
6. Subsequently, the fourth compliance report was discussed and adopted at MONEYVAL's 53rd Plenary in June 2017. The Plenary heard an update of the measures taken by Montenegro since the third compliance report and the high-level mission. The Plenary noted the substantial progress made through legislative developments, particularly in relation to the Criminal Code, the Law on International Restrictive Measures, the Law on Misdemeanours and the new Law on the Prevention of Money Laundering and Terrorist Financing. Despite the fact that most of the legislation was yet to enter into force², the Plenary welcomed the commitment by the Montenegrin government to finalise the legislative process before the Parliament's summer recess. In light of these developments, no further additional steps under the CEPs were deemed necessary by the Plenary. However, Montenegro was urged to bring the various legislative instruments into force before the 54th Plenary in September 2017 and invited to submit an updated compliance report. The Plenary would then decide the next steps under the CEPs.
7. The purpose of this paper is to explain the action that has been taken by the Montenegrin authorities since adoption of the country's fourth compliance report in June 2017 at MONEYVAL's 53rd Plenary, focussing on the adoption of the four legislative acts referred to in the fourth compliance report. It should be read in conjunction with the progress report of 4 September 2017 submitted by Montenegro.

1.2 Progress made by Montenegro since the adoption of the fourth compliance report

8. The Montenegrin authorities reported that the amendments to the Criminal Code and the Law on International Restrictive Measures were adopted by Parliament and came into force in July 2017. The amendments to the Law on Misdemeanours were adopted and came into force in August 2017. Some of the main developments resulting from these amendments are described below.
9. The amendments to the Criminal Code introduce a definition of property under Article 268 of the Criminal Code, which criminalises money laundering. The definition states the following: "In terms of this Article property is understood to mean property rights of any kind, regardless of whether they refer to tangible or intangible assets, moveable or immoveable things, securities and

² At the time of the fourth compliance report, the amendments to the Criminal Code, the Law on International Restrictive Measures and the Law on Misdemeanours had been adopted by the Government but had not yet been adopted by Parliament. The Law on the Prevention of Money Laundering and Terrorist Financing had still been in draft form.

other documents providing property rights.” The definition broadly addresses one of the main 4th round MER deficiencies and its corresponding recommended action: *Not all types of property are covered by the ML offence (Recommended action: A definition of property applicable to the ML offence should be introduced in the CC).*

10. The amendments to the Criminal Code also rectify an important deficiency in relation to Special Recommendation II. Article 449 of the Criminal Code now criminalises the financing of all the offences under the Treaties annexed to the FT Convention. Furthermore, the financing of these offences is no longer subject to the additional purposive element.
11. The amendments to the Law on International Restrictive Measures have brought about a significant improvement to Montenegro’s regime on Targeted Financial Sanctions. They introduce a mechanism for establishing a national list which, in addition to including persons designated under UNSCRs 1267/1989 and 1988, will extend to persons designated under UNSCR 1373 further to a request by another country or after having been identified as targets for designation by the Montenegrin authorities.
12. The new Law on the Prevention of Money Laundering and Terrorism Financing has undergone a consultation process and been submitted to the European Commission for its opinion, as part of Montenegro’s EU pre-accession programme, before adoption by the Government. It appears that, upon its adoption, the law will address the large majority of deficiencies of a technical nature in relation to Recommendations 5 and 13 and Special Recommendation IV. A full analysis of these provisions will be conducted once the law is adopted and in force.

2. Conclusions

13. In light of the above, the Secretariat is broadly satisfied that the high-level mission conducted on 3-4 May 2017 (Step 2 of the CEPs) has had a positive effect and triggered an accelerated legislative action. With the coming into force of the amendments a number of important deficiencies have now been addressed, notably in relation to Recommendation 1, Special Recommendation II and Special Recommendation III. It is therefore proposed to the Plenary to maintain Montenegro under Step 2 of the CEPs. However, since some significant deficiencies (both technical and effectiveness-related) are still outstanding, Montenegro is urged to continue leveraging the momentum created at a political level to push through the remaining reforms. In particular, the Law on the Prevention of Money Laundering and Terrorist Financing should be adopted without further delay. It is proposed that after the Plenary meeting the Secretariat take stock of the remaining deficiencies and submit a memorandum containing these deficiencies to Montenegro, as expeditiously as possible. It is proposed to the Plenary that Montenegro be requested to report back to the Plenary on the remaining deficiencies ahead of the 56th Plenary in April 2018. Should Montenegro fail to achieve further significant progress which meaningfully addresses all deficiencies identified in the MER by that time, the Secretariat would propose to the Plenary to apply Step 3 of the CEPs.