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

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Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

MONTENEGRO

17 March 2009

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LIST OF ACRONYMS USED

ACQUIS COMMUNAUTAIRE - compliance of the national legal system with the standards and norms of the European Union

AD – Akcionarsko Društvo **- JSC** Joint Stock Company

AML/CFT - Anti money laundering and counter terrorism financing

ANB – Agency for National Security

APMLTF – Administration for the Prevention of Money Laundering and Terrorist Financing

CAFAO – European Union Customs and Fiscal Assistance Office

CAO - Competent Accrediting Officer for Instrument for Pre-accession Assistance

CBCG - Central Bank of Montenegro

CC – Criminal Code

CDA – Central Depository Agency

CDD - Customer Due Diligence

CPC – Criminal procedure Code

CRPS – Central Register of the Commercial Court (CRCC)

DEM- Deutschmarks

DIS - Decentralised Implementation System

DNFBP - Designated Non-financial Businesses and Professions

DOO – Društvo sa Ogranicenom Odgovornošću - **LLC** limited liability company

DTRA - Defence Threat Reduction Agency

EBRD - European Bank for Reconstruction and Development

EEA - European Economic Area

EUR – Euro

FATF - Financial Action Task Force

FOS – Financial Intelligence Unit

GDP - Gross Domestic Product

GTZ – German Organisation for Technical Support- Die Deutsche Gesellschaft fűr Technishe Zusammenarbeit

ID (number) – Identification (number)

IPA - Instrument for Pre-accession Assistance

KD- Komanditno Društvo **–** **LP-** Limited Partnership

KZ CG – Criminal Code of Montenegro (**CC of Montenegro**)

LPMLTF – Law on the Prevention of Money Laundering and Terrorist Financing

MEQ – Mutual Evaluation Questionnaire

MER – Mutual Evaluation Report

MIP – Ministry of Foreign Affairs

MIPD - Multiyear Indicative Planning Document

ML - Money Laundering - Pranje Novca

MLA- Money Laundering Actions

MLA Law – The Law on International Legal Assistance in Criminal Matters

MMF – International Monetary Fund

MNE – Montenegro

MTN - Measures of Secret Surveillance

MUP – Ministry of Internal Affairs

MVT service - Money or Value Transfer services

NIPAC - National Instrument for Pre-accession Assistance Coordinator

NPI - National Program for Integration of Montenegro in EU

NPO - Non-profit Organisations

NVO – Nongovernmental Organisations **(NGO)**

OD – Ortačko Društvo - **GP** - General Partnership (joint venture)

OEBS –Organisation for Development and cooperation in Europe (**OSCE**)

OECD - Organisation for Economic Co-operation and Development

OLAF - European Anti-Fraud Office

PEP – Politically Exposed Person

R – Recommendation

S/RES - Security Council Resolution

SCG - State Union of Serbia and Montenegro

SKP – Sector of Criminal Police

SR - Special Recommendation

SRO – Self Regulatory Organisations

STR- Suspicious Transaction Report

TF - Terrorist Financing

UNCTAD - United Nations Conference on Trade and Development

UNMIK- United Nations Interim Administration Mission in Kosovo

UNODC - United Nations Office on Drugs and Crime

USPN - Administration for the Prevention of Money Laundering **(APML)**

WCO - World Customs Organisation

WTO – World Trade Organisation

ZKP CG – Criminal Procedure Code (**CPC of Montenegro**)

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Montenegro was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), complemented – due to the specific scope of evaluations carried out by the Committee – by issues linked to the 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 the "Third EU Directive" and Directive 2006/70/EC "implementing Directive", in accordance with MONEYVAL's terms of reference and Procedural rules, and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Montenegro, and information obtained by the evaluation team during its on-site visit to Montenegro from 15 to 20 September 2008, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Montenegrin government agencies and the private sector. A list of the bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised: Mr. Bostjan Skrlec, District State Prosecutor, Assigned to the Supreme State Prosecutor's Office [subsequently appointed Secretary of State (Deputy Minister) at the Ministry of Justice], Slovenia (Legal Evaluator); Ms. Paula Lavric, Senior Member of the Office's Board, National Office for Prevention and Control of Money Laundering (NOPCML), Romania (Law Enforcement Evaluator); Mr Josep Maria Francino, Director, Unitat de Prevenció del Blanqueig, Andorra (Financial Evaluator); Mr. Charles Ott, U.S. Department of Treasury, Office of Terrorist Financing and Financial Crime, USA (Financial Evaluator); and a member of the MONEYVAL Secretariat. The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all the systems.

3. This report provides a summary of the AML/CFT measures in place in Montenegro as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out Montenegro's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

[1] As updated in February 2008.

II. 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 (APMLTF) 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. APMLTF 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. APMLTF 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 APMLTF 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 summary.

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.

III. MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Montenegro

1. Montenegro is located on the south-east part of the European continent, more precisely in the very centre of the Balkan Peninsula. It stretches on the area of 13,815 square kilometres and its population consists of 650,580 inhabitants. On its south part Montenegro touches the Adriatic sea and its shore extends to 294 km, while on the other three sides it touches the high mountains of the Balkans. Montenegro's territory is varied topographically. It borders Serbia to the east and the northeast, Croatia and Bosnia and Herzegovina to the northwest, Albania to the southeast and is opposite Italy to the west across the Adriatic Sea. The capital city is Podgorica with 152,025 inhabitants

2. Montenegro was part of the various forms of Yugoslavia from 1918, and then formed part of the state union of Serbia and Montenegro before it declared independence 2006 following a referendum, making it the newest fully recognised country in the world. It became the 192nd member state of the United Nations in June 2006, and the 47th member state of the Council of Europe in May 2007.

3. The population comprises 43.16 % Montenegrins, 31.99 % Serbs, 7.77 % Bosnians, 5.03 % Albanians, 1.1 % Croats and smaller minorities of Yugoslavs, Macedonians, Slovenians, Hungarians, Russians, Egyptians, Italians and Germans.

4. Most citizens speak the Montenegrin language. Apart from this, Serbian, Albanian, Bosnian and Croatian are recognised in daily usage.

5. Most Montenegrin inhabitants are Orthodox Christians. The religious institutions all have guaranteed rights and are separate from the state. There are a sizeable number of Sunni Muslims in Montenegro that maintain their own Islamic Community of Montenegro. There is also a small Roman Catholic population. Religious determination according to the census is: Orthodox (74.24 %); Muslims (17.7 %) Roman Catholic (3.54 %); and others (4.52 %).

Economy

6. Forecasted macroeconomic indicators for 2008

1. GDP in current prices, € million	2,528.7
2. Real GDP growth, %	7.0
3. Inflation	4.0
4. Growth of employment (persons), %	3.7
5. Unemployment rate, %	10.8
6. Trade balance of goods and services - in € millon, current prices	-841.2
7. Trade balance of goods and services, % GDP	-33.2
8. External debt - in million €	504.0
9. External debt, % GDP	20.0
10. FDI – net, in € million	793.8
11. FDI – net, % GDP	31.4

7. The trend of economical growth continued in the first quarter of 2008. With improved conditions for developing entrepreneurship and new inflow of foreign investments, increased turnover in the area of tourism and trade and the range of construction services and industry, in the first quarter of 2008, compared with the same period of the previous year, gross domestic product reached the level of €586.6 million with a realistic increase in the amount of 8.1% (the forecast for 2008 was 7.0%). In the first quarter the inflation rate, measured by retail prices index, slightly increased and in March it was 2.3% in comparison with December, and 0.4% compared to February. In March the prices of agricultural products increased by 2.4%, industrial products by 0.4%, while the prices for services stayed at the same level as they were in the previous month.

8. In March the inflation rate, measured by the consumer price index, was lower than the one measured by retail prices index and it was 2.0% compared to December 2007, and 0.4% compared to February 2008. In the first quarter the highest cost increase was recorded in family budgets – for food (3.6%), traffic and Post of Montenegro (1.7%) and services (1.1%).

9. Activities for creating a new methodology for monitoring inflation by harmonising consumer prices, as currently used at the EU, are in progress. The movement in inflation in 2008 will be mostly influenced by global movements that are expressed through the price increase trends of foodstuffs and energy-generating products influenced by changes in the price of oil and oil derivatives in the world market and limited abilities of purchasing electric power. In the same time, Montenegro will try to influence the price disparity of energy and telecommunications in the domestic market.

10. Unemployment is decreasing in Montenegro. The records of the Employment Service show in March 2008 that there were 31,258 unemployed persons, the unemployment rate is decreased to the level of 10.8%, and the Montenegrin authorities consider that the measures of supporting entrepreneurship and the newly employ have produced good results.

11. According to the data available, in the first two months of 2008, foreign trade was €360.1m an increase of 26.2% on the previous year. Exports were €61.7m with a decrease of 16.2%, and import were €298.4m with growth of 40.8% in relation to 2007. The trade deficit was in of €236.8m, an increase of 70.8%.

12. At the end of March 2008, foreign debt was €465.4m, with a decreasing trend of its participation in GDP (17.0% forecast for 2008). Potential investors are interested to invest in the region. After the record amount of the direct foreign investments was achieved in 2007 with a total inflow of €1,007.7m, with €524.9m of the net income. In the first two months of 2008 a total amount of €130.0m of direct foreign investment was achieved, with €71.9 millions of net income.

13. Initiatives on implementation of the strategic commitments of Montenegro to the process of accession to the EU system and Euro Atlantic integrations in 2008 are determined by the obligations undertaken by signing the Stabilisation and Association Agreement and Interim Agreement on Trade and Trade-related Matters between the European Community and Montenegro. The Interim Agreement on Trade and Trade-related Matters between the European Commission and Montenegro came into effect on 1st January 2008. The Draft of the National Program for Integration of Montenegro in EU (NPI) for the period of 2008-2012 has been adopted. The Draft of the IPA 2008 Project Proposal has been finalised. Submission of The project suggestions for Programming available assets through IPA 2009 has been completed. Activities for introducing the Decentralised Implementation System (DIS) and Training for government employees related to the activities in the process of the European Integrations are being undertaken.

System of Government

14. The current Constitution of Montenegro was ratified and adopted by the Constitutional Parliament of Montenegro on 19 October 2007. The Constitution was officially proclaimed as the Constitution of Montenegro on 22 October 2007. This Constitution replaced the Constitution of

1992. The new Constitution defines Montenegro as a civic, democratic and environmentally friendly country with social justice, established by the sovereign rights of its government.

15. The President of Montenegro is the head of state of Montenegro. The President is elected for a period of five years through direct and secret ballots. The current president was re-elected in the first round of the 2008 presidential election with 51.9% of the vote. The President represents Montenegro in the country and abroad; promulgates laws; Calls for Parliamentary elections; proposes to the Parliament a candidate for Prime Minister, as well as for the president and justices of the Constitutional Court; proposes the holding of a referendum; grants pardons; and confers honours and decorations.

16. The Parliament of Montenegro is the highest legislative and constitutional body of Montenegro. In accordance with the Montenegrin constitution it consists of 81 members of parliament, elected in free and secret elections, for a four-year term. The Montenegrin Parliament passes all laws in Montenegro, ratifies international treaties, appoints the Prime Minister, ministers, and justices of all courts, adopts the budget and performs other duties as established by the Constitution. The Parliament can pass a vote of no-confidence on the Government by a majority of the members. One representative is elected per 6,000 voters, which in turn results in a reduction of the total number of representatives in the Parliament of Montenegro.

17. The Government of Montenegro is the executive branch of state authority in Montenegro. It is headed by the prime minister. It comprises the Prime Minister, the deputy prime ministers as well as ministers. The current Prime Minister of Montenegro and Head of Government and the current members of the cabinet were elected on 29 February 2008 by a majority vote in the Parliament of Montenegro.

Legal system and hierarchy of laws

18. The judicial system in Montenegro is comprised of the following parts: the Supreme Court, the Administrative court, the Appellate court, the two Higher courts, the two Trade courts, and fifteen basic courts.

19. The Basic Courts are in charge, by law, for first instance criminal offences that carry either a monetary sentence or a prison sentence of up to ten (10) years, and for first instance civil cases/common pleas in cases dealing with property, author, labour, marital disputes and personal/legal matters. In addition, the Basic Courts deal with the extra-judicial matters and executive cases, provide international legal assistance, and engage in execution and avowal of foreign court decisions.

20. The Higher Courts are in charge, by law, of prosecution of those criminal offences for which a longer imprisonment is prescribed, as well as organised crime offences, irrespective of the sentence length, and offences with elements of corruption such as: money laundering, abuse of monopoly status, equality rights violation in the field of economy, estimation of abuse, state secret disclosure, professional position abuse, professional fraud/deceit, and authority abuse in the field of economy, bankruptcy and false bankruptcy, illegal intermediation, false income sheet, for which the prescribed sentence is eight (8) years or more.

21. The Higher Courts also have exclusive power to make decisions for the following criminal acts:

- manslaughter,
- rape,
- endangering air traffic safety,
- illegal and unauthorised production, storage and trade of illicit drugs,
- preparation of activities against the constitutional regime and safety of Montenegro,
- disclosure of state secrets,
- inciting national, racial, and religious hatred, strife, and intolerance,

- violation of territorial sovereignty,
- association for anti-Constitutional activities,
- calls for violent change of the constitutional organisation,
- preparing acts against the constitutional order and security of Montenegro and SMN

22. The Higher Courts in second instance cases have the power to bring decisions on appeals of the Basic courts' decisions. The Higher Courts, aside from trials, are engaged in providing assistance in international legal assistance. In the Higher Courts there are specialised departments for criminal offence trials that deal with organised crime, corruption, terrorism, and war crimes.

23. *The Appellate Court* has a power to take decisions in complaint cases against decisions of other higher courts in criminal matters and against decisions of corporate commercial courts.

24. *The Supreme Court of Montenegro* is the third instance institution (when defined by law) that deals with extraordinary legal remedies against court decisions in the state that defines legal positions and opinions regarding the unified implementation of the Constitution, laws and other regulations on the territory of the state and also other jobs prescribed by Law.

25. The judges of the regular courts are nominated and deposed by an independent and autonomous body, the Judicial Council. The judges are nominated for an unlimited mandate with an exception of the President of the Supreme Court who is selected and dismissed by the Parliament of Montenegro.

26. *The Constitutional Court of Montenegro* decides on:

- Cases where questions arise relating to the compliance of the laws, other regulations, general acts with the Constitution and confirmed and published international agreements;
- Cases of Constitutional complaints regarding the human rights violations and rights guaranteed by the Constitution after all other available legal means have been exhausted; and
- All other cases guaranteed by the Constitution.

27. In Montenegro, the hierarchy of the normative acts is prescribed in the following manner:

- The confirmed and published international agreements and rules of international law supersedes national legislation and as such as implemented in those cases where they regulate the relationships in a manner that is different from the internal/national legislation (Article 9 of the Constitution of Montenegro).
- The Constitution of Montenegro (Official Gazette, number 1/07).
- Laws that must be in accordance with the Constitution.
- Bylaws (decisions, regulations and others) that are published in the Official Gazette.
- Internal acts (relating to institutions, organisations, and state agency) that are not published in the Official Gazette (statutes and similar).

Transparency, Good Governance, ethics and measures against corruption

28. Montenegro ratified the UN Convention against Corruption in 2006. Montenegro is a Party to the UN Convention against transnational organised crime (succession 2006). As is well known, this Convention recognises that corruption is an integral component of transnational organised crime and must be addressed as part of efforts to combat organised crime. Montenegro has acceded to the Council of Europe's Criminal Law Convention on Corruption in December 2002 and the Council of Europe's Civil Law Convention on Corruption in January 2008.

29. A joint First and Second Evaluation Rounds evaluation was undertaken in June 2005 by GRECO (the CoE Group of States against Corruption). In the conclusions of this report it is stated that corruption is one of the major concerns of Montenegrin citizens. The authorities usually identified as being worst affected are the judiciary, the customs service and the police. The fact that

Montenegro is a small country might contribute to the development of a close-knit community culture reticent to report suspicions of corruption. The evaluation report further states that although significant improvements through legal and institutional reform of the judiciary have been achieved, the independence of judges and prosecutors is still an issue of concern.

30. The Transparency International 2008 “Corruption Perception Index” ranked Montenegro 85th out of 180 (where 180 is considered the most corrupt country in the world). The Transparency International “Global Corruption Report 2008” provides that changes to the Criminal Code and the Criminal Procedures Code in July 2006 have increased penalties for corruption and the misuse of power, but the Parliament turned down a request that police be allowed to use undercover surveillance in cases of suspected corruption. In August 2006 the Government adopted the Action Plan for the Fight against Corruption and Organised Crime, and subsequently established a commission to monitor implementation.

31. The “Global Corruption Report 2008” also focuses on the fact that a number of EU countries have accused Montenegro’s elite of links with organised crime. Furthermore, the report highlights that officially most public enterprises have been privatised through transparent tender processes; with government seeking strategic partners with related experience. In practice, the obligations defined in the contracts are rarely fulfilled and the strategic partner often turns out to be an offshore company.

32. The National Commission charged with monitoring and reporting on the implementation of the Action Plan for the fight against corruption and organised crime adopted its second report in March 2008, covering the period September 2006 - December 2007. The report points out that, whereas progress has been made in the legislative field and in the establishing of anti-corruption structures, such as DACI, concrete results and efficient criminal prosecution of cases before the courts are still lacking as no significant rulings have so far been handed down. The National Commission has set up a working group in order to improve the Action Plan for 2008 and to target it towards more concrete and visible results.

1.2 General Situation of Money Laundering and Financing of Terrorism

33. 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. When asked about what would constitute the most serious proceed generating crime problem in Montenegro, the response was different crimes related to drugs, including illegal production and trading in drugs. Montenegro is a part of the transit corridor for drugs being smuggled from East to West. As serious crime problems the authorities also mentioned goods smuggling, fraud, tax evasion, corruption and abuse of office, including the privatisation process.

34. Money laundering is criminalised in Article 268 of the Criminal Code. At the time of the on-site visit there was only one conviction involving two persons on money laundering, see below.

35. In 2004, one charge was raised on money laundering. Two individuals were subsequently found guilty and convicted to three and two years of imprisonment respectively. Goods worth $895.000.00 were seized and confiscated.

36. In 2005, one charge was raised for money laundering. The legally binding verdict of release was delivered due to there being insufficient evidence against the accused. There are two further cases, pending investigation, against 7 persons.

37. In 2006 the Supreme State Prosecutor- the Department for Combating Organised Crime raised three charges against twenty three persons for the criminal act of money laundering in association

with other offences (falsified documents, fraud and abuse of professional/official position). The procedures in line with all the charges are still ongoing.

38. In 2006. the Special Prosecutor raised nine requests for investigation against fifty persons and five indictments against thirty one persons. There are four pending investigations against ninteen persons.

39. The Higher State Prosecutor in 2006 raised two charges against five persons for the criminal act of money laundering in association with other predicate offences such as falsified documents, illegal trade, unauthorised production, storage and trade of illicit drugs. The procedures in line with all the charges are still ongoing.

40. In 2007 the Supreme State Prosecutor - the Department for Combating Organised Crime raised one charge against eight persons for money laundering in association with other offences such as abuse of official position, fraud and falsification of document, and one request for broadening the investigation (in a 2006 case) against ten persons for criminal act of money laundering in association with other predicate offences (fraud and falsified documents). The investigation is ongoing.

41. In 2008 the Supreme State Prosecutor - the Department for Combating Organised Crime raised three requests for investigation against seven persons for money laundering in association with other predicate offences such as abuse of official position, falsified documents, fraud and illegal trade. The investigation at the Higher Court in Podgorica in ongoing.

Terrorist financing

42. Terrorist financing is criminalised in Article 449 in the Criminal Code in Montenegro. From 2004 up to the time of the on-site visit there were no legal proceedings for the criminal offence of terrorism financing.

43. The evaluation team was informed by the Montenegrin authorities that they do not consider Montenegro to be exposed to terrorism or financing of terrorism.

44. However, the Supreme State Prosecutor - the Department for Combating Organised Crime brought a charge against eighteen individuals in 2006 for a criminal offence of assembling for the purpose of anti-constitutional activity in accordance with Article 372 pg.1 and 2 in relations with the criminal offence terrorism in accordance with Article 365 of the Criminal Code and preparation of activities against the constitutional regime and safety of Montenegro in accordance with Article 373 pg.1, 2 and 3 in relations to terrorism and armed insurrection in accordance with Articles 365 and 364 of the Criminal Code.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

Banking sector

45. 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).

46. The banking sector dominates other segments in the Montenegrin financial system, both regarding its development and its contribution to economic growth.

47. There are currently 11 banks in Montenegro which are licensed by the Central Bank of Montenegro. The main activities of the banks are lending and deposit taking. There is an ongoing increase in deposits, savings and total assets of banks. At the end of the third quarter of 2007, savings was over twenty times higher and banks' assets almost ten times higher than at the end of 2000.

48. Pursuant to the Law on Banks, banks in Montenegro may perform investment banking operations. One of the investment banking activities practised by Montenegrin banks is the long-term crediting of investment projects. Some banks have started brokerage and custody operations (six banks have obtained a safe custody license from the Securities Commission), so domestic banks will engage in investment banking operations. The main reason that the banks did not launch this function earlier is, inter alia, the lack of demand for this kind of service. In order to obtain external funding, domestic companies were mostly focused on bank loans.

49. One bank issued bonds in the second year half of 2007, this representing a new form of acquiring funds. The reason why the banks did not engage in this form of financing previously is that, in addition to the main sources for their lending activity, they had been mostly oriented towards foreign borrowing.

50. The commercial banks in Montenegro have their own self regulatory body – the Association of Montenegrin Banks. Membership of the Association is voluntary. At the time of the on-site visit all commercial banks operating in Montenegro were members of the Association.

51. There are no exchange offices in Montenegro but the banks may perform bill of exchange business operations on the basis of Article 6 of the Law on banks (Official Gazette of the republic of Montenegro, no. 14/08). The Central bank of Montenegro has also adopted the Decision on the manner and conditions in reference to the performing of the bill of exchange business operations.

52. The regulatory and supervisory body of the banking sector is the Central Bank of Montenegro.

Capital market

53. As in many other countries in transition, the Montenegrin capital market is the financial market segment which has undergone the most intensive development. At the time of the on-site visit, market capitalisation amounted to over €5.5 billion and some 240% of the estimated GDP, while the turnover on the Montenegrin stock exchanges to GDP ratio reached the level of 28.72% by mid-October 2007.

54. The Montenegrin capital market is characterised by a very high participation of the citizens in the capital market. Foreign investors also have a significant involvement in transactions on the Montenegrin capital market. Some €350 million of foreign capital has been invested in Montenegro in the form of portfolio investments, that is, the purchase of securities through the capital market. This represents nearly 30% of the total money invested so far in the purchase of shares and bonds on the stock exchanges, not taking into account the state revenues from privatisation. New capital invested in the Montenegrin enterprises and banks in the form of foreign direct investments is over €321 million. Approximately €130 million of the new capital is invested in the purchase of new issues of shares of enterprises and banks. The additional €191 million of the new capital (earned profit, undistributed reserves) have been reinvested and distributed to the owners in the form of shares (reinvested capital that was not spent).

55. The regulatory and supervisory body of the capital market is the Securities Commission of Montenegro.

Insurance Sector

56. The Montenegrin insurance market has been on an upward trend in recent years. In the period 2002–2007, when there were 6 insurance companies operating in the insurance market and one

reinsurance company. The total value of the gross premium has almost doubled, that is it grew from €22.90 million to €51.02 million, which represents 2% of GDP. 47.20% of premiums received relate to mandatory insurances, 26.19% to property insurance, 15.02% to insurance against accidents, and 11.57% to life insurance. Insurance industry data for 2007 and the first six months of 2008 highlight the growing role and importance of the insurance industry in the financial services sector.

57. Life insurance in Montenegro is a relatively new product, as in other transitional countries, but while in 2002 it was almost totally absent from the market, in 2007 life insurance premiums already amounted to €5.9 million (2006: €1.8 million).

58. At the time of the on-site visit ten insurance companies and one reinsurance company were performing insurance activities in Montenegro. Five companies were performing only non-life insurance business, three were performing only life assurance business, while two were performing both life and non-life insurance business. Foreign subsidiaries may be established and at the time of the on-site visit two Austrian insurance companies were operating in Montenegro.

59. Nine insurance agent companies are operating in Montenegro. Additionally 184 natural persons hold a licence for performing insurance brokerage activities.

60. The Montenegrin insurance industry is mostly foreign-owned. The existing trends, experiences in the region and the announced opening of new companies suggest that the development of this sector will be further intensified.

61. From the total shareholder's equity on 30 June 2008, which was €28 million, foreign capital amounted to €16.64 million (59.42% of the total) while domestic capital participated in amount of €11.36 million (40.58% of the total). Domestic capital prevails in the insurance industry in Montenegro. The State has majority shares in only one insurance company, „Lovćen osiguranje" (41.44%). By the end of 2008 it is expected that privatisation of the insurance industry will be finished in line with the relevant legislation.

Table 1 : Insurance density in Montenegro

Gross premium per capita (in €)	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Life insurance	0.00	0.15	0.72	1.32	2.95	9.53
Non-life insurance	36.83	41.14	41.41	50.33	60.95	72.76
Total	**36.83**	**41.29**	**42.13**	**51.65**	**63.90**	**82.29**

62. The insurance market in Montenegro, in 2007 and the first half of 2008, is featured by low level of life assurance and very high level of compulsory insurances. It is notable that compulsory insurances show a decreasing trend in the portfolio structure.

Table 2: Distribution of premiums according to classes

Classes of Insurance	**31.12. 2007. Share of Gross Premium (in %)**	**30.06.2008. Share of Gross Premium (in %)**
Compulsory Insurance	47.20	43.10
Property Insurance	26.19	30.99
Accident Insurance	15.02	13.01
Life Insurance	11.57	11.81
Other classes of non-life Insurance	0.02	1.09

63. The regulatory and supervisory body of the insurance sector is the Insurance Supervision Agency of Montenegro (ISA). ISA intends to sign a MoU with The Administration for the Prevention of Money Laundering and Terrorist Financing (APMLTF) the Montenegrin FIU.

Leasing

64. Leasing is a form of financial services that has been recently introduced in the Montenegrin financial markets. The first leasing companies appeared in 2006, and the value of their placements in the first quarter of 2007 amounted to some €80.2million or 3.5% of GDP.

65. Natural and legal persons are offered financial and operational leasing, whereas financial leasing is prevalent. There are four dominant leasing companies on the market, and they are recording a strong increase in their business operations.

Designated Non-Financial Businesses and Professions (DNFBP)

66. Designated individuals and entities in Montenegro who must take measures for detecting and preventing money laundering and terrorist financing are referred to as "obligors" in Article 4 of the Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF) (See Annex III). A distinct Section III of this same law (inclusive of Articles 41 through 44) lays out the tasks and obligations of lawyers and notaries. Among these obligors, as well as lawyers and notaries, are most of the non-financial businesses and professions (DNFBPs) noted in the Glossary of the FATF 40 Recommendations.

FATF Designated Financial Businesses and Professions in the LPMLTF			
Sector	Designated/ Not Designated	Supervision for AML/CFT Compliance	Registered for AML/CFT Purposes
Casinos	Designated	Administration for Games of Chance	No
Real Estate Agents	Designated	APMLTF	No
Dealers in Precious Metals and Stones	Designated	APMLTF	No
Lawyers and Notaries	Designated	Chamber of Lawyers	No
Accountants and Auditors	Designated	Ministry of Finance	No
Trust and Company Service Providers	Not Designated[2]	-	-

Casinos (including internet casinos and other forms of gambling)

67. Montenegro's Law on Games of Chance (Official Gazette of the Republic of Montenegro No. 52/04 and Official Gazette of the Republic of Montenegro No. 13/07) divides games of chance

[2] For further information see below and section 4.2

into two groups, namely, lottery games of chance and special games of chance. Lottery games of chance include lotteries, express and instant lotteries, bingo, TV tombola, tombola organised on premises, lotto, keno, toto, sports pools as well as similar games based on lotto. Special games of chance include games organised in casinos, games organised in betting places and games played on slot machines. In Montenegro, there are four casinos (one located in Podgorica, two in Budva and one in Kotor), 120 slot machine clubs and 430 betting places licensed for organising games of chance. Although internet casinos are permitted with the proper license, authorities noted that no individual or entity has yet to apply for an internet casino license.

Real Estate Agents

68. Business organisations, legal persons, entrepreneurs and natural persons who are engaged in the real estate trade are obligated to take measures to detect and prevent money laundering and terrorist financing according to the APMLTF. There are about 600 real estate agencies in Montenegro.

69. Real estate investment has played an important role in the recent economic development of Montenegro. In 2006, total foreign direct investment reached €644 million, with a substantial amount of this (€257 million) devoted to real estate. Coastal Montenegro and particularly the area around Budva had enjoyed much of this boom in the real estate market. Under existing laws, foreigners cannot buy land unless they are legal entities and the land is purchased solely for a business activity. This situation has led to foreigners usually establishing companies in Montenegro in order to buy real estate.

Dealers in Precious Metals and Stones

70. Dealers in precious metals and stones must take measures against money laundering and terrorist financing when payment is made in cash in an amount of €15,000 or more in one or more related transactions. The obligations of this group are essentially unchanged from what they were under the original AML law of 2003, with the exception that the most recent version of the law adds the category of legal persons dealing in precious metals and stones and the products made from these materials.

71. The extent of the individuals and entities in this area obligated to take measures against money laundering and terrorist financing is unclear. These dealers are supervised by the recently established Reporting Entities and Control Department in APMLTF which only began its inspection activities with the real estate sector in the summer of 2008. The number of obligors in Montenegro dealing in precious metals and stones is as yet undetermined.

Lawyers and Notaries

72. The activities of lawyers in Montenegro are regulated by the terms of the Advocacy Act (Official Gazette of the Republic of Montenegro, No. 79/06 26 December 2006). This law defines advocacy as an independent and autonomous activity engaged in providing legal assistance to natural and legal persons. Advocates can operate individually or be part of an advocate office with joint ownership or in a partnership. Advocates are registered with the Bar Association of Montenegro. Advocate entities characterised by joint ownership or partnership will also be registered with Central Registry of the Commercial Court. At the time of the mutual evaluation visit there were reported to be approximately 520 advocates in Montenegro.

73. The Law on Notaries (Official Gazette of the Republic of Montenegro, No. 68/05 15 November 2005) sets forth the basic parameters for this profession. Notaries can draft notary acts such as documents, excerpts, minutes taken by the notary and certificates. They can also accept deposits in money, securities and other property, and, on the basis of a court order, perform actions in accord with this law and special laws. Notaries are appointed by the Ministry of Justice after passing the requisite examinations.

74. Both lawyers and notaries in Montenegro must comply with the requirements of the LPMLTF only when they engage in certain specified activities on behalf of a customer or client. These activities are enumerated in Article 41 of the LPMLTF.

Accountants and Auditors

75. The Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro, No. 69-05 18 November 2005) prescribes the conditions and manner of maintaining business books and for performing audits of financial statements. Accountants and auditors are considered to be obligors under Article 4 of the AML law, where they are included in the category that covers audit companies, independent auditors and legal or natural persons providing accounting and tax advisory services.

76. Their professional association is Montenegro's Institute for Accounting, which maintains a registry for accountants and auditors. There are reportedly over 2,000 accountants in Montenegro. Auditors are licensed by the Ministry of Finance.

77. The recent Accounting and Auditing Report on the Observance of Standards and Codes (AA ROSC) for Montenegro noted some deficiencies such as a lack of detail in disclosures of financial information as well as the absence of systematic enforcement of financial reporting standards.

Trust and Company Service Providers

78. Trusts may not be formed in Montenegro and foreign trusts may not operate in Montenegro. It is not possible for trusts to enforce contracts under Montenegrin law as they are not recognised under the law.

79. Legal persons or practitioners may register companies, but may not:

- as a means of business form companies or other legal persons (be owners on behalf of other natural or legal persons),
- act or arrange for another person to act as a director or secretary of a company (the directors or secretary of the company may be a natural person nominated by the shareholders meeting and may not act on behalf of other persons nor have agents to act on their behalf, since their role is *intutitu personae*);
- act as providers of registered offices, business addresses, accommodation or correspondence addresses for businesses other than sole proprietors;
- be an individual or firm providing a nominee director, nominee company secretary or nominee shareholder services or other similar services designed to ensure the confidentiality of the true ownership or control of a company or corporate body, or to act in these roles on behalf of another person or firm; Firms in Montenegro may open a custody account for securities trading held within custodian banks who are obliged to reveal the name of the true owners of the account on whose behalf they act.

As set out in the Business Organisation Law (see below).

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

80. The Business Organisation Law of Montenegro (BOL, Official Gazette of the Republic Montenegro, Nos. 6/02, 17/07) regulates the organisational and legal forms of enterprises and their registration.

81. The main forms through which economic-commercial activities may be conducted in Montenegro are as follows:
    (1) The individual entrepreneur;
    (2) The joint stock company ("JSC"),
    (3) The limited liability company ("LLC");
    (4) The general partnership ("GP");
    (5) The limited partnership ("LP");
    (6) Foreign company branches.

82. If a natural person or a group consisting of natural or legal persons engage in commerce but fail to comply with the formation or registration requirements set forth herein as they relate to limited partnerships, joint stock companies, or limited liability companies, they shall be deemed to be, respectively, an individual entrepreneur or a general partnership for purposes of relations with creditors and other third parties.

83. Any individual who enters into a contract on behalf of a business knowing that it is not legally registered may be personally required to perform on that contract and personally liable for any harm arising.

84. **The individual entrepreneur** is a natural person, who engages in commerce for the purpose of making profit and is not performing on behalf or as an agent or employee of another person. The individual entrepreneur is personally liable for all debts incurred to the full extent of his assets.

85. **General Partnership** is the relationship, which subsists between persons carrying on a business in common with a view of profit. All partnerships that are not limited partnerships are general partnerships. A general partnership may arise by operation of law based upon the facts and conduct of the individuals. A general partner may be natural or legal person and partners have unlimited joint and several liability.

86. A general partnership is required to register by submitting a registration statement with the Central Registry of the Commercial Court for statistical purposes. However, the existence of a partnership is not conditioned on the registration. The registration statement shall state the name of the general partnership, its partners and their addresses. The partnership agreement, if any, may be filed but is not required.

87. **A limited partnership** is a partnership of one or more persons called general partners (who are jointly and severally liable for all debts and obligations of the partnership) and one or more persons called limited partners (who at the time of entering into such partnership contribute a sum or sums as capital or property valued at a stated amount and who are not be liable for the debts or obligations of the partnership beyond that amount).

88. The registration of a limited partnership is effected by transmitting to the Central Registry of the Commercial Court a statement or contract signed by the all partners containing the following particulars:
    - the partnership name and statement that the partnership is established as limited partnership;
    - the principal place of business;
    - the term, if any, for which the partnership is entered into, and the date of its commencement;
    - the full name of each of the partners;
    - the name of every limited partner as such;
    - the sum contributed by each limited partner, and whether paid in cash or otherwise.

89. If, during the continuance of a limited partnership any change occurs in the partnership name, the principal place of business, the term of the partnership, the partner or particulars about partners, the sum contributed by any limited partner or the type of liability of any partner a statement,

signed by the partnership, specifying the nature of the change shall within seven days be transmitted to the Central Registry of the Commercial Court.

90. A **joint stock company** is a company, which has its capital divided into shares and is liable for its obligations only to the extent of its assets. The minimum amount of capital of a joint stock company is €25,000 and shares acquired by the founders for the initial establishment of the company must equal or exceed that amount.

91. The founders of a joint stock company and shareholders can be either natural or legal persons.

92. The legal document governing the conduct of the company's business is The Company Charter, which must include:
    - the name of the company;
    - address of its registered office and address for receiving official notices;
    - the nature of the company's business activities;
    - a statement that the company is a joint-stock company and the amount of authorised share capital;
    - the rules governing changes in capital that are not mandated by law;
    - the procedure for exchanging one class of securities for another;
    - limitation on the right of the company to issue bonds or incur other types of debt, if any;
    - special benefits granted to the founders, if any;
    - in so far as they are not determined by law, the powers of and procedure for calling general meetings, procedures at general meetings and voting rules;
    - in so far as they are not determined by law, the rules governing the number of board members, the procedure for election of the Board of Directors, procedures regarding the appointment of executive management, and their respective powers and duties, disqualification, removal and the allocation of powers among these bodies;
    - procedure for rotating directors;
    - rules concerning the use of the company seal, if there is one;
    - the procedure for issuing and receiving legal notices;
    - the duration of the company, if this is not indefinite;
    - the procedure to propose amendments to the charter;

93. Information regarding the number of issued shares and the composition of the share capital by the class of shares must be set forth either in the charter or in the separate legal document and must be presented to the Central Registry.

94. At the first registration the following documents must be disclosed:

    - the foundation agreement;
    - the charter;
    - a list of directors:
    - the first and surnames, dates of birth, and any former names of the directors;
    - their identification numbers;
    - their residential addresses;
    - a statement indicating their citizenship;
    - their business occupation;
    - details of any other directorships or positions held in Montenegro or elsewhere and the place of registration of such companies if not in Montenegro;
    - names and addresses of the Authorised Officer, and Chief Executive and the auditor;
    - the name of the company, the address of its registered office and address for receiving official notices;
    - the signed consent of the first directors, the Chief Executive, the Authorised Officer and the auditor to their appointments;

- a copy of the decision of the Securities Commission approving the prospectus for initial offering of shares as well as the decision of the Securities Commission regarding the success of the issue;
- a document confirming payment of the appropriate registration fee.

95. Disclosure of company's name and registered office, the names of the members of the Board of Directors, Authorised Officer, Chief Executive (if applicable) and the auditor as well as the existence of the foundation agreement and the charter and date of the registration are made public in the Official Gazette (by the Commercial Court).

96. **A limited liability company** is a company formed for the purpose of conducting a business for profit by natural or legal persons who shall make a monetary or non-monetary contribution and who shall not be liable for the debts or obligations of the limited liability company beyond that amount. The contributions shall constitute the limited liability company's initial capital. Every limited liability company must have a name, which must include the words "Limited Liability Company" or "LLC."

97. At the first registration, the following documentation must be disclosed:

- the foundation agreement;
- the charter;
- a list of founders, members, officers and directors, if any, (including the first and surnames and any former names; their personal identification number, or passport number if a foreign national; their residential addresses; their citizenship; details of any other directorships, memberships in limited liability companies or partnerships, or other management positions held in Montenegro or elsewhere and the place of registration of such companies if not in Montenegro);
- the name of the managing director;
- the address of the registered office and place for receipt of official notices, if different;
- persons authorised to represent the company either jointly or individually;
- the signed consent of the first directors to their appointments, if any;
- a document confirming payment of the appropriate registration fee.

98. The company's name and registered office, the names of directors, the managing director, as well as the existence of the foundation agreement and the charter and date of the registration are made public in the Official Gazette.

99. If company established and registered abroad intents to conduct business in Montenegro, it shall register its branch as a **Foreign Company Branch** at the Central Registry. At the registration all the data regarding the address and activities of such branch in Montenegro, as well as the data on name and legal form of the foreign company must be presented. Authenticated copies of the charter of the foreign company and of its registration certificate (or corresponding document) must also be presented and names and addresses of all persons authorised to represent the company and persons residing in Montenegro, who are authorised to accept on behalf of the company service of legal process and any notice required to be served on the company.

100. All entities listed above, (including the individual entrepreneurs and foreign company branches) are subject to **registration procedure at the Central Registry of the Commercial Court** in Podgorica.

101. Joint stock company and limited liability company shall acquire the status of a legal person upon registration.

102. 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 website on the Internet.

103. Joint stock companies, limited liability companies and limited partnership registrations are effective for a limited amount of time (1 year) and are required to be renewed by re-registration, which should take place within 14 months following the expiration period. If re-registration is not filed the business is de-registered ex-officio.

104. A "branch" of a company is a unit of a company having no legal identity apart from the company itself.

105. By the Law on Securities, all securities issued in Montenegro are dematerialised and exist in electronic form in the computer system of the Central Depository Agency and can be traded only on stock exchanges. Accounts of all owners of securities are kept at the Central Depository Agency.

106. Issuing of bearer shares is not permitted under Montenegrin law. All securities in Montenegro are dematerialised. It is, however, possible to purchase and sell foreign shares in Montenegro; all such transactions will be conducted in accordance with the registration provisions of the country of origin. If such shares are bearer shares there is a theoretical possibility that these could be transferred within Montenegro.[3]

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

107. The Administration for the Prevention of Money Laundering was established by the Decree of the Government of the Republic of Montenegro, from 15th December 2003 ("Official Gazette of The Republic of Montenegro" no. 67/03). It formally started on 5th February 2004, by appointing the Director of the Administration. The Administration is organised as an administrative Financial Intelligence Unit (FIU). In accordance with its competences and by the Amendments to the Regulation on Organisation and Work Methods of the State Administration ("Official Gazette of The Republic of Montenegro", no. 26/08 from 18th April 2008) the official name of the administration has been changed into: "The Administration for the prevention of Money Laundering and Terrorist Financing" (APMLTF).

108. APMLTF's powers are to collect and analyse information and data collected from reporting entities, state agencies and foreign financial-intelligence units (where the case involves a foreign party). Where there is reason to believe that the case involves money laundering, terrorist finance, or another crime, the case is then delivered to the relevant state bodies (police and/or prosecution) together with all the supporting information collected. It is expected that until 2012 the Directorate will continue to strengthen its role in the system of combating money laundering and terrorist finance in accordance with its new powers as envisaged by the latest law governing this issue as well continue its intense regional and international cooperation.

109. Requests from foreign FIUs will be dealt with if there is a legal justification for dealing with the request. APMLTF is able to collect data and information concerning resident and non-resident natural and legal persons, depending on whether they have carried out transactions related to a foreign country, whether they have certain ownership status in a company registered in a foreign

[3] The Securities Commission is in the process of developing rules concerning transactions in all securities traded in Montenegro.

country, or they are related to a foreign country in any other manner. Article 60 of the LPMLTF states:

> *The competent administration body*(APMLTF) *can provide data, information and documentation about persons or transactions if there are reasonable grounds for suspicion of money laundering or terrorist financing on a request of competent authority of foreign state for detection and prevention of money laundering and terrorist financing, under reciprocity conditions.*
>
> *The competent administration body needs not to act in accordance to the request from the paragraph 1 of this Article if:*
> 1. *on the basis of the facts and circumstances, stated in the request , evaluates that there are not enough reasons for suspicion of money laundering or terrorist financing, and,*
> 2. *providing data should jeopardize or may jeopardize the course of criminal proceeding in Montenegro or otherwise could affect interests of the proceeding.*
>
> *The competent administration body shall give information in written form to the competent authority which provided request, about reasons for rejecting and shall state the reasons for rejecting.*
>
> *The competent administration body may determine conditions and data usage limits from the paragraph 1 of this Article.*

APMLTF does not appear to have any restriction on exchanging information with other competent authorities of foreign states for detection and prevention of money laundering and terrorist financing and may determine conditions and data usage of information

110. In November 2007, the new Law on the Prevention of Money Laundering and Terrorist Finance (See Annex III) was adopted (Off. Gazette, No. 14/07) to regulate the measures and activities aimed at the prevention of money laundering and terrorist finance.

111. In July 2005 the Government adopted the Program for the fight against corruption and organised crime. In 2006 the Government adopted the Action Plan for Implementation of the Program for fight against corruption and organised crime. The Third Report on the Realisation of Measures from the Innovated Action Plan covering the period 1 January to 30 July 2008 assesses that APMLTF adopted the Regulations on Internal Organisation and Systematisation in accordance with the LPMLTF. In accordance with the new Regulations the Department for the Supervision of reporting entities within APMLTF was established (seven vacancies were filled).

112. According to Article 8 of the LPMLTF reporting entities shall undertake risk analysis which determines the risk assessment of groups of customers or of an individual customer, business relationship, transaction or product related to the possibility of misuse for the purpose of money laundering or terrorist financing. Such risk analysis shall be prepared pursuant to guidelines determined by APMLTF and other designated AML/CFT supervisory authorities. The Report assessed that such guidelines have not yet been issued by the AML/CFT supervisors as required in the Law. The Guidelines will be issued in accordance with a regulation issued by the Ministry of Finance and drafting is in progress.

113. The National Program for Integration of Montenegro into the EU (NPI) for the period 2008-2012 mid-term priorities are defined as:

- Continued professional development of employees, and
- Continued cooperation with relevant international institutions, FATF first of all, so as to protect the financial system from laundering the proceeds of crime and prevent terrorist finance, in accordance with Stabilisation and Association Agreement.

114. The projected number of employees and annual budget for APMLTF are set out below:-

Employment plan

Name of institution	Existing - planned	2007	Planned number of employees				
			2008	2009	2010	2011	2012
Directorate for the Prevention of Money Laundering	Existing	12	34	34	34	34	34

115. There are currently twenty seven employees and one temporary member of staff. The remaining vacancies have been publicly announced.

Financial requirements (in Euros)

	2008	2009	2010	2011	2012
Budget funds	390,000.00	712,996.64	709,016.48	710,000.00	712,000.00
Foreign support	-	-	-	-	-

Note: The projected budget funds by individual years refer the cost of newly recruited staff under the new Regulation on Internal Organization and Systematization of Work Posts.

Financing of terrorism

116. Criminalisation of terrorism in Montenegro is set out in the Criminal Code which recognises the following acts terrorism, international terrorism, hostage taking and terrorism financing as criminal acts. A new AML/CFT Law was passed at the end of 2007 with a view to preventing suspicious financial transactions. This new AML/CFT Law included provisions to counter terrorism financing.

117. One of the priorities in the fight against terrorism and organised crime in Montenegro is the successful protection of borders. For this reason Montenegro has started the creation of legal-technical solutions necessary for the use of identity documents prepared on the basis of the biometric technology. Montenegro commenced issuing ID documents with biometric data in 2008. At the present time there are only optical document readers at border crossings. The Border Police Department has no devices for reading biometric data from documents at Montenegrin border crossings, although it is intended that they acquire the relevant equipment for reading biometric data in the near future.

118. A Department for combating organised crime has been formed within the Criminal police, and a Special antiterrorist unit has existed within the Ministry of Internal Affairs for some time. The Centre for fighting drugs and smuggling has also been established. The Police Administration has signed a number of agreements and established cooperation with counterparty authorities, particularly those of the neighbouring countries and the region. The Police Administration is participating in international and regional projects and conferences aimed at strengthening police cooperation among countries in the region in the fight against all forms of crimes. An important additional step has been made in the reorganisation of the National Security Agency in making it into a reference intelligence agency, as well as the transformation of the former Military Security Service into the Department of defensive-security operations for communication and crypto-protection, and the forming of the Department for information-security and technical support of the Ministry of Foreign Affairs of Montenegro.

b. The institutional framework for combating money laundering and terrorist financing

119. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

The Central Bank of Montenegro

120. The Law on Central Bank of Montenegro governs the institutional status of the Central Bank and its powers and responsibilities. Pursuant to this Law, the Central Bank is an independent organisation of Montenegro and is solely responsible for monetary policy, establishment and maintenance of a sound banking system and efficient payment system. In that respect, the Central Bank issues bank licenses, regulates and controls their operations, issues and conducts the measures for bank rehabilitation, including opening and conducting the bankruptcy and liquidation proceedings in banks, regulates, controls and provides efficient performance of the payment system, performs the operations of a banker, advisor and fiscal representative of the government bodies and organisations, performs macroeconomic analyses and participates in the preparation and drafting of the laws and secondary legislation acts that govern the banking system.

121. A new Law on Banks came into force in March 2008 and the Central Bank is in the process of issuing by-laws. Montenegro underwent a Financial Sector Assessment Program (FSAP) evaluation in 2007.

122. The Bank Supervision Department has 33 employees all of whom have university degrees. The level of employees' training is high and all of them are included in some of the educational forms and training organised by foreign institutions and organisations, as well as through internal forms of education. The growth and development of the banking sector and its compliance with the new standards in bank supervision have resulted in the periodical hiring of new employees.

123. The Central Bank is the supervisor of the implementation of the LPMLTF in banks and foreign banks' branches and other financial institutions; savings-banks, and saving and loan institutions; organisation performing payment transactions; exchange offices (at present there are none in Montenegro); and institutions for issuing electronic money. The evaluators noted that, pursuant to Article 8 of the Law on Foreign Current and Capital Operations, "*Exchange operations may be performed by legal entities and entrepreneurs, which have contract with a bank, and are registered for performing exchange operations. The Central Bank shall prescribe more specific terms and manner of performing exchange operations*." However, no administrative provisions appear to be in force for preventing unlicensed exchange operations.

Agency for Telecommunication and Postal Business Operations

124. The Agency for Telecommunication and Postal Business Operations is responsible for the supervision of telecommunication and postal business operations. The Agency receives its powers from the Law on Postal Services ("Official Gazette of the Republic of Montenegro", No.46/05). The Agency has specific responsibility for the supervision of post offices for AML/CFT purposes under Article 86 of the LPMLTF. The Agency has adopted a Programme against Money laundering (No.00010-1174/9-1 dated 09.03.2005), and, pursuant to the LPMLTF, has issued Guidelines on the implementation of the LPMLTF.

Ministry of Internal Affairs and Public Administration

125. The Ministry of Interior and Public Administration has responsibilities in the field of protection of public order and interests. The main structural units of the ministry are the Department for security, protection and control; the Department for internal administrative affairs; the Department for emergency situation and civil security; the Department for public administration; and the Department for local self-government. The Department for security, protection and control is tasked with the supervision of the police, complaints and petitions. Additionally this department deals with security, protection and classified information.

126. The Ministry of Interior and Public Administration has concluded a number of MoUs with foreign countries on cooperation in fighting against all forms of crimes. At the time of the on-site visit such MoUs were agreed with: Albania; Bulgaria; Croatia; "the former Yugoslav Republic of Macedonia"; Slovenia; Turkey; the Russian Federation; Bosnia and Herzegovina; Austria; Serbia; United Nations Mission in Kosovo (UNMIK) on police cooperation. Bilateral agreements with Moldova and Ukraine were in progress.

Ministry of Justice

127. The Ministry of Justice manages, coordinates and controls the implementation of the state policy in the field of justice. It produces draft laws and secondary legislative acts, related to the judicial system and to the activities under the competence of the Ministry of Justice. With respect to the anti-money laundering and terrorism financing policy the Ministry of Justice is responsible for the Criminal Code and the Criminal Procedure Code.

128. The Ministry of Justice is the central authority for mutual legal assistance and is also responsible for the Law on International Legal Assistance in Criminal Matters (See Annex IX) which was adopted and entered into force in January 2008.

129. Furthermore the Ministry of Justice (Department for registration of NGOs) is responsible for the registration of *foreign* NGOs, including NPOs.

The Public Prosecution Service

130. According to Article 13 of the Law on State Prosecution, the State Prosecution Service comprises The Chief State Prosecutor's Office, high state prosecutors' offices, and basic state prosecutors' offices shall be established within the State Prosecutor's Office. These are structured as follows:-

- Supreme State Prosecution for the territory of Montenegro with the seat in Podgorica. Part of the Supreme State Prosecution, including the Department for suppression of organised crime, corruption, terrorism and war crime.
- Two High State Prosecutions, one with the seat in Podgorica, and one with the seat in Bijelo Polje, for the territory of High Courts.
- 13 Basic State Prosecutions.

131. The State Prosecution is a unique and independent state authority that performs the affairs of prosecution of the perpetrators of criminal offences and other punishable acts who are prosecuted ex officio. The Supreme State Prosecutor and state prosecutors are appointed for the period of five years. The Prosecutorial Council ensures the independence of state prosecutorial service and state prosecutors. The State Prosecution is financed by the State budget.

132. The Law on State Prosecutor ("Official Journal of RMNE", No. 69/03) regulates the establishment, organisation, jurisdiction, conditions and procedure for election, termination of office and dismissal of State Prosecutors, and other issues of significance for the work of the State Prosecutors, as well as issues of significance for the work of the Special Prosecutor for Suppression of Organised Crime, and issues of significance for work of prosecutor's administration. Rules of Procedure on Internal Work of the State Prosecutor ("Official Journal of RMNE", No. 12/07) particularly regulate the organisation and manner of internal work of State Prosecutors. The Law on Changes and Amendments on State Prosecution was passed in 2008 (Published in the Official Gazette of Montenegro 40/08 on 27 June 2008) and entered into force on 5 July 2008. Article 66 paragraph 1 of this law required that "A Department for Suppression of Organised Crime, Corruption, Terrorism and War Crimes (hereinafter referred to as: the Department), headed by the Special Prosecutor, shall be established within the Chief State

Prosecutor's Office, for the purpose of carrying out activities aimed at suppression of organised crime, corruption, terrorism and war crimes."

133. The State Prosecutor is the person conducting the pre-trial proceeding, and the State Prosecutor has an active role in proving criminal acts and in criminal prosecution of perpetrators. Whenever there is reason to believe that a case involves money laundering, terrorist financing, or another crime, the case is referred from the FIU to the line state bodies (police and/or prosecution) together with all the supporting information collected.

Ministry of Foreign Affairs

134. The Ministry of Foreign Affairs undertakes tasks in public administration, regarding the formation and execution of the foreign policy of the Republic of Montenegro, furthering relations with other countries, international organisations and institutions; monitoring of the situation and the development of international relations, as well as of the bilateral cooperation with other countries; following and presentation of the political situation and the activities of the ministries and institutions of Montenegro in the EU association process; membership of Montenegro to the international organisations, form of the representation of Montenegro in the missions to the UN, OSCE, EU and the Council of Europe, as well as the opening or closure of the diplomatic/consular representatives of Montenegro to third countries and international organisations; undertaking diplomatic, consular and other specific tasks regarding the establishment of political, economic, and cultural relations of Montenegro with third countries and international organisation; preparation, conclusion and execution of international legal acts; protection of the interests of Montenegro and its citizens in the foreign countries in cooperation with other relevant institutions; participation in the establishment and the formation of the foreign policy and international cooperation in all spheres, in cooperation with other relevant state institutions; preparation of the participation of the Montenegrin representatives in the international conferences and negotiations for the conclusion of the international agreements; undertaking of the necessary tasks for the implementation of international agreements, as well as other tasks under its competences.

135. The Ministry of Foreign Affairs has little direct responsibility for fighting money laundering and counter terrorism financing. The Ministry receives the UN consolidated lists on terrorists and terrorist organisations and disseminates the lists to the Ministry of Interior and Public Administration, the Ministry of Finance, Customs and the Police Directorate. Otherwise the Ministry of Foreign Affairs is not involved in the fight against ML/TF.

Ministry of Finance

136. The Ministry of Finance budget sector performs the activities related to: preparation procedure, budget planning and execution; making proposals for guidelines and short-term macro-economic framework for budget preparation and planning, execution, amendments and assessment of the budget.

137. The Ministry of Finance state treasury sector performs the management activities related to: payments based on relevant documentation and data submitted by the spending units; managing the accounting system of the state receipts and expenses.

138. The Ministry of Finance economy, finance, international cooperation and games on chance system sector performs the activities related to regulation of the financial system and market of Montenegro in the manner that is in accordance with modern operating principles as well as activities related to the international financial cooperation harmonised with the international standards from this area which are connected with: operations in the field of accounting system, banks and insurance, international cooperation and the EU integration; preparation of the regulations that stimulate private sector growth; prepares and proposes laws and other by-laws drafts which regulate banking, insurance, financial market as well as games on chance system;

taking part in negotiations with the foreign partners and other aspects of cooperation with the international financial organisations and the Ministry of finance representation in all aspects related to the state funds and property privatisation.

139. The Ministry of Finance cooperative services and property-legal operation sector performs the activities related to: property managing, property using, supervision and management of the state property of the Republic of Montenegro.

140. The Ministry of Finance is responsible for developing a regulative framework of fiscal policy.

141. The Ministry of Finance is the supervisory body for the Montenegrin FIU (APMLTF), the Public Revenues, the Customs Administration, the Agency for Anti–Corruption Initiative, the Administration for real estate authority and for the Administration for games of chance. The Ministry is competent to pass laws and sublaws, as well as to perform administrative supervision of the Administrations mentioned.

Customs

142. The Customs Administration controls and manages records of physical entry and exit of means of payment in and out of the country. The Central Bank describes the amount of cash that may be taken in and out of the country without being declared to the Customs Administration. Capacity building activities of inspection and customs services for carrying out control on border crossings will be continued (continuously during 2008 and 2009).

143. The Custom Administration also deals with the enforcement of intellectual property rights. The Custom Administration, in line with the Customs Law of Montenegro, will not approve the requested customs procedure for goods, if there is suspicion that they violate intellectual property rights.

144. Negotiations on the accession to the World Trade Organisation are in their final stage.

145. There are no import/export licences. The management of tariff quotas is in the competence of the Customs Administration. The Montenegrin customs tariff nomenclature has been harmonised with the Harmonised System 2007 as of May 2007.

Judiciary

146. The Law on Courts (Official Gazette of the Republic of Montenegro No.5/02 and 49/04) and the Law on Changes and Amendments of Law on Courts (Official Gazette of the Republic of Montenegro No.22/08) regulate the organisation and jurisdictions of courts, as well as the manners and procedures for electing judges, jurisdiction and composition of the Court Council. Disciplinary procedures, termination and discharge of the function, work organisation of the courts, court administration activities and court administration supervision.

147. The institutional framework of the judiciary system includes 15 main courts, two higher courts and two commercial courts, Appellate, Administrative and Supreme courts. Cases of organised crime, corruption and money laundering are dealt with in the Higher Courts of Montenegro on the first instance. The Court of Second Instance (the Appellate Court) may approve, suspend or reverse a judgment by the Court of First Instance. The Supreme Court deals with cases in which the legal basis in the Court of Second Instance is different from the in the Court of First Instance. Additionally the Supreme Court deals with cases in which imprisonment of 40 years (maximum penalty) is asked for in the indictment.

Financial Intelligence Unit (FIU)

148. The Administration for the Prevention of Money Laundering and Terrorist Financing (APMLTF) is the Montenegrin FIU. It was established in 2004 and it is an administrative type of FIU. APMLTF is the central authority for combating money laundering and terrorist financing. It has been a member of the Egmont Group since July 2005.

149. APMLTF is an independent body whose administrative work is supervised by the Ministry of Finance. Otherwise, it has full operational autonomy. At the time of the on-site visit the number of staff with APMLTF was 25 employees out of 34 budgeted.

150. APMLTF is a national centre for receiving and requesting, analysing, and disseminating disclosures of STRs and other relevant information concerning suspected money laundering and terrorist financing activities. APMLTF is the supervisor for compliance with the AML/CFT requirements for a large number of reporting persons and entities listed in Article 4, item 14 and 15 of the AML/CTF Law, for further details see under Recommendation 26.

The National Security Agency

151. The National Security Agency (Agency) is established for the purpose of performance of activities aimed at the protection of constitutional order, security and territorial integrity of the Republic of Montenegro. The Agency, within its competence, conducts data collection, analysis, assessments and records keeping on all forms of activities aimed at threatening national security, including money laundering and terrorism.

152. The Agency is responsible to the Government. The work of the Agency is subject to both internal and Parliamentary control. The Agency does not have police powers.

Securities Commission

153. The Securities Commission consists of five members appointed by the Parliament from persons nominated by the Government. The members include the Chairman, Deputy Chairman and three members. Each of the five Commission members has overall responsibility for the activities of a department. The departments are: Cabinet of the Chairman; Capital Market Development and International Cooperation Department; Corporate Financing Department; Investment and Pension Funds Department; Securities Market Department. These departments are run by the members of the Securities Commission. Furthermore, the Secretariat of the Commission is run by the General Secretary of the Securities Commission.

154. At the time of the on-site visit there were 13 persons employed with the Securities Commission. The Commission plans to employ another 17 persons within the next 2 years. The Rules on Internal organisation and Systematisation of the Securities Commission prescribes the maximum number of employees, which is 42 persons. The evaluators have subsequently been advised that there are now 29 individuals employed at the Securities Commission, of which 24 have the higher educational qualifications (university degree or higher, of which two persons have PhD and one is a master of science) and 5 employees have lower degrees.

155. The Securities Commission supervises the capital market not only as the prudential supervisor but also for compliance with the LPMLTF. The commission undertakes off-site and on-site inspections.

156. The Securities Commission was the first organisation in Montenegro that adopted a list of indicators for recognising suspicious transactions in 2004.

157. The Securities Commission has signed an MoU for exchange of information and mutual cooperation with APMLTF. At the time of the on-site visit a MoU was being prepared with the Ministry of Interior and Public Administration and an MoU with the Central Bank was in the process of being signed.

158. The Securities Commission is an ordinary member of IOSCO. The Commission has also signed bilateral agreements with the security market regulators of "the former Yugoslav Republic of Macedonia", Croatia, Romania, Bosnia and Herzegovina, Serbia, Albania and Turkey.

Insurance Supervision Agency

159. The Insurance Supervision Agency (ISA) was established by law in 2007 and became operational in January 2008. The ISA is an independent regulatory body responsible to the Parliament. The Council of the ISA consists of two members and a President. Organisations subject to supervision by the ISA are insurance companies, foreign insurance company affiliates, insurance broker companies, insurance agents, and insurance ancillary service providers. The ISA performs off-site and on-site supervision. The ISA is financed by the supervised companies. The Ministry of Finance supervised the Insurance market before the ISA was established.

160. The ISA is structured in three organisational parts:

- insurance market supervision
- regulation, development and cooperation and
- general affairs.

At the time of the on-site visit the ISA had 8 employees but there are plans to increase the number of staff to 17.

161. At the time of the on-site visit there was 1 life insurance company, 3 non-life insurance companies and 2 combined non-life companies in Montenegro. To be licensed an insurance company must be established as a joint stock company in Montenegro. For that reason there are no foreign branches in Montenegro. Foreign subsidiaries may be established and at the time of the on-site visit two Austrian insurance companies were operating in Montenegro.

162. In accordance with Article 86 in the LPMLTF the ISA is the supervisor for compliance with the LPMLTF in the insurance market. ISA intends to sign a MoU with APMLTF.

Administration for Lottery and Gaming

163. The authority for the formation of the Administration for Games of Chance was made on April, 18th 2008. by the Direction of Organisation and Manner of Work of State Administration ("Official Gazette of Montenegro", No 26/08). The Act on the Internal Organisation and Systematisation of the Administration for Games of Chance was adopted by the Government of Montenegro and put into the force on August, 1st 2008. The Administration for Games of Chance commenced work on August, 1st 2008, and it is planned that it will be fully operational within a one-year period. Currently there are 17 employees in the Administration 6 of whom are inspectors.

c. *The approach concerning risk*

164. Under its byelaws the Ministry of Finance can require supervisory bodies to adopt guidelines on risk analysis and risk assessment. Obligors are required to undertake a risk analysis which determines the risk assessment of groups of customers or of an individual customer, business relationship, transaction or product related to the possibility of misusage for the purpose of money laundering or terrorist financing. The risk analysis shall be prepared pursuant to the supervising bodies guidelines.

165. Article 4 of the LPMLTF prescribes the list of the reporting entities-obligors. Item 3 of this Article also grants the government the power to define additional obligors if there is considered to be a risk of money laundering. This Article also allows the Government to define obligors on whom requirements can be relaxed if the risk of money laundering or terrorist financing is not considered to exist. Lawyers and notaries have been designated as a special category of obligors and are required to ensure that the relevant requirements concerning detection and prevention of money laundering and terrorist financing are undertaken.

d. Progress since the last mutual evaluation

166. Since the last evaluation in 2003, there have been a number of developments.

167. The first law on the prevention of money laundering was passed in September 2003 (The Official Gazette of the Republic of Montenegro, no. 55/03 from 1st October 2003, and it became effective on 8th of October 2003). The Administration for the Prevention of Money Laundering, as an administrative body responsible for the prevention of money laundering, was established by the Decree of the Government of the Republic of Montenegro, in December 2003. The Administration commenced its work in February 2004, and the operational work was started in mid-2004. In March 2005 the Law on Changes and Amendments to the Law on the Prevention of Money Laundering was passed, entering the provisions on terrorist financing.

168. On the basis of the Law the following laws implementing regulations were issued:-

- The Rule Book on the manner of work of a compliance officer, the manner of conducting internal control, keeping and protecting data, the manner of records keeping and training of the employees, was published in the Official Gazette of the Republic of Montenegro no. 55/05 on 5th October 2005.

- Book of Rules on the Manner of Reporting Cash Transactions with the Value Exceeding €15,000 and Suspicious Transactions to the Administration for the Prevention of Money Laundering.

169. The new Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF) was published in the Official Gazette of the Republic of Montenegro no. 14/07 on 21st December 2007. It became effective on 29th December 2007 (See Annex III). The LPMLTF contains innovations and it prescribes that reporting entities shall make a risk analysis by which they determine the assessment of the risk related to the client, business relationship or transaction regarding the possible abuse for the purposes of money laundering and terrorist financing. Article 4 of the Law defines the list of reporting entities, and the Government of Montenegro can extend the list on the basis of a money laundering and terrorist financing risk assessment. Significant new procedures in the Law included a requirement to establish the real owner of a legal person, the possibility of ongoing monitoring of accounts and clients, special types of client verification – customer due diligence (enhanced, simplified and usual), special monitoring of politically exposed persons, the prohibition of opening anonymous accounts, the prohibition of carrying on business with shell banks and blocking transactions at the request of a foreign FIU. The Law prescribes that the administrative body responsible for the prevention of money laundering and terrorist financing is required to supervise the implementation of this Law, and carry out the supervision at: agencies engaged in activities of real estate trade, travel organisation, brokerage or representation in life insurance affairs; humanitarian and nongovernmental organisations... (Article 4 paragraph 2 items 14 and 15 of the Law). The affairs of first instance misdemeanour proceedings, within the competencies of the responsible administrative body, are performed by the officer authorised for conducting misdemeanour proceedings

170. Drafting regulations for implementing the Law (bylaws) is underway. For the time being the existing Rule Books continue to be applied. [4]

171. In April, by a Decree of the Government (Official Gazette of Montenegro no. 26/08 from 18th April 2008) the name of the Administration for the Prevention of Money Laundering was, accordingly to the competencies, changed into the Administration for the Prevention of Money Laundering and Terrorist Financing (APMLTF).

172. APMLTF, in co-operation with other competent supervision bodies, prepared professional opinions for the new "List of indicators of suspicious transactions and clients" which was provided to the Ministry of Finance. The list of indicators issued in 2004 was revised in March 2007. The new list of indicators includes 65 indicators for different categories of reporting entities. [5]

173. APMLTF has signed Memoranda of Understanding with the Central Bank of Montenegro, the Securities Commission, the Ministry of Internal Affairs, the Customs Directorate, the Department of Public Revenues of Montenegro and the Basic Court in Podgorica. APMLTF has also entered into a number of MoUs with other international FIUs.

174. Since July 2005, APMLTF has become a full member of the EGMONT Group and representatives of APMLTF regularly participate in EGMONT Group work groups.

175. Montenegro became a full member of MONEYVAL at the Plenary Meeting held on 4-9 July 2007.

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[4] The evaluators have subsequently been advised that following have recently been issued:-

- The Rule Book on the Manner of Work of a Compliance Officer, the Manner of Conducting Internal Control, Keeping and Protecting Data, the Manner of Records Keeping and Training of the Employees (the Official Gazette of the Republic of Montenegro no. 80 on 26th December 2008) has recently been issued.
- The Rule Book on Delivering Data on Suspicious Transactions in an Amount above €15,000 and Suspicious Transactions to the Administration for the Prevention of Money Laundering, (the Official Gazette of the Republic of Montenegro no. 79 on 23rd December 2008)

[5] In December 2008, APMLTF, in cooperation with other competent bodies and reporting entities, prepared a professional opinion for a new List of Indicators of Suspicious Transactions and Customers which was delivered to the Ministry of Finance. According to Article 46 of the LPMLTF the Ministry of Finance defines the list of indicators based on the professional opinion prepared by the Administration in cooperation with other competent bodies.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

<u>Laws and Regulations</u>

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1 and 2

176. The money laundering offence is criminalised by Article 268 of the Criminal Code (CC) in the following terms:

> *"(1) Anyone who through banking, financial or other business operations conceals the manner s/he obtained money or other property which s/he knows as obtained through a criminal act, shall be punished by an imprisonment sentence of six months to five years.*
> *(2) If the offender committing an act as of Paragraph 1 of this Article is at the same time a perpetrator and an accomplice in a criminal act through which money or property gain as of Paragraph 1 of this Article is obtained, s/he shall be punished by an imprisonment sentence of one to eight years.*
> *(3) If the amount of money or the value of property referred to in Paragraphs 1 and 2 of this Article exceeds forty thousand Euros, the offender shall be punished by an imprisonment sentence for a term of one to ten years.*
> *(4) If an act referred to in Paragraphs 1 and 2 of this Article is committed by more persons who joined together to commit such acts, they shall be punished by an imprisonment sentence of three to twelve years.*
> *(5) Anyone who commits the act referred to in Paragraphs 1 and 2 of this Article and he could have known or ought to have known that money or property were income gained by criminal activity, shall be punished by imprisonment for a term of up to three years.*
> *(6) Money and property as of Paragraphs 1, 2 and 3 of this Article shall be confiscated"*

177. With regard to the English translation of Article 268 of the Criminal Code, the legal evaluator, (who is fluent in the Montenegrin language,) needs to point out, that the wording used in the first paragraph, does not fully represent the scope of the definition of criminalization as it is defined in the original Montenegrin version of the text. The phrase, which has been translated as "the manner he obtained the money", in its original form and in consistency with the Montenegrin legal terminology actually covers more than simple "manner of obtaining". The definition in fact is much broader than the translation implies and it includes the "concealment or disguise of the illicit origin of the property by conversion or transfer etc. and also the true nature, source, location, ownership etc. of criminal property" as defined by the conventions.

178. The definition in the Criminal Code of the criminal offence of money laundering is however limited to conduct, which falls within "*banking, financial or other business operations*" (Article 268, Paragraph 1 of the Criminal Code). Neither of the conventions offer any ground for such limitation. Any type of conversion or transfer should be criminalised, regardless of whether it falls within "business operations" or any other activities of legal or natural persons. 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. In the consequence, simple acquisition and possession of illicit property (Article 6 (b) (i) of The Palermo Convention) is not covered under Article 268 of the Criminal Code. For this reason the scope of the criminal offence of money laundering is not fully consistent with the Vienna and Palermo conventions.

179. 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.

180. The offence of money laundering extends to any type of property (*money or other property)* and without consideration of its value. The CC also extends the scope of the offence to indirect proceeds of crime (Article 112 and 113).

181. 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, the 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. The fact that the predicate offence is regularly prosecuted together with the money laundering offence implies that there might be an evidential problem when the predicate offence cannot be prosecuted. The evaluators are concerned that this presents an effectiveness problem.

182. 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. (See Annex II for list of designated categories of offences based on the FATF Methodology.). The evaluators noted, however, that insider trading and market manipulation are not covered as predicate offences.

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

184. Self-laundering is specifically incriminated in Article 268, Paragraph 2, and all ancillary offences to money laundering are sufficiently covered in Articles 23-25 and 400-401 of the CC.

185. Except for negligent money laundering, which is expressly provided for in Article 268, Paragraph 5, 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.

186. Ancillary offences to money laundering are appropriately covered, including the conspiracy to commit (Articles 400 and 401 of the Criminal Code), attempt (Article 20), aiding and abetting, facilitating, and counselling the commission (Articles 23, 24 and 25).

187. Liability of legal persons is provided for in the Law on Criminal Liability of Legal Entities for Criminal Acts (See Annex VII). In accordance with Article 3 of The Law on Criminal Liability of Legal Entities, defined criminal offences for which legal entities are liable includes both money laundering and terrorist financing and states that "*Legal entities may be held liable for criminal offences referred to in the special section of the Criminal Code*[which includes offences for money laundering and terrorist financing] *and for other criminal offences provided for under a separate law, if the conditions of liability of a legal entity prescribed by this Law have been fulfilled*." With regard to sanctions, for legal entities, 2 types of punishments may be imposed, a fine and dissolution of the legal entity and may only be imposed as a principal punishment. With regard to fines, Article 14 states:-

> "*(1)A fine shall be determined depending on the amount of the damage caused or illicit material gain obtained, and if these amounts are different the higher amount shall serve as a basis for the determination of fine.*

(2) Fine may not be less than two-fold amount of the damage caused or illicit material gain obtained or higher than 100-fold amount of the material damage caused or illicit material gain obtained.
(3) If by a criminal offence no material damage was caused or no illicit material gain was obtained, or if it is difficult to determine the amount of such damage or material gain within a reasonable period of time due to the nature of the criminal offence committed and other circumstances, the court shall mete out the fine in a fixed amount which may not be less than one thousand Euros or higher than five million Euros.“

188. Furthermore, Article 5 of the Law on Criminal Liability of Legal Entities for Criminal Acts provides that legal persons have liability for individuals acting on their behalf in that *“A legal entity shall be liable for a criminal offence of a responsible person who acted within his/her authorities on behalf of the legal entity with the intention to obtain any gain for the legal entity”*.

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

190. The penalty for money laundering is up to 5 years of 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.

Statistics

191. No specific statistics were provided regarding money laundering cases. It seems that there are no dedicated statistics kept in Montenegro on these cases. The Montenegro Supreme State Prosecution, Department For Combating Organised Crime, Corruption, Terrorism and War Crime provided some data in the form of plain text. From that data, the following table was produced:

Year	Cases	Persons	Together with predicate offence	Convictions
2004	2	3	1	Final 1
2005	8	8	7	0
2006	10	53	9	Not final 1[6]
2007	2	11	2	0
2008	3	7	3	0

In accordance with the Rule of internal work of the state prosecutors (Official Gazette of Montenegro, no 22/07 from January 27th, 2007), State Prosecution maintain statistic about all criminal offences in cases in which the prosecutors proceed.

2.1.2 Recommendations and comments

192. The money laundering offence as defined by the CC is basically sound (keeping in mind the translation difficulties, as described in paragraph 176), but it lacks further refinement. The current formulation of criminalised behaviour (conversion/transfer and concealment/disguise) is narrower than the requirements in the Vienna and Palermo Conventions. This should be clarified in the CC.

[6] The case is from 2006 and the non-final conviction was made after the on-site visit

193. Although Montenegro has adopted an "all crime" approach for predicate offences insider trading and market manipulation offences do not appear to be a predicate offence to money laundering as required in Criteria 1.3 and the FATF Glossary. The CC should be amended to clearly include insider trading and market manipulation offences as predicate offences for money laundering.

194. There is relatively strict regulation of extraterritoriality in the case of predicate offences committed by persons who are not citizens of Montenegro against a foreign state. This also raises the question of inclusion of "all serious offences" in the predicate offences. This is subject to incriminations in those countries and if offences are not punishable with at least 5 years imprisonment, the offence would not be considered a predicate offence in Montenegro. Abolition of this limitation (5 years imprisonment) would prevent such situations.

195. The effectiveness of the AML system in Montenegro remains somewhat questionable. There is only one final conviction (two natural persons) for the money laundering offence. The case related to 2 Chinese cash-couriers detected by the Customs Administration.. In the following years several cases of suspected money laundering are being investigated, and the cases are now in various phases of proceedings. Despite the number of cases pending, no final judgement is yet reached in these proceedings. Some of these cases have been on-going for a relatively long period. The evaluators were informed that the reason for Montenegro not being able to finalise these proceedings lies with the logistical complexity of such cases, in which several perpetrators are often involved. The absence of convictions nevertheless negatively affects the assessment of the effectiveness of the system. The fact that the predicate offence is regularly prosecuted together with the money laundering offence implies that there might be an evidential problem when the predicate offence cannot be prosecuted. The evaluators are concerned that this presents an effectiveness problem.

196. Clear comprehensive and well-structured statistics regarding money laundering should be kept systematically. Such statistics should differentiate between the amounts of money being laundered, implementation of provisional measures regarding proceeds of crime, different predicate offences and indictments/conviction ratio. Absence of comprehensive and structured statistics, as well as lack of final convictions, makes it impossible to fully measure the effectiveness of the money laundering criminalisation.

2.1.3 Compliance with Recommendations 1 and 2, and 32

	Rating	Summary of factors underlying rating
R.1	**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.
R.2	**Compliant**	

2.2 Criminalisation of terrorist financing (SR. II)

2.2.1 Description and analysis

197. The financing of terrorism offence is criminalised in Article 449 of the Criminal Code (CC) as follows:

(1) Anyone who provides or raises funds intended for financing of criminal offences referred to in Articles 365, 447 and 448 of the present Code, shall be liable to imprisonment for a term of one year to ten years.

(2) Funds referred to in Paragraph 1 of this Article shall be confiscated.

198. The provision of the terrorism financing offence is a result of a process of aligning the incrimination with the requirements of the 1999 UN International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) ratified by Montenegro in 2002. The Article targets the funding intended for terrorist activity. Activity, which falls within the scope of such terrorist activity, is defined by specific criminal offences as defined in other Articles of the CC, namely, Article 356 (terrorism), Article 447 (international terrorism) and Article 448 (hostage taking).

199. 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 interpret "funds" to include "assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit." As there are no judicial findings currently relating to this definition of funds this has therefore yet to be tested.

200. The 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 CC ("*intended for financing of criminal offences referred to in Articles 365, 447 and 448 of the present 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 (which doesn't require such link to be established) and could be an important limitation for effective use in the practice.

201. 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, as defined by the Article, misses the funding of terrorist organisations and individual terrorists.

202. The attempt of committing the offence of financing terrorism itself is punishable under the general incrimination of attempt (Article 20 of the CC). Ancillary offences to the terrorism financing offence are sufficiently covered in Articles 23-25 and 400-401 of the CC.

203. Following the "all-crime" principle terrorism financing is a predicate offence for money laundering.

204. As already noted in relation to money laundering, extraterritoriality of the terrorism financing offence would normally not be a problem. The same limitation regarding the offences committed abroad by the foreigners against a foreign country exists. In such cases the CC is only applicable if by the law of the foreign country the terrorism financing offence is punishable by minimum of 5 years of imprisonment. On the other hand, in very limited number of cases, the CC provides

liberal application of Montenegrin law for offences committed abroad, even without the condition of double criminality (which is normally a general principle). This would only apply in cases for which the supreme prosecutor so decides.

205. The mental element for terrorism financing is intent. The intent is extrapolated from 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. Liability of legal persons is provided for in the Law on Criminal Liability of Legal Entities which in its Article 3 provides that "legal entities may be held liable for criminal offences referred to in the special section of the Criminal Code and for other criminal offences provided for under a separate law, if the conditions of liability of a legal entity prescribed by this Law have been fulfilled". 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.

206. There have been no cases of terrorist financing offences in Montenegro so far.

2.2.2 Recommendations and comments

207. At the time of the evaluation, no cases of terrorism financing were recorded in Montenegro. With no investigations and prosecution for terrorism financing it is not possible for the evaluators to assess the effectiveness of the system.

208. A definition of "funds", which includes "assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit." should be laid down in the Criminal Code.

209. The reference to specific criminal offences (terrorism, international terrorism and hostage taking) in Article 449 appears not to be in line with the scope of the Terrorist Financing Convention and the Interpretive Note to SR II, as the scope which constitutes the criminal offence becomes narrower. Under Articles 365 and 447, only the acts, intended to *cause harm* (to the constitutional order of Montenegro, or the foreign state/international organisation) are criminalised, while the convention requires the incrimination of any acts of violence which purpose is to *intimidate* a population or *compel* a government or international institution (to do/to abstain from doing).

210. The criminalisation of financing of terrorism in the CC does not address the incrimination of funding of terrorist organisations and individual terrorists. Leaving this issue only to the general provisions on aiding and abetting is not sufficient (IN 2 (d) and 4).

211. The solution of relating the existence of the terrorist financing offence to specific criminal offences, found under other Articles of the CC is also appropriate (IN 6). Under current legislation, terrorist financing is only considered to be a criminal offence if funds are intended for one of three specific criminal offences (Terrorism, Article 365, International Terrorism, Article 447 and Hostage Taking, Article 448). A more flexible definition which would incriminate financing. Furthermore, there needs to be an offence introduced to cover cases when funds are not linked with a specific terrorist.

212. The absence of any case law on terrorist financing offences makes it impossible to assess the potential impact of the jurisprudence on the above mentioned questions of scope of incrimination and on the methods of interpretation related to incrimination of financing of terrorist groups and individual terrorists.

213. Article 449 should be therefore be brought fully in line with international standards.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**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.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

214. Article 268 (6) of the CC provides for the confiscation of money and property subject to money laundering. Such confiscation is mandatory. It has to be stressed, that despite of the low number of convictions (only one final conviction), a significant amount of laundered money was actually confiscated ($895.000).

215. Article 449 (2) of the CC provides for the confiscation of funds intended for terrorism financing. Such confiscation is mandatory.

216. The general confiscation regime is regulated by Article 75 and Article 112 to 114 of the CC in the following manner:

- Proceeds from crime are confiscated according to Articles 112 and 113 CC,
- Instrumentalities ("*objects which were used or intended for use in the commission of a criminal offence or which resulted from the commission of a criminal offence*") 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. Technically, such system could imply to certain inability of the courts to confiscate the instrumentalities (not owned by the perpetrator), but giving the fact that in case of conviction, instrumentalities are recognized as illegal, any further use of them would be contrary to morality and would present the danger of using them for criminal offence, so in practice, the instrumentalities would be regularly confiscated.
- Equivalent value confiscation is applied when the confiscation of the proceeds itself is not possible.

217. 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. But the evaluators were not given any evidence or statistics to assess the effectiveness of this system in practice.

218. The definitions of instrumentalities and proceeds of crime (*objects which were used or intended for use in the commission of a criminal offence or which resulted from the commission of a criminal offence/ money, things of value and all other property gains)* are broad enough to encompass both direct and indirect proceeds, including substitute assts such as income, profits, or other benefits. In principle it does not matter where the assets are located or who holds them. If the person, who is not the perpetrator, holds the proceeds then these assets will be confiscated if this person received them free of charge or for obviously inadequate compensation (*from the persons it has been transferred to without compensation or against compensation that is obviously inadequate of its real value*).

219. The rights of *bona fide* third parties are fully established in the law (Article 114 of the CC and Article 539 CPC) and they are to be actively included in the decision-making procedure regarding confiscation.

220. Only the court is authorised to make decisions on recovery of property subject to confiscation, following a proposal from a competent State Prosecutor. The court decision encompasses both contractual and other disposition of property subject to confiscation. In accordance with the Constitution of Montenegro and Law on Courts, courts are independent and autonomous in decisions, and any influence on bringing court decision is forbidden and subject to criminal prosecution.

221. Confiscation is conviction based and is imposed together with the guilty verdict (Article 542 CPC). Instrumentalities can also be confiscated in cases, when there is no conviction, if reasons of public safety or morality justify it (Article 537 CPC). There are no special provisions in this respect relating to money laundering.

222. 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 (Articles 81, 230, 246 and 541 CPC). 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. This solution has some limitations, due to the fact, that the definition of organised crime (Article 507 of the CC) sets rather high standards and not all of the money laundering offences will fall within its scope. Statistics provided from the competent authorities show, that there were several cases of money laundering that did not meet the criteria of organised crime. In the context of the preventive regime, APMLTF also has the power to suspend the transaction for 72 hours (Article 51 of the LPMLTF).

223. There is no requirement for an offender to demonstrate the lawful origin of the property. A Bill for a new criminal procedure law, which is in the process of being drafted is expected to provide for the reversal of burden of proof.

224. 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. The evaluators were not provided with any provision or other information about existence of such authority.

225. Very limited statistics was provided concerning confiscation, freezing and seizing of proceeds of crime. Montenegro Supreme State Prosecution, Department For Combating Organised Crime, Corruption, Terrorism And War Crime provided some data in the form of plain text and tables. From that data, the following could be deducted:

Provisional measures and confiscation applied in Money Laundering cases

Year	Cases	Amount of proceeds €	Temporary measures €	Confiscation proposed €	Confiscation Imposed €
2004	1	$895,000	0	0	$895,000
2005	2	40,000	40,000	0	0
2006	9	5,804.000	5,804,000	5,804,000	0
2007	2	190,000	190,000	0	0
2008	3	80,000	80,000	0	0

226. Available data shows, that Montenegrin authorities use the instruments for temporary preservation of proceeds of crime in money laundering cases (freezing and seizure). These instruments were applied in a most cases. Despite many measures which have been applied, the lack of final convictions makes it uncertain that those instruments will always actually reach their ultimate purpose – permanent confiscation of the proceeds of crime. At the time of the evaluation there was only one final conviction concerning any of the cases described.

2.3.2 Recommendations and comments

227. The seizure and confiscation instruments under Montenegrin law seem to be adequate and well balanced. It covers all forms of criminal proceeds and instrumentalities. All eventualities are properly addressed, including the situations where conviction is made impossible.

228. Although the solution which provides more flexible conditions for the seizure in the cases of organised crime is welcomed, it has somewhat limited scope due to a relatively strict definition of organised crime, which does not include all situations of money laundering and terrorism financing. The evaluators, however, did not detect any such negative effects in practice.

229. Montenegrin authorities are encouraged to introduce a reversal of the burden of proof regarding property subject to confiscation, which is currently under consideration.

230. The evaluators advise the establishment of legal 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.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**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.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

231. The implementation of SR III was explained as being covered by Article 520, Paragraph 2 of the CPC which deals with the obligation to provide data. The provision provides that the State Prosecutor may request that the competent state authorities, banking or other financial institutions make an inspection of business activities of certain persons and to submit to him documentation and data that may be used as evidence of the criminal offence or property gained by commission of the criminal offence, as well as information on suspicious money transactions referred to in the Convention on laundering, searching, seizure and confiscation of gain obtained by criminal activities. 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 the period of three months but no longer than six months.

232. Additionally the Montenegrin authorities explained that money or other assets or property of a terrorist organisation can also be temporarily seized following Article 81 of the CPC as items which are intended for committing of criminal offences. The Article provides the procedures for seizure of objects under the Court order.

233. 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 in accordance with S/RES/1267 (1999). Such freezing should take place without delay and without prior notice to the designated persons involved.

234. Montenegro has not designated any persons who should have their funds or other assets frozen in accordance with S/RES/1373 (2001). Neither does Montenegro examine and give effect to actions initiated under the freezing mechanisms of other countries.

235. During the on-site visit assessors were informed by some of the reporting entities (especially the banks) that the lists of designated entities are being distributed to them. The evaluators were told that the terrorist lists are received by the Ministry of Foreign Affairs who forwards them to the Ministry of Finance who again forwards the lists to APMLTF who distributes them to the all reporting entities. Updates of the lists are being disseminated as well. However, due to the absence of an effective mechanism to freeze such funds the dissemination of the lists has no effect. The reporting entities that confirmed the reception of the list were not aware of any obligation to freeze terrorist funds and other assets of persons on the lists without delay and without prior notice to the designated persons.

236. General guidance on freezing of funds has been issued but there is no specific guidance on the freezing of terrorist finances.

237. The evaluators were informed that a true match of names has never been identified in Montenegro. If a match did occur, the reporting entity is required to inform APMLTF immediately.

238. There are equally no formal procedures for evaluating de-listing requests, for releasing funds or other assets of persons or entities erroneously subject to freezing and for authorising access to frozen resources when deemed necessary for basic expenses, payment of certain types of fees, etc pursuant to S/RES/1452 (2002). Nor are there specific measures to protect the right of bona fide third parties consistent with Article 8 of the Terrorist Financing Convention.

239. There are no sanctions for non-compliance and no monitoring mechanism.

2.4.2 Recommendations and comments

240. As a priority Montenegro should establish a central authority at national level to examine, integrate and update the received lists of persons and entities suspected to be linked to international terrorism before sending them to the financial sector and DNFBP. Additionally, a domestic mechanism to enact S/RES/1373 (2001) should be implemented to be able to designate terrorists at national level as well as to give effect to designations and requests for freezing assets from other countries. Likewise, Montenegro should adopt procedures for evaluating de-listing requests, for releasing funds or other assets of persons or entities erroneously subject to the freezing and for authorising resources pursuant to S/RES/1452 (2002).

241. Practical guidance to the financial institutions and DNFBP concerning their responsibilities under the freezing regime as well as for the reporting of suspicious transactions that may be linked to terrorism financing should be issued by the authorities.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**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)

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and analysis

242. The Administration for the Prevention of Money Laundering was established in 2003 by a Governmental Decree. The Montenegrin FIU, now named Administration for the Prevention of Money Laundering and Terrorist Financing[7] (APMLTF) is the central authority for combating money laundering and terrorist financing. It has been a member of the Egmont Group since July

[7]According to the Decree on changes and amendments of the decree on organization and working method of the state administration published in the Gazette of Montenegro", No. 26/08 dating from 18 April 2008.

2005 and operates according to the Egmont Group Documents[8] . Its powers and duties are confirmed in the LPMLTF (Chapter V- Administration body competencies, Article 47 – Article 65).

243. The new "Law on the Prevention of Money laundering and Terrorist Financing" (LPMLTF) entered into force on 29 December 2007 (See Annex III).

244. APMLTF is an independent body whose administrative work is supervised by the Ministry of Finance. Otherwise, it has full operational autonomy. APMLTF is an administrative type of FIU. The Ministry of Finance has formed a Working Group that is preparing regulations for the implementations of the LPMLTF.

245. Since February 2008 APMLTF has been organised through 7 organisational departments:

- Analytics Department,
- Suspicious Transactions Department,
- Informational Technology Department,
- General and Legal Affairs and PR Department,
- Department for Conducting Misdemeanour Procedure,
- Reporting Entities Control Department,
- National and International Cooperation Department.

246. APMLTF is managed by a Director and two assistants (deputy directors). One is Head of Data receiving, processing and analysing department and the other is Head of control, national and international department.

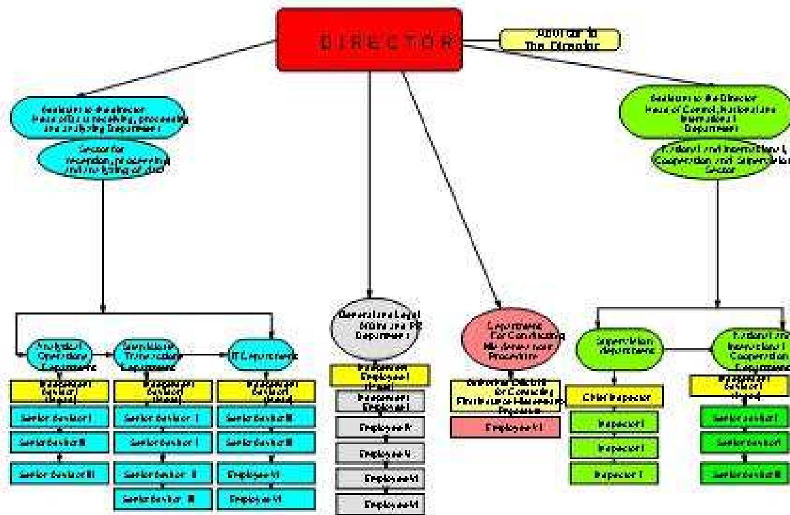
247. The Rule Book on internal organisation and systematisation has defined 34 job positions for employees in APMLTF. Generally, a college-level education is required with an emphasis on law, economics and IT, knowledge of the English language is required for certain positions and all employees are required to have computer skills. Currently there are 27 civil servants and employees and 1 trainee employed for professional.

248. According to the Articles 58 and 59 of the Law on Civil Servants and Employees (Official Gazette of Montenegro no. 50/08) civil servants and employees, including those employed in APMLTF, are liable for breaches of the obligations of employees, which can be minor or serious disciplinary offences. The disciplinary measure for a minor disciplinary offence is a fine of an amount of up to 15% of salary paid in the month in which the offence was committed. For a serious disciplinary offence - a fine of an amount of 20 to 30% of salary paid in the month in which the offence was committed or termination of employment.

249. At the time of the on-site visit, the number of staff with the APMLTF was 27 employees, out of 34 budgeted.

[8] Egmont Group Statement of Purpose and Egmont Group Principles for Information Exchange between Financial Intelligence Units for Money Laundering, were both implemented by Government Decision of 07.10.2002 no. 1405-r).

APMLTF ORGANISATION CHART



250. APMLTF is a national centre for receiving and requesting, analysing, and disseminating disclosures of STRs and other relevant information concerning suspected money laundering and terrorist financing activities. APMLTF has the relevant supervisory powers (checking, control) for the subject persons listed in Article 4, item 14 and 15 of the AML/CTF Law, see below. In September 2004 APMLTF issued a List of Suspicious Transaction Indicators, which is published on its web site (http://www.vlada.cg.yu/aspn/) and it was updated in March 2007.APMLTF has also provided the List to reporting entities in hard copy. During the on-site visit the evaluators were informed that reporting entities identify and report suspicious transactions based on indicators released by the APMLTF.

251. APMLTF's main tasks are:

- Receiving data and information from the reporting entities (listed under Article 4 of the AML/CTF Law) concerning suspicious transactions and cash transactions exceeding €15,000. APMLTF receives STRs and CTRs from reporting entities either in hard copy or on the secure web site;
- Temporarily suspending transactions by written order, within 72 hours, if there are reasonable grounds for suspicion of money laundering or terrorism financing and to notify such a suspension to competent bodies without delay;
- Analysing and processing data and information received in accordance with the law in order to identify the existence of solid grounds for money laundering or terrorist financing;
- Receiving requests from competent authorities to provide necessary data and information in order to accomplish their activity objectives; the information related to the notifications received in accordance with the provisions of the information, are processed and used within APMLTF within its confidentiality regime;
- Immediate notifying the relevant competent body (police administration or prosecution's office) in cases in which solid grounds of committing offences of money laundering or terrorist financing, or other criminal acts were found.

Receiving and analysing STRs

252. After an STR is received, the Department for Analytics and the Department for Suspicious Transactions are involved in analytical processing of transactions and persons for which there are reasonable grounds for suspicion of money laundering or terrorist financing. If there are serious grounds for money laundering or terrorist financing, APMLTF may decide to block the transaction for 72 hours and send the report to the competent authority (police administration or prosecution's office). The decision is taken by the Director of the FIU based upon a proposal made by the Head of the Suspicious Transactions Department or the Deputy Director.

253. Moreover, reports are analysed for further investigation. Requests from other state bodies' databases are also performed for additional information. If necessary, additional information is requested from the reporting entities, including information on other subjects revealed during the analysis of the reports. The reporting entities are required to provide APMLTF with requested data no later than 8 days after the day of receiving the request (Article 48 of the LPMLTF).

254. If there are grounds for reasonable suspicion of money laundering or terrorist financing APMLTF can request reporting entities to perform ongoing monitoring of a customer's financial business (Article 53 of the LPMLTF). Ongoing monitoring of transactions shall not be for more than 3 months although if there are reasonable grounds for suspicion of money laundering or terrorist financing it may be prolonged for another 3 months. The Montenegrin authorities did not provide the evaluation team with examples of cases in which this provision was used.

255. APMLTF forwards the relevant information to the law enforcement authorities (police administration or prosecution's office) according to their jurisdiction (Article 55 and 56 of the LPMLTF). There are no specific criteria related to the chosen competent authority and this discretionary power may have a negative impact on effectiveness of the system.

256. All reports received by APMLTF are kept in its database and used on a daily basis for analysis and intelligence purposes. CTRs are analysed by the Analytical Department within APMLTF in case of receiving requests from other institutions or in cases that are linked with STRs.

257. The information sent to law enforcement authorities cannot be used in court, as it is classified.

Statistics

258. Thirty seven on-site inspections of reporting entities were performed by APMLTF from May 2008 to September 2008.

259. Inspectors from the reporting Entities Control Department of APMLTF have submitted fourteen requests for initiating a misdemeanour procedure. These requests were processed by an authorised officer immediately after reception. In five cases the accused (legal person and the authorised person of the legal person) were found guilty and fined; the total amount of imposed fines was €13,860, and the costs of the misdemeanour proceedings were €300. In one case the misdemeanour procedure was discontinued as, during the procedure, it was found that there are no evidence that the accused persons committed a misdemeanour as stated in the request. Eight cases are still being processed.

260. The total number of notifications sent to other state agencies due to reasonable suspicion that a criminal act was committed was four.

Guidance and feedback

261. In accordance with Article 33 of the LPMLTF, in September 2004 APMLTF issued a List of Suspicious Transactions Indicators for the securities market; banks; customs administration; tax

administration; and legal and natural persons, business organisations, entrepreneurs engaged in trade or business. The List is available on APMLTF's web site.

262. The evaluation team advised the Montenegrin authorities to issue an updated List of Suspicious Transactions Indicators since the existing List dates back to 2004 and the current AML/CFT Law came into force at the end of 2007.

263. The Ministry of Finance has issued a Book of Rules (see Annex IV) on the manner of reporting cash transactions with the value exceeding €15,000 and suspicious transactions to the Administration for Prevention of Money Laundering. The Book of Rules was published in the Official Gazette No.55/05, dated 5 October 2005.

264. Attached to the Book of Rules are reporting forms for CTRs and STRs. The reporting forms specifically address banks; stock exchanges; brokers and funds; the Central Depository Agency; merchants and intermediaries; customs; and other reporting entities such as post offices, insurance companies, gambling houses, etc. The Book of Rules is not considered to be a regulation or "other enforceable means" as it does not set out enforceable requirements with sanctions for non-compliance.

265. In accordance with Article 8 of the LPMLTF guidelines on risk analysis shall be determined by the competent supervisory authorities, pursuant to the Regulation adopted by the Ministry of Finance. During the on-site visit the evaluation team was advised that the Ministry of Finance has established a working group in order to prepare a draft of the Regulation.[9]

266. APMLTF gives training to reporting entities and law enforcement agencies and participates in seminars where examples of ML cases are provided. No typologies were provided to reporting entities. APMLTF needs to enhance training for its own staff and for reporting entities, in order to increase the awareness and understanding of money laundering and terrorism financing schemes which may be used.[10]

267. In accordance with Article 65 of the LPMLTF, APMLTF is required to submit a report to the Government on its work and status, at least once a year. In the replies to the questionnaire it is indicated that APMLTF publishes statistical data and informs the public on the phenomena of money laundering and terrorism financing at least once a year. The activities of APMLTF, information on important events, legal provisions, etc. are available on APMLTF's website.

268. Additionally APMLTF regularly submits reports to the National Commission for Monitoring of the Realisation of the Action Plan for the implementation of the program for fight against corruption and organised crime.

269. Feed-back is provided by APMLTF to reporting entities according to Article 57 of the LPMLTF. In general, it is a case by case feed-back, except in cases where the FIU evaluates that notification may cause detrimental effects on the course and outcome of the proceeding.

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[9] The evaluators were subsequently advised that the Securities Commission adopted an Instruction about risk analysis of money laundering, "know your client" procedures and procedures for recognizing suspicious transactions at its meeting held on November 28, 2008. This Instruction is to be implemented until the adoption of the Guidelines of the Ministry of Finance and will then be amended in accordance with these Guidelines.

[10] The evaluators have subsequently been advised that APMLTF, in cooperation with the Organization for Security and Co-operation in Europe (OSCE) Office in Podgorica, has organized three seminars and two counselling sessions workshops on the prevention of money laundering and terrorist financing, at which, among other things, money laundering case studies were presented. The speakers were domestic and foreign experts from AML/CFT area. These sessions were carried out between October and December 2008.

270. In practice, the feedback is provided on a regularly basis by telephone although in some cases written feedback is provided. The compliance officers are informed by phone if there is a suspicion of money laundering and whether it was confirmed as an STR.

Access to information and Request for additional information

271. The basic requirement for APMLTF to gain access to other agencies' information is provided in the LPMLTF. All government authorities are required without delay to provide all information and documents to APMLTF that are needed to fulfil its duties. The information is to be provided no later than 8 days after the day of receiving the request or enable, without compensation, direct electronic access to data and information stated in the request (Article 50 of the LPMLTF). In practice, APMLTF has access to other institutions data bases, but there is not a direct link.

272. APMLTF has access to the Citizens' database of the Ministry of Internal Affairs and as well as publicly available databases:

- Central Register of the Commercial Court,
- Public Revenues Department
- Ministry of Justice –register of NGOs.

The establishment of a National Informative Office of state administrative bodies is planned and it will include representatives of the state administrative bodies incorporated in the system for the prevention of money laundering and terrorist financing: APMLTF, Police Directorate, Customs Directorate and Public Revenues Department.

273. Article 54 of the LPMLTF provides that APMLTF may require the data and information necessary to perform their legal tasks from any reporting entity based upon an initiative which comes from the Court, State Prosecutor, Police Directorate, Competent Tax Authority, Custom Directorate, Directorate for Anti Corruption Initiative and other competent authorities.

274. Furthermore APMLTF may exchange information, based on reciprocity, 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. APMLTF has intensified and improved the exchange of information with other FIUs by creating a unit dealing with requests from the other FIUs as a priority.

Requests for information sent by APML/FT during the period 2004-2008
(the statistics reflect the entire year 2008)

Year	Number sent	Number received	Spontaneous disclosure
2004	8	8	
2005	58	52	
2006	44	36	4
2007	46	32	1
2008	60	50	

Out of 44 requests sent by APML/FT to foreign FIUs in 2006, 43 requests were related to suspicions for money laundering and 1 requests was related to a suspicion of terrorist financing.

Requests for information received by APMLTF during the period 2004-2008

Year	Number received	Number sent	Spontaneous disclosure
2004	9	9	
2005	23	23	
2006	24	24	1
2007	42	42	
2008	39	34	2

Out of 24 requests, received by foreign FIUs in 2006, 22 requests were related to suspicions for money laundering and 2 requests were related to suspicion of terrorist financing.

275. Moreover, the receipt of data, information and documentation from reporting entities or state authorities professional and official secrecy rules should not present a barrier to APMLTF.

276. In order to keep specific and distinct records on money laundering and terrorism financing the competent courts, state prosecutor and other public bodies are obliged to provide data on offences and crimes related to money laundering and terrorism financing to APMLTF. During the on-site visit, the evaluation team was informed that APMLTF had not received any such information, which indicates that in practice law enforcement appears reluctant to provide feedback.

Protection of information

277. Data held at APMLTF is securely protected and only disseminated in accordance with the LPMLTF. Article 280 of the Criminal Code establishes liability for any breach of professional secrecy by an employee of APMLTF concerning price sensitive information. Article 11 of the Code of Ethics, which applies to all state employees, requires all civil servants and other state employees to protect confidential data, information and facts which are accessible by them in the performance of their duties. The Code of Ethics does not, however, specify any sanctions for breaches. However, there is no obligation to only disseminate information received according to the law. Article 52 paragraph 2 of the Law on Civil Servants and State Employees (The Official Gazette of Montenegro no. 50/08), which applies to all employees of the state authorities and including employees of APMLTF states "*the obligation to keep an official secret shall last even after the termination of employment, but no longer than five years from the day of the termination of office. Exceptionally, the obligation to keep an official secret may last even longer, when this is stipulated by the law.*" The prohibition for the dissemination of information received by APMLTF's employees, after cessation of working, should be an explicit provision in the law without any time limit. The evaluators do not consider Criteria 26.7 to be fully observed.

278. APMLTF is working with information covered by professional secrecy, and unlawful disclosure is considered to be a criminal offence under Article 425 of the Criminal Code. No cases have occurred where confidential information has been disclosed within the four years APMLTF has existed.

279. In order to process the information necessary for the financial investigations, the APMLTF uses a secure network. Only employees working with the Analytic Department, Department for Suspicious Transactions and the IT Department have access to the secure network. Separately, there is a local network of state bodies to which users are connected and it is used for general purposes. This network is available to all employees within APMLTF. There are workstations for all staff members, 10 notebooks and an advanced protection system.

Resources, Professional standards and Training

280. The replies to the questionnaire indicate that APMLTF has been allocated with an adequate amount of funds for financing planned expenditures. The funding is secured in the Budget for Montenegro and reflects an understanding of the complexity and importance of the work of APMLTF. Further details of the budget and staffing levels are set out in Section 1.5 above.

281. At the time of the on-site visit, the number of staff with the APMLTF was 27 employees, out of 34 budgeted. During the on-site visit the evaluation team was informed about problems with employees leaving for the private sector. The evaluators were informed that the management of APMLTF is making efforts to hire highly educated and skilled persons.

282. 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. The technical infrastructure makes it possible to use the most modern data processing software for handling data, supporting management decisions, permitting staff to work on specific cases and protecting information. There are 25 desktop computers in use and 10 notebooks. APMLTF has prescribed a procedure of keeping backup files on a safe location outside its premises, in a safe deposit box in the Central Bank of Montenegro. APMLTF's access to external databases has been described earlier in this section

283. During the employment process APMLTF used a screening system (evaluation and checking) in order to decide upon the individual persons to be employed. The criterion for selection of APMLTF staff has already been described earlier in this section.

Training

284. The staff of APMLTF are provided with relevant training for combating money laundering and terrorist financing. From 2006 - 2008, the representatives of APMLTF participated in numerous training sessions targeting the fight against money laundering and terrorism financing, both locally and abroad.

285. Representatives of APMLTF participated at:

- Seminar on Typologies of Money Laundering and Terrorist Financing (16th -20th June 2008, Syracuse, Italy),
- the International Conference on Harmonisation of the Fight against Fraud and Corruption in Europe "Together we are stronger" organised by OLAF (European Commission -European Anti-Fraud Office) and DBB Academy -Germany (25th - 26th February 2008, Cologne);
- 57th Plenary meeting of the Council of Europe for criminal issues (1st -7th June 2008, Strasbourg),
- OSCE Conference on public–private partnership in fighting against terrorism (14th September 2008, Vienna),
- Regional Conference on combating human trafficking and money laundering (Larnaca, Cyprus, 18th – 19th September 2008),
- Seminar on the prevention of money laundering organised by OSCE (Organisation for Security and Co-operation in Europe, Becici 13th – 14th October 2008),
- Workshop on the Prevention of Money Laundering and Terrorist Financing (Kolasin 25th - 26th November 2008),
- Seminar for training prosecutors, accountants and auditors on reporting criminal offences related to corruption (Podgorica, 24th - 25th November 2008),
- Workshop on the prevention of money laundering and terrorist financing (Kolasin 17th - 19th December 2008

Statistics

286. APMLTF keeps a number of detailed statistics, but the statistics were nevertheless considered insufficient by the evaluation team in order for Montenegro to ensure an efficient self assessment of their system.

287. The following represents the most important statistics that were provided to the evaluation team. Statistics are broken down on the type of reporting entity.

Reports on cash deposits and withdrawals over the threshold of €15,000

Item	2004	2005	2006	2007	2008
- The number of received reports, out of which:					
• Banks	**498**	**1,867**	**2,297**	**3,278**	**2,881**
• Stock exchange					
• other	**23**	**74**	**44**	**63**	**40**
• Customs	**3**	**81**	**109**	**134**	**137**
• Insurance and reinsurance companies		**1**	**1**		
• Economic agents that carry out gambling,		**1**			**5**
• Postal offices	**1**	**4**	**23**	**32**	**16**
• brokers					
• auditors, natural and legal persons giving tax, accounting, or financial and banking advice					
• real estate companies	**3**	**65**	**76**	**154**	**132**
• CDA					
• Lawyers					
- Number of operations	**4,836**	**21,661**	**41,719**	**88,124**	**58,630**
- Amounts of cash deposits €million	**585**	**2,084**	**1,331**	**2,007**	**1,631**
- Amounts of cash withdrawals €million	**34**	**2.100**	**863**	**1,439**	**1,510**

288. Some categories of reporting entities (CDA, brokers, stock exchange) perform their main activity in a cash-less manner and therefore do not normally handle cash transactions in the amount of €15.000 or more. In order for the reporting entities to execute a transaction, a client has to submit an order and transfer (cashless order) the funds needed for the execution of that order from his/her bank account to the account of the reporting entity. After executing the requested transaction the reporting entity pays any funds due by a cashless payment order to the client. Reporting entities such as lawyers, auditors, natural and legal persons engaged in tax, accounting or banking and

financial advice, insurance and reinsurance companies, perform the major part of their work in a cashless manner (deposit and withdrawal orders), and only a small number of transactions are executed in cash in the amounts under €15.000, so these categories of reporting entities are not obliged to submit reports of that kind to the APMLTF.

Suspicious transactions reports

	2004	2005	2006	2007	2008
- The number of received reports, out of which:	44	507	186	116	46
Banks	44	500	183	104	33
Customs		7	2	12	13
Brokers			1		
Blocked transactions		8	73	27	8
Amounts of cash blocked €m		1.6	22.8	18.8	1
Suspicious transactions referred onwards to competent state authorities	4	18	95	46	16

289. Regarding statistics on STRs, the evaluators noticed the significant decrease in STRs from 2005 (507) to 2006 (186). The Montenegrin authorities explained tha there had been a lack of quality in STRs in 2005 and the subsequently training provided to reporting entities and the amendments from the end of 2005 on reporting obligations explained the decrease in the number of STRs received in 2006 and then in 2007. The decreased number of STRs lead to a decreased number of blocked transaction. The Montenegrin authorities also mentioned that the decrease of foreign investments had caused a reduction in STRs. The evaluators accept the Montenegrin authorities explanations, but nevertheless, consider that a further explanation is based upon the lack of action in updating the List of Suspicious Transactions Indicators. It is worth to mention that reporting entities, in performing their reporting obligation, are totally reliant on the List.

Cases forwarded to the Police Directorate and State Prosecutor by APMLTF and the number of blocked transactions

	Total number of cases (transactions) opened in APMLTF		**Total number of cases (transactions) forwarded to Suspicions Transaction Department**		**Total number of cases (transactions) forwarded to Police Directorate**	**Total number of cases (transactions) forwarded to State Prosecutor**
	On Analytics Department initiative	**On Reporting entities initiative**	**On Analytics Department initiative**	**On Reporting entities initiative**		
2004	250		129		4 (4)	2 * (2)
	210 (392)	40 (44)	89 (96)	40 (44)		
2005	823		347			9**

	665 (968)	158 (507)	189 (358)	158 (507)	18 (18)	(9)
2006	658		240		29 (95)	9*** (42)
	579 (736)	79 (186)	161 (246)	79 (186)		
2007	750		237		43 (46)	5**** (7)
	640 (843)	110 (116)	127 (226)	110 (116)		
2008	269		101		51 (57)	6***** (11)
	227 (423)	42 (46)	59 (83)	51 (57)		

***Out of the total number of cases four forwarded to the Police Directorate, two cases were also forwarded to the State Prosecutor in 2004.**

**** Out of the total number of cases eighteen forwarded to the Police Directorate, nine cases were also forwarded to the State Prosecutor in 2005.**

***** Out of the total number of cases twenty nine forwarded to the Police Directorate, nine cases were also forwarded to the State Prosecutor in 2006.**

****** Out of the total number of cases forty three forwarded to the Police Directorate, five cases were also forwarded to the State Prosecutor in 2007.**

******* Out of the total number of cases forty four forwarded to the Police Directorate, six cases were also forwarded to the State Prosecutor in 2008.**

290. Montenegro does not keep full statistics on the number of STRs that result in investigation, prosecution and conviction. This is largely due to the fact that FIU information is mixed with other information at the law enforcement and prosecution stages.

2.5.2 Recommendations and comments

291. Since the last evaluation in 2003, there have been major changes. A Financial Intelligence Unit has been created (Administration for the Prevention of Money Laundering and Terrorist Financing – APMLTF). APMLTF is an administrative FIU which takes a leading role in the development, coordination and implementation of the AML/CFT system. In performing its activities as an independent administrative body supervised by the Ministry of Finance, the FIU receives, obtains without limitation, analyses and discloses information to relevant bodies.

292. Article 55 of the LPMLTF prescribes that if APMLTF evaluates on the basis of data, information and documentation obtained in accordance with the LPMLTF when, in relation to certain transactions or persons, there are reasonable grounds for suspicion of money laundering or terrorist financing, APMLTF shall inform the competent authority in written form with necessary documentation about the reasons for suspicion.. There are no specific criteria indicating the competent authority to receive the notification from APMLTF which normally starts the investigation. This discretionary power for APMLTF may have a negative impact on the effectiveness of the system. Although the evaluators noted that, in most cases, APMLTF delivers the notifications to the Police and Prosecution authority.

293. APMLTF has a proper IT system in place, but APMLTF should take into consideration the necessity of expanding their direct access to other authorities' databases.

294. The evaluation team advise the Montenegrin authorities to issue an updated List of Suspicious Transactions Indicators since the existing List was revised in March 2007 and the current AML/CFT Law came into force at the end of 2007.

295. The prohibition for the dissemination of information received by APMLTF's employees, after cessation of working, should be an explicit provision in the law without any time limit.

296. Despite provisions in the LPMLTF, Montenegro does not keep full statistics on the number of STRs that result in investigations, prosecutions and convictions.

297. APMLTF needs to enhance the training for its own staff and for reporting entities, in order to increase the awareness and understanding of money laundering and terrorism financing schemes which may be used.

2.5.3 Compliance with Recommendations 26, 30 and 32

	Rating	Summary of factors underlying rating
R.26	**Largely Compliant**	• Need to expand APMLTF'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 APMLTF employees to disseminate information after the cessation of working with APMLTF. • The low number of STRs filed to law enforcement authorities in comparison with the number of analysed STRs brings into question the effectiveness of the APMLTF.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 and 32)

2.6.1 Description and analysis

Recommendation 27

298. 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 have all been established by law, as are their activities. Article 44 of the Criminal Procedure Code stipulates that pre-trial investigations on money laundering and terrorism financing are conducted by the Police Administration under the supervision of the prosecutors.

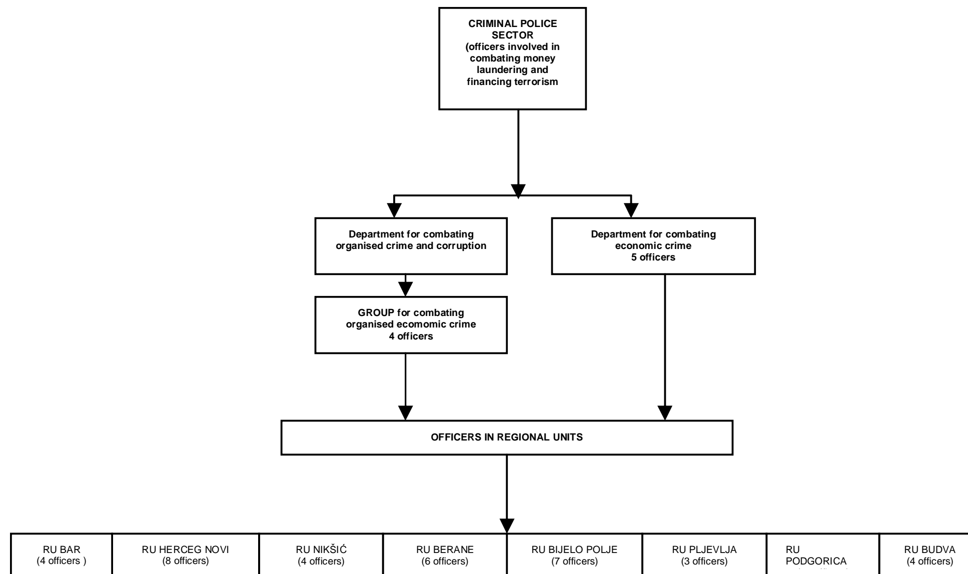
299. Each time a police officer receives a complaint or commences an investigation ex officio he is required to promptly inform the Prosecution Authority. The Prosecution Authority claims that legal provisions and systems in place enable them to be aware of all ongoing investigations within the Police Administration.

300. The prosecutors can refer money laundering cases back to police officers, particularly to ask for additional evidence and in instances in which procedures have been violated. The Prosecution Authority didn't provide statistics in this respect, but the evaluation team was advised that such restitutions are random.

Police Administration

301. At the time of the on-site visit the Police Administration was in the process of reorganisation and systematisation. The Police Administration is divided into 2 sectors, and money laundering and

terrorism financing investigations are within the sector of the Criminal Police. This sector is divided into 3 subunits: Unit for Fight against Organised Crime and Corruption; Unit for Fight against Corporate Crime; and Unit for Fight against Drugs and Smuggling. The fight against money laundering and terrorism financing is generally supported directly through the work of two specific units: the Unit Against Organised Crime and Corruption (where a Group Against Economic Crime has been established) and the Unit for Fight Against Corporate Crime.



302. All staff within special units of the Police Administration which are involved in money laundering and terrorism financing investigations have higher education, certification, basic IT knowledge and skills and most of them speak at least one foreign language.

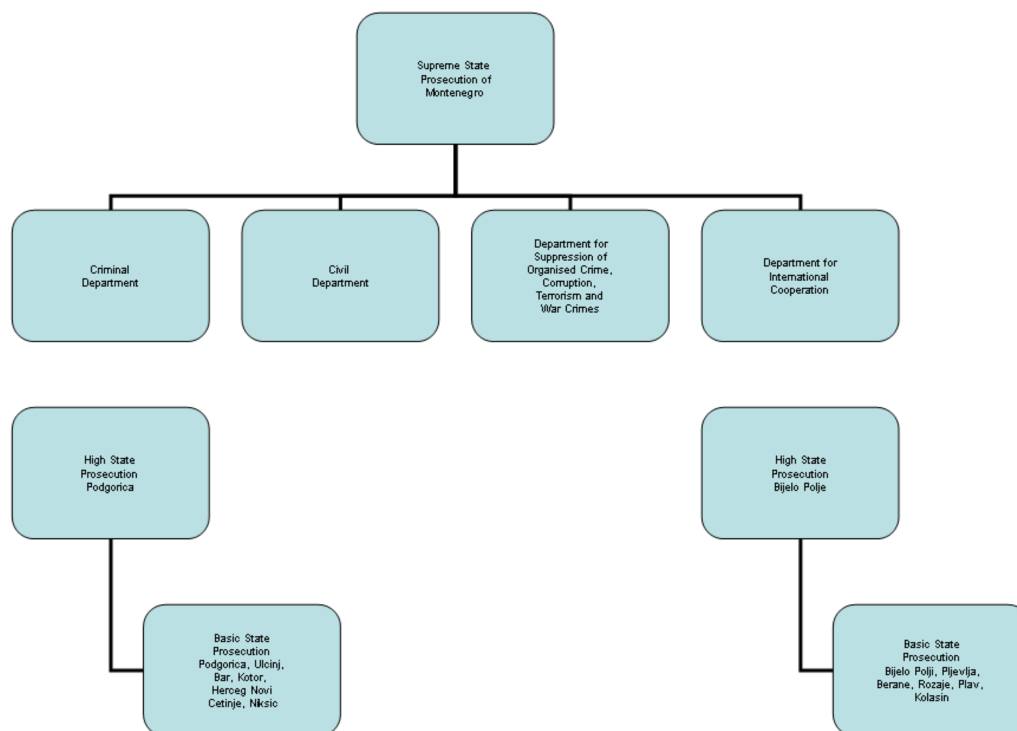
303. The powers and duties of the Police Administration are set out in Article 230 of the Criminal Procedure Code which stipulate that "the police authorities may seek information from citizens, apply polygraph testing, conduct voice analysis, perform anti-terrorist inspection, carry out permanent recording of public places at which criminal offences have been frequently committed, restrict movement of certain persons in a certain area for an absolutely necessary time, publicly offer a reward with the view of collecting information, request from a legal person delivering telecommunication services to establish identity of telecommunication addresses which were online at the certain moment; undertake necessary measures regarding the establishing of the identities of persons or objects; take a sample for DNA analysis; issue a warrant for a person or warrant for seizure of objects; carry out in the presence of the authorised person an inspection of objects and premises of state authorities, enterprises, firms and other legal entities, review their documentation and seize it if necessary, as well as undertake other necessary measures and actions. A records or an official note shall be made on facts and circumstances established in the course of carrying out particular actions, which may be of importance for the criminal proceedings, as well as on discovered or seized objects."

Prosecution Authority

304. The Prosecution Authority is independent from executive, legislative branches. The structure, function and operational independence is provided by the law[11] as is the procedure through which prosecutors are appointed. The evaluators found that generally, the prosecutors are able to perform their work in area of money laundering and terrorist financing, independently

[11] Law on state prosecutor's office.

305. Details of the structure of the prosecution authority are set out below.



306. The main departments and prosecutors office involved in investigating money laundering and terrorist together with their duties are set out in Article 14 of the Law on State Prosecution as follows:
"The Chief State Prosecutor's Office shall proceed before the Supreme Court of Montenegro, the Appellate Court of Montenegro and the Administrative Court of Montenegro, other courts and other state authorities, in accordance with the law.
The Chief State Prosecutor's Office shall, in accordance with the law, file a petition for protection of legality.
The Chief State Prosecutor's Office shall also exercise other duties, which are not defined as falling within the competence of the High State Prosecutor's Office and the Basic State Prosecutor's Office."

307. In the Supreme State Prosecution the Criminal Department has the competency to act in criminal matters, especially in submitting extraordinary legal remedies.

308. The Department for Suppression of organised crime, corruption, terrorism and war crime has been established within the Chief State Prosecutor's Office for the purpose of carrying out activities aimed at the suppression of organised crime, corruption, terrorism and war crimes, and is acting before the Special department of the High Courts in Podgorica and Bijelo Polje, which departments are established according to Article 99, paragraph 2 of the Law on Courts, and which are competent for the criminal offences of organised crime, corruption, terrorism and war crime.

309. The Department for International Cooperation has the competency for the cases for international cooperation in criminal matters, according to the Law on Mutual Legal Assistance In Criminal Matters (official gazette of Montenegro No4/08 from January 17th, 2008)

310. High State Prosecutors are competent to proceed before the High courts in criminal matters in accordance with Article 15 of the Law on State Prosecution for criminal offences punishable by a minimum of ten years of imprisonment.

311. The Basic State Prosecutor is competent to proceed before the Basic Courts as stated in Article 16 of the Law on State Prosecution for criminal offences punishable with under 10 years of imprisonment.

312. Articles 44 and 45 of the Criminal Procedure Code sets out the fundamental rights and main duties of the State Prosecutor as follows:

"(1) The fundamental right and the main duty of the State Prosecutor shall be the prosecution of perpetrators of criminal offences.

(2) The State Prosecutor shall, regarding the criminal offences that are prosecuted ex officio, be competent to:

- *conduct pre-trial proceedings;*
- *request that an investigation be carried out and direct the course of preliminary proceedings in accordance with the present Code;*
- *issue and represent an indictment or indicting proposal before the competent Court;*
- *file appeals against Court decisions that are not final and to seek extraordinary legal remedies against the final Court decisions; and*
- *undertake other actions determined by the present Code.*

(3) In order to exercise powers referred to in Paragraph 2, Item 1 of the present Article, all authorities taking part in a pre-trial proceedings shall be bound to notify the competent State Prosecutor before taking any action, except in the case of emergency. Police officers and other state authorities in charge of discovering the commission of criminal offences shall be bound to proceed upon any request of the competent State Prosecutor.

(4) If a police authority or other state authority has failed to proceed upon the request of the State Prosecutor referred to in Paragraph 3 of this Article, the State Prosecutor shall inform the head of this authority and if necessary, a competent Minister or the Government."

Furthermore, Articles 45 and 46 of the Criminal Procedure Code defines subject matter jurisdiction and territorial jurisdiction of The State Prosecutor, as follows:

"The subject matter jurisdiction of the State Prosecutor in the criminal proceedings shall be prescribed by the Law on the State Prosecutor.

The territorial jurisdiction of the State Prosecutor shall be determined according to the provisions that prescribe the jurisdiction of the court within the jurisdictional territory to which the State Prosecutor is appointed."

313. A special department for combating organised crime, corruption, terrorism and war crimes has been established within the Supreme State Prosecution of Montenegro in accordance with Law on Changes and Amendments to the Law on state prosecutor (Official gazette, number 40/2008). This department investigates organised crime as defined in the Criminal Code - Article 507, illegal trade, drugs, human beings trafficking, arms trafficking, goods that are included in illegal business, money laundering in case of organised crime, etc. According to the last amendments in April 2008 to the Law on Courts, this special department within the prosecution's office is the only one competent for investigation and prosecution of money laundering cases. A special department for the investigation of money laundering has also been established within the Police Administration which also investigates terrorism financing.

314. When hiring prosecutors, general and specific conditions must be met. These conditions are defined by Articles 24 to 36 of The Law on State Prosecutors Office (Published in the "Official Gazette of the Republic of Montenegro", No. 69/2003 and "Official Gazette of Montenegro" 40/2008) Which is set out in Annex VIII

315. During the on-site visit the evaluation team was informed that the special department within the Supreme State Prosecution needs more staffing and adequate premises. At the time of the on-site visit, only 2 out of 6 budgeted positions were filled, by the Head and Deputy Head of Department. Subsequent to the on-site visit, the evaluators have been advised that on September 15th 2008 the Prosecutors Council of Montenegro named four more Deputies of the Special Prosecutor for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes, so at this moment The Department has 1 Special Prosecutor and 5 deputies.

Powers to postpone or waive arrest or seizures

316. Montenegro has taken measures that allow the investigative officer (law enforcement) or the supervising prosecutor to postpone or waive the arrest of suspected persons or the seizure of criminal money. This is all part of the regular evidence building process and can be used when investigating money laundering, terrorism financing or predicate offences.

Additional elements

317. According to the Criminal Procedure Code, the Police Administration and the Prosecution Authority are able to use a wide range of special investigative techniques, such as interrogation, making inquiries, collection of samples for a comparative study, test purchases, examination of premises, buildings and vehicles, examination of items and of documents, surveillance, identification of persons, mail, phone and internet, wiretapping of telephone conversations, and saving all information through communication channels, undercover operations, controlled delivery and so on (CPC, Article 237). In cases of controlled delivery and undercover operations, approval from the Prosecutor is sufficient.

318. Following Article 238 of the Criminal Procedure Code these measures may be ordered for criminal offences for which a prison sentence of ten years or a more severe penalty may be imposed or criminal offences with elements of organised crime. The penalty requirements do not pose any problems in the case of terrorism financing offences, but may restrict the use of such measures in the case of money laundering and some predicate offences. The evaluators were advised that in practice the prosecutors and police officers apply all of the investigative methods in cases of organised crime and money laundering, but the team was not provided with examples and statistics in order to assess the efficiency or effectiveness.

319. Professional codes and financial institutions, customer secrecy provisions cannot be used to inhibit investigations.

320. Investigative groups may undertake joint investigations with other countries, provided it is done on the basis of a treaty or agreement, for example with the Russian Federation and the United States. Money laundering methods and techniques are studied by law enforcement authorities and APMLTF.

Recommendation 28

321. The Police Administration and the prosecutors are authorised to use a wide range of powers when conducting investigations concerning money laundering, terrorist financing and predicate offences. In accordance with chapter VII of the Criminal Procedure Code, these powers include:

*i)*the compulsory acquisition (*i.e.* inquiry and detention) of Articles, documents and other materials relevant to the crimes;
ii) the search of persons, Articles, houses and other premises where suspects or criminal evidence may be hidden; and
iii) the seizure and acquisition of Articles relevant to the crimes .

322. To exercise most of these powers the police officers do not need a court order. In specific cases however, the Prosecution Authority must give approval, and a court warrant is required. This applies for searches of private homes and the seizure of subjects and documents containing information on deposits and accounts in banks and other credit institutions, if the information is protected by confidentiality and secrecy provisions. These powers also apply to investigations and prosecutions of money laundering, terrorism financing and predicate crimes and in relation to freezing and confiscating of the proceeds of crime. None of the officials whom the evaluators met with made any reference to any particular difficulty to use any of the provisions (Criminal Procedure Code, Articles 75 to 85 and Article 537 to 545).

323. The power to take witness statements is based on the Criminal Procedure Code. A witness can be any person who may know of any circumstance that is important for the investigation and who has been called to provide evidence. Witness statements can be used in money laundering, terrorism financing and predicate offence cases by all law enforcement authorities when investigating a case (Criminal Procedure Code, Article 95-111).

Training

324. The State Prosecution maintains a regular education programme for the State Prosecutors and Deputies. At least two prosecutors from each Prosecution Office and every prosecutor from the Department for Suppression of organised crime, corruption, terrorism and war crime, have been provided with training on anti-money laundry issues. In 2008 the following training sessions have been arranged:

- Implementation of the Council of Europe Civil law Convention; five prosecutors participated
- Organised crime; two prosecutors participated
- Anti-corruption policy and preventive measures; four prosecutors participated
- Combating money laundry; four prosecutors participated
- Organised crime and corruption; eleven prosecutors participated
- Implementation of the professional instructions about the procedures for complying criminal offences with the corruptive elements and protection of the whisper-blower; two prosecutors participated
- Training of the Prosecutors, accountants and auditors about the complying criminal offences with the corruptive elements; thirteen prosecutors participated
- Combating money laundry in the financial sector; four prosecutors participated
- Anti-corruption policy in Montenegro; one prosecutor participated
- Inter-agency cooperation in combating money laundry and financing of terrorism; three prosecutors participated.

325. 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 as follows:

- Seminar about money laundering in cooperation with the American bar Association/Legal initiative for Central and Eastern Europe. Podgorica March 2003
- Seminar about money laundering in cooperation with the American Ministry of Finance. Podgorica September 2003

- Participation of 5 judges in a seminar on money laundering and financing of terrorism (practical case studies and exchange of experiences), in Belgrade in February 2005. The main organiser of the seminar was the Judicial Centre of Serbia in cooperation with the Academy for EU law (Trier).
- Participation by a group of Montenegrin judges in a seminar organised in Podgorica in December 2005 by OEBS as part of a project on suppression of organised crime; capacity building of Montenegrin judiciary. The primary topic of the seminar was cyber crime and money laundering, investigation techniques and processing of cases. Participation was provided within the framework of a special six-month project of support to The Centre by OEBS.

326. A Police Academy has been established within the organisation of the Police Administration.

327. The Police Academy organises training for the students as well as for the staff of the Police. Besides training for the students and police officers, training is also organised for prosecutors and judges. During the year training is organised in accordance with previously submitted plans: two training sessions for the students and two for the police officers. In one of the training sessions for police officers, prosecutors and judges also take part. The lectures for students are conducted by experienced police officers, while the training sessions for the police officers are conducted by officers from other countries. In past training sessions the following areas have been covered:

- Legislation
- AML/CFT Case studies
- International experiences
- Revealing of the predicate offences
- Inter agencies cooperation, etc.

Additional elements

328. It was considered that in consideration of the forgoing, 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. Due to the relatively low number of cases investigated and prosecuted it is not possible to form a conclusion on the effectiveness of these provisions.

Recommendation 30

329. Representatives of both law enforcement bodies that the evaluation team met with expressed satisfaction with their working condition, means and the resources available. The evaluators are however of the opinion that the special department within the Supreme State Prosecution needs more staffing and adequate premises. At the time of the on-site visit only 2 positions (Head and Deputy Head of Department) out of 6 budgeted positions are filled. Subsequent to the on-site visit, the evaluators have been advised that on September 15th 2008 the Prosecutors Council of Montenegro named four more Deputies of the Special Prosecutor for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes, so at this moment The Department has 1 Special Prosecutor and 5 deputies.

330. The evaluation team was informed that overall, the total number of law enforcement officials specialised and involved in AML/CFT investigations is as follows:

- specialised prosecutors: 23
- specialised police officers: 72

The number of staff involved in ML cases appears to be sufficient compared to the number of initiated criminal cases.

Recommendation 32

331. Various statistics on the number of STRs received, confiscations, etc. are set out in section 2.5 above. These statistics were not readily available and were in many cases incomplete. With regard to prosecutions, Montenegro does not keep full statistics on the number of STRs that result in investigation, prosecution and conviction. This is largely due to the fact that FIU information is mixed with other information at the law enforcement and prosecution stages.

SUPREME STATE PROSECUTION OF MONTENEGRO
Statistical data for the criminal offence of money laundry
for the period from 2004 to 15.09.2008

Year	No. of cases	No. of persons	Investigations		Temporary measures		Amount of proceeds derive from crime	Raised indictment		Confiscation proposed	Pending investigation		Convictions		Conviction based confiscation	Transferred criminal cases	
			No. of cases	No. of persons	No.of cases	No. of persons		No. of cases	No. of persons		No. of cases	No. of persons	No. of cases	No. of persons		No.of cases	No.of persons
2004	2	3	1	2			$895,000	1	2	$895,000			1	2	$895,000	1	1
2005	3	8	3	8			€40,000	1	1		2	7	1*	1			
2006	10	53	9	50	4	31	€5,965,000	5	31	€195,800	4	19	1**	2	€161,000	1	3
2007	2	11	1	10			€190,000***				1	10				1	1
2008	3	7	3	7	1****	1	Over € 80,000				3	7					

* Conviction of release
**Conviction is not final
*** In the case in which the investigation is being conducted was not suggested to determinate temporary measure, because this measure has already been determinated against the same persons in the case from 2006.
****in this case, preventive measures is related to securing of the proseeds of crime in the amount of €70,000

332. The Montenegrin authorities claimed that corruption is no longer a problem within the judicial system. However, international reports and the public perspective are quite different. Unless the Government of Montenegro succeeds in eradicating corruption, its law enforcement bodies will continue to be less effective than possible.

333. The evaluators noted that as part of the comprehensive ongoing reform process in anticipation of Montenegro joining The EU, considerable effort is being committed to the fight against the corruption. In that sense, and especially following regular communication with GRECO, reforms have been made within the legal and institutional framework, and a media plan has been developed. Following amendments to the Law on Courts and the Law on State Prosecution Office, the centralisation of prosecution and trial for the criminal offence of corruption has been implemented. In accordance with this, the institutional framework was also reformed

- In The Supreme State Prosecution Office and in The Higher courts of Montenegro, Specialised departments for criminal offences of organised crime, corruption, terrorism and war crimes have been established (commencing on 1st September 2008.).
- In the Police administration, corruption being tackled at every level
- In The Department for the Fight against Organised Crime and Corruption a Group for fighting corruption, staffed with three officers specially trained for this type of criminal activity, has been established
- In the Department for Suppression of Economic Crime there are five trained officers, as well as 63 officers in branch units and substations of Police Administration with responsibility for looking into corruption.
- All State institutions are obliged to implement measures from Government Action Plan for Implementation of Strategy of Fight against Organised Crime and Corruption, and provide three-month, six-month and annual reports on the implementation of measures within their jurisdiction.
- In order to fight corruption more efficiently, the reporting of corruption is promoted (telephone lines for anonymous reporting have been established in the Prosecution Office and the Police). Furthermore, in every branch police unit a contact person at inspector level has been to receive reports of corruption.

2.6.2 Recommendations and comments

334. The main law enforcement authorities involved in the fight against money laundering and terrorist financing are the Police Administration and the Prosecution Authority. The Prosecution Authority should implement a rigorous supervision mechanism in order to avoid excessively returning cases to the Police Administration, which may lead to a negative impact on the effectiveness of the system. (See under Recommendation 27 above.)

335. Prosecutors lead the pre-trial procedure and together with police officers they have the power to postpone an arrest in order to identify the additional perpetrators, gather evidence, etc.

336. At the time of on-site visit there was only one conviction in a money laundering case. The evaluators were concerned about the low level of final convictions and express their concern in respect of effectiveness of investigations performed by law enforcement authorities.

337. There is a need to extend the special investigative techniques to all forms of money laundering; otherwise there are not sufficient legal provisions to enable law enforcement authorities to ensure a proper investigation.

338. All law enforcement authorities should continue to strengthen inter-agency AML/CFT training programmes in order to have specialised financial investigators and experts at their disposal. Also,

there is a need ensure that an international training programme on money laundering and terrorism financing issues is created and implemented.

339. Corruption is a problem and it continues to be a problem for all law enforcement bodies and the judicial system. While the government is to be commended for its policy efforts to eliminate corruption, these efforts have still not had sufficient impact throughout the country. Unless Montenegro succeeds in eradicating corruption, its law enforcement bodies will continue to be less effective than possible.

340. Comprehensive statistics on all aspects of money laundering and terrorist financing should be maintained and regularly analysed in order to assess the effectiveness of the system and make improvements where necessary.

2.6.3 Compliance with FATF Recommendations

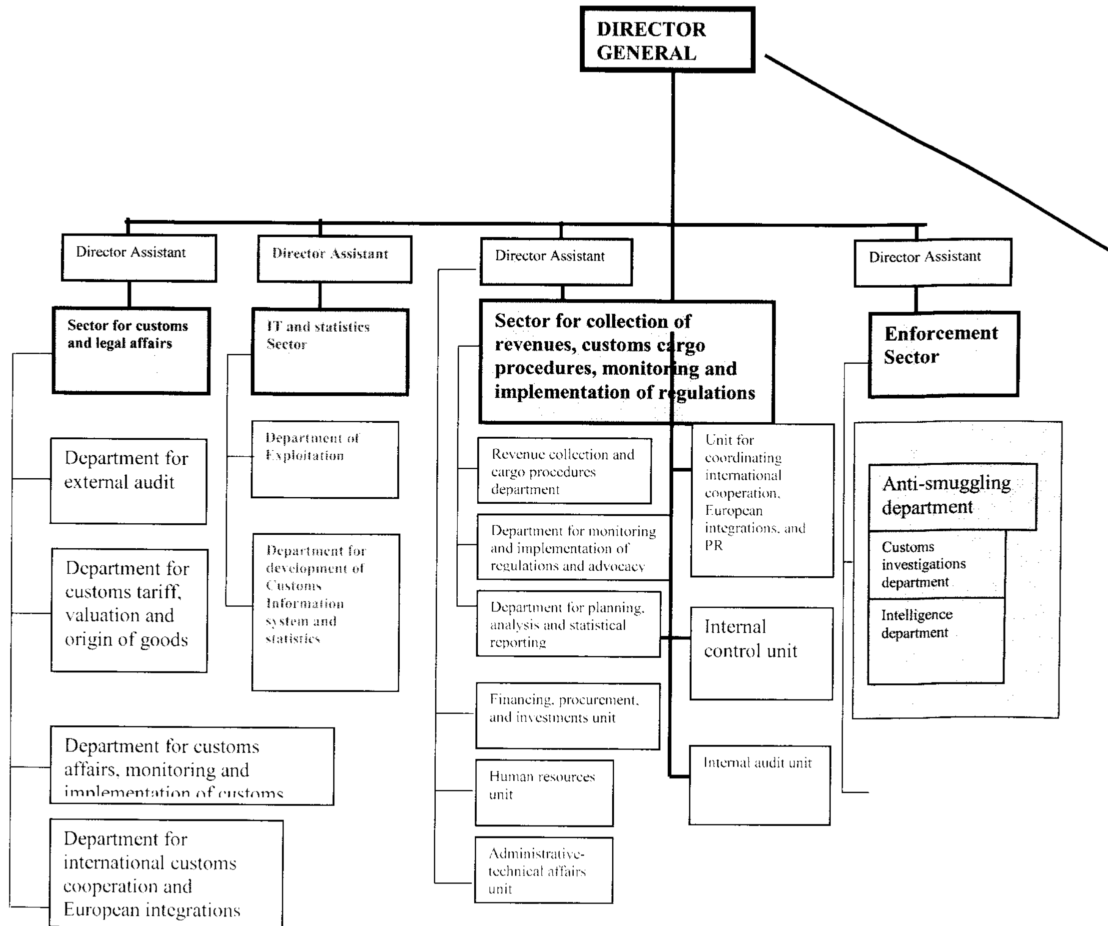
	Rating	**Summary of factors underlying rating**
R.27	**Largely Compliant**	• Only one conviction of ML (effectiveness issue) • Corruption may have an impact on effectiveness of the system.
R.28	**Compliant**	

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

341. The Montenegrin Customs Administration is responsible for cross-border cash movement control together with the Border Police. The Customs Administration is part of the Montenegrin AML/CFT system.

Organisational Chart for the Montenegrin Customs Administration



342. The Montenegrin 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. It can initiate misdemeanour and criminal procedures. It can participate in Sector organised actions and cooperate with units within the Sectors, and with all other organisation units within the Customs Administration, as well as other state organs. It can also maintain statutory evidence, ensuring confidentiality and data protection. It is required to maintain records and submit reports concerning its scope of activities.

343. In order to prevent and reduce violations of customs legislature, Customs authorities may perform any control deemed necessary in companies, their warehouses, and other places of business, as well as in places where business books and accounts are kept.

344. 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. They conduct arrests of perpetrators, collecting evidence as required after which the case is then forwarded to the Criminal Police Department. The Criminal Police, in cooperation with the Prosecutor's Office, then prepares a case and files a criminal complaint and conducts further investigations. The Border Police do not conduct investigations, but actively cooperate with the Criminal Police Department in relation to conducting investigations and on daily basis.

345. There are 1470 budgeted working positions at the Border Police. Currently 90% of working positions are fulfilled. Normally, about 46 people are situated at branch offices of Border Police and Department for operative work where they perform operative field work and part of their regular activities is the prevention of money laundering and terrorist financing.

346. The Republic of Montenegro has implemented a declaration system as follows:

- In accordance with Article 66, paragraph 1 of the AML /CFT Law, the Customs Administration shall provide data or enable electronic access, to APMLTF, on any money, cheques, bearer securities, precious metals and precious stones transported across the state border, exceeding a value or amount of €10,000 or more, within 3 days from the date of transportation.

- It follows from paragraph 2 in the same Article that if there are reasons for suspicion of money laundering or terrorist financing the Customs Administration shall provide data, from paragraph 1, to APMLTF on transportation or attempt of transportation of any money, cheques, bearer securities, precious metals and precious stones transported, in value or amount lower than €10,000. There are no provisions in the Law regarding the obligation of reporting suspicions of money laundering and terrorism financing in case of an amount higher than €10,000.

- Residential and non-residential civil persons are allowed to carry in or out of Montenegro cash equivalent to €2,000 without reporting to thecustoms authorities[12].

347. At the present time Montenegro does not record details of amounts between €2,000 and €10,000 since there is no sub-legal act which would regulate maintaining such evidence. The relevant legislative changes are being considered.

348. Bearer negotiable instruments appear to be covered in accordance with the FATF requirements[13].

349. In accordance with Article 74 in the LPMLTF the customs service shall keep records:-

- on reported and non reported transportation of money, cheques, securities, precious metals and precious stones across the state border, in the amount and value of €10,000 or more, and
- on transportation or attempted transportation of money, checks, securities, precious metals and precious stones across the state border, in amount less than €10,000, if there are reasons for suspicion of money laundering or terrorism financing.

350. Article 75 of the LPMLTF enumerates the content of the records that shall be kept and processed:

[12] Decision on the threshold of the cash money that can be taken in or taken out of Montenegro without reporting obligation to the competent authorities – Official Gazette of Montenegro, no 58 from October 10th 2005.

[13] Article 3 Law on foreign currency and capital operations

- name, address of permanent residence, date and place of birth and the nationality of the natural person, that transports or attempts to transport assets from Article 74 of this Law, across the state border.
- company, address and the registered office of a legal person or personal name , address of permanent residence, nationality of the natural person, for whom the transport of assets from Article 74 of this Law across the state border is performed;
- name, address of permanent residence and the nationality of the natural person, or company name, address and the registered office of the legal person to whom cash is provided;
- the amount, currency and the type of cash transported across the state border;
- source and purpose of using the cash transported across state border;
- place, date and time of crossing or attempt of crossing the state border, and
- reasons for suspicion of money laundering or terrorist financing.

Additionally the data on whether the cash transfer has been reported to the administrative body competent for customs affairs shall also be kept.

351. A customs officer shall immediately inform officers of the Department for Customs Security (Customs Enforcement Section) if there are reasonable ground for suspicion of money laundering, regardless of the amount of money, the value of cheques and bearer negotiable instruments, precious metal and precious stones transported across the state border. Afterwards all received data or reports are delivered, by the reporting form, to Department for Customs Security (Customs Enforcement Section) and forwarded to the Administration for the prevention of money Laundering and Terrorist Financing.

352. Article 69 of the LPMLTF provides that the Customs Administration shall inform APMLTF on its observation and measures taken referring to suspicious transactions on money laundering or terrorism financing. The information shall be provided every year by the end of January.

353. Within the Customs Control Department there is a special department involved in customs investigations. The special department is involved in both criminal investigations related to illegal trade and administrative investigations related to administrative offences (failure to declare or making a false declaration). The Law on Foreign Current and Capital Operations ("Official Gazette of Montenegro", No. 45/05 As Of 28th July 2005) sets out the relevant administrative offences and sanctions.

Statistics

Year	Reports submitted on suspicious cash and undeclared cash transactions.
2004	11
2005	87
2006	124 (2 cases of undeclared money)
2007	129 (2 cases of undeclared money)
2008	80 (1 case of undeclared money)

354. Montenegro does not fully maintain statistics on the number and amount of cross-border declarations made. Statistics are held on the number of cases related to cash reports, suspicions of ML and TF reports and number of investigations related to administrative offences.

Sanctions and confiscation provisions

355. During this period (2006-2008) Customs Administration employees discovered five cases of undeclared money at border crossings. All cases were processed and commitments are punished adequately in accordance with statute. False customs declaration is an administrative offence as set out in the Law on Foreign Current and Capital Operations. At the time of the on-site visit there

had not been any cases. In all five cases of non-declaring currency the Customs Administration administered fines.

356. Administrative sanctions are available to deal with non-compliance of Customs' currency rules. The evaluation team were, however, advised that according to Law on Foreign Currency and Capital Operations, customs officers cannot withdraw or seize the undeclared or false declared currency or other BNI. The fines are connected to the minimum monthly wage which appears rather low and cannot be considered dissuasive. Statistics on sanctions are listed in the table below.

No. 2006-2008	Undeclared amount of money	Citizenships of persons sanctioned	Sanctions
1	€3,800	Montenegrin	€550
2	€32,600	Italian	€1,500
3	€14,000	Ukrainian	€500
4	€160,000	Montenegrin	€550
5	€28,500	Serbian	€1,100

357. Criminal sanctions for non-compliance with currency rules are available. If a criminal offence relating to Articles 265 of the Criminal Code (smuggling) is suspected, customs officers are entitled to use all powers of the Criminal Procedure Code, which includes seizure of relevant items. The punishment is imprisonment from 6 month up to 8 years.

358. 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. Only in such circumstances may they start an investigation. This is not sufficient to meet the requirements of Special Recommendation IX.3 which requires that the designated competent authorities should be able to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found.

Gold and silver

359. Precious metals and stones can only be imported by natural persons for personal purposes and are not subject to import duties. Imports of precious metals and stones by natural persons for trading purpose is forbidden. If an illegal cross-border movement of precious metal or stones is detected , a criminal case may be initiated. The evaluation team was not provided with examples.

Recommendation 30

Resources and Training

360. Montenegrin authorities indicated that the law enforcement elements of the customs service are currently staffed at a sufficient level and have the necessary technical resources at their disposal. Furthermore, they have adequate operational independence and autonomy. The Customs Administration has 546 employees in total of which:

- 102 officers are located in the headquarters,
- 296 officers are located at border customs offices,
- 33 officers are located at the airports.

361. Employees allocated to border customs offices and at airports, together with officers from the Anti-smuggling Department (9 officers specialised in AML/CFT issues, too) as well as 2 officers designated in accordance with Article 1 of the Agreement with APMLTF, are Customs staff involved in control of import and export of national and foreign currency and BNI. Moreover, the evaluation team was informed that another 19 customer officers were trained and specialised in

AML/CFT cross-border transport of currency. 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.

362. Staff members from the Customs Administration have attended the following training seminars:-

- Prevention of money laundering, organised by Anti-money laundering Administration and representatives of technical assistance of US Ministry of Finances – 5 employees of Customs Administration attended in Podgorica in October 2004.
- Prevention of money laundering, organised by TAIEX – 2 employees of Customs Administration attended in Podgorica in June 2005.
- Advanced seminar on money laundering, organised by the US Ministry of Finances, technical assistance office – 4 employees of the Customs Administration attended in Bečići in March 2007.
- Prevention of money laundering and terrorism financing organised by OSCE, via OSCE Office in Podgorica – 2 employees of Customs administration attended in Kolašin in June 2007.
- Advanced seminar on money laundering organised by US Ministry of finances, technical assistance office - 4 employees of Customs administration attended in Podgorica in June 2007.
- Suspicious transactions; Prevention of money laundering held in Institute «Dr. Simo Milošević», organised by Anti money laundering Administration with assistance from the United Nations development program office in Montenegro (UNDP) – 2 employees of Customs Administration attended in Igalo in June 2007.

363. The evaluators were not advised of any relevant training programmes arranged for the Border Police.

National Cooperation

364. Montenegrin authorities have made efforts towards strengthening co-operation between the Customs Administration and the other authorities involved in combating money laundering by concluding cooperation agreements with the Police and APMLTF. The Customs Administration is also participating in the APMLTF data sharing project referred to in section 2.5. The Customs Administration has also signed agreements with the Law University for training and with the Employers Union. These arrangements satisfy the requirements of Special Recommendation IX.6.

365. At the international level the Customs Administration has entered into the following agreements:-

- Agreement on mutual assistance in customs matters between the Government of Montenegro and the Government of the Republic of Croatia as of 1 January 2008;
- The Agreement on mutual assistance in customs matters between the Government of Montenegro and the Government of the Republic of Moldova concluded on 27 October 2008 in Chisinau.
- The Customs Administration joined the International convention on the simplification and harmonisation of customs procedures – Revised Kyoto Convention as well as Istanbul Convention in 2008

Furthermore, the Interim Agreement on trade and trade related matters between the European Community and the Republic of Montenegro entered into force on 1 January 2008. Consequently, the customs Administration is paying special attention to the application of rules of origin as stipulated in *Protocol 3* of the Interim Agreement (definition of term "originating goods" and methods of administrative cooperation). Practical application of TIR Convention in Montenegro

started on 15 January 2008. Agreements on mutual assistance in customs matters with Ukraine, Belarus and Switzerland are currently being negotiated.

Safeguarding information

366. All Customs data is protected by secrecy rules designed to protect the data from unauthorised access[14]. Furthermore, the Custom Administration has created an internal intelligence department which is responsible for the protection of information. The Customs officials are bound by secrecy provisions, breach of which is punishable according to Article 425 of the Criminal Code (Disclosure of official secret) with imprisonment from 3 months up to 8 years. This legal provision is also applied to persons who have disclosed official secrets after his/her position as an official has ceased.

367. All of the shortcomings under Special Recommendation III are applicable in case of Special Recommendation IX.

Statistics

368. The statistics that were provided to the evaluators were insufficient or were not relevant for assessment of the effectiveness. There appear to be no statistics on the number and amount of the amount of cross border declarations made. The authorities do, however, keep statistics on the number of cases related to cash reports, STRs and the number of investigations related to administrative offences.

Additional elements

369. The Montenegrin Customs Administration has not provided any information related to implementation of the Best Practices Paper "Freezing of Terrorist Assets - International Best Practices" for Special Recommendation IX.

370. The Customs Administration has maintained its own database since 2006. It also participates in the "National Coordination Unit" project. The aim of the project is to connect the data bases within APMLTF, Police and Tax Administration.

2.7.2 Recommendations and comments

371. The Customs Administration is responsible for the control of cross-border cash movement in order to prevent money laundering and terrorist financing.

372. The examiners noted that the Customs have no clear powers to stop individuals and restrain currency in all circumstances. This issue should be addressed.

373. The Customs Administration should have the legal authority to restrain currency in cases of an administrative offence.

374. The Customs Administration should take into consideration a system to use reports on currency declaration in order to identify money launderers and terrorists.

375. The administrative sanctions for false declarations or non-declared currency should be raised considerably. Taking into account the low chance of detection, the fines are not considered to be dissuasive or effective.

376. Statistics should be retained on customs and currency declarations and reviewed to identify areas of risk.

[14] Law on secrecy data, published in Official Gazette no. 14/29.02.2008

377. The Customs Administration indicated that it is well staffed, but in order to increase the effectiveness, the Montenegrin authorities should hire more specialised staff to deal with ML and TF cross-border transportation of currency.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**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.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

378. An overview of the financial sector is set out in Section 1.3 above and section 1.5 above provides an overview of the strategy to prevent money laundering and terrorist finance.

379. 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.

380. The Central Bank of Montenegro is the regulator of the banking sector. The Central Bank is an independent organisation of Montenegro and is solely responsible for monetary policy, establishment and maintenance of a sound banking system and efficient payment system. In that respect, the Central Bank issues bank licenses, regulates and controls their operations, issues and conducts the measures for bank rehabilitation, including opening and conducting the bankruptcy and liquidation proceedings in banks, regulates, controls and provides efficient performance of the payment system, performs the operations of a banker, advisor and fiscal representative of the government bodies and organisations, performs macroeconomic analyses and participates in the preparation and drafting of the laws and secondary legislation acts that govern the banking system. The Central Bank is the supervisor of the implementation of the LPMLTF in banks and foreign banks' branches and other financial institutions; savings-banks, and saving and loan institutions; organisation performing payment transactions; exchange offices; and institutions for issuing electronic money

381. The Securities Commission supervises the capital market not only as the prudential supervisor but also for compliance with the LPMLTF. The commission undertakes off-site and on-site inspections. The Securities Commission was the first organisation in Montenegro that adopted a list of indicators for recognising suspicious transactions in 2004.

382. The Insurance Supervision Agency (ISA) is responsible for the regulation and supervision of insurance companies in Montenegro. The ISA was established by law in 2007 and became operational in January 2008. The ISA is an independent regulatory body responsible to the Parliament. Organisations subject to supervision by the ISA are insurance companies, foreign insurance company affiliates, insurance broker companies, insurance agents, and insurance ancillary service providers. The ISA performs off-site and on-site supervision. The ISA is financed by the supervised companies. The Ministry of Finance supervised the Insurance market before the ISA was established. In accordance with Article 86 in the LPMLTF the ISA is the supervisor for compliance with the LPMLTF in the insurance market. ISA intends to sign a MoU with APMLTF.

383. In November 2007, the new Law on the Prevention of Money Laundering and Terrorist Finance (LPMLTF) was adopted (Off. Gazette, No. 14/07) to regulate the measures and activities aimed at the prevention of money laundering and terrorist finance. The law is set out in Annex III. 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 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 report.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

384. 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. All government agencies are reportedly obligated to deliver reports to the National Commission noting their progress in accomplishing the goals of this national program. The evaluation team was furnished a copy of the second report to the National Commission supervising this effort that covered accomplishments from September 2006 through December 2007. Related to this anti-corruption effort, GRECO's Compliance Report on Montenegro, adopted in December 2008, noted that Montenegro has implemented or dealt with in a satisfactory manner two thirds of the recommendations contained in GRECO's Joint First and Second Round Evaluation Report. Despite this, nowhere did the team see a formal assessment of the national risks posed by money laundering and the financing of terrorism.

385. Nevertheless, there was evidence of serious thought having been given to these matters. The Ministry of Finance did mention that two principal vulnerabilities were recognised during the drafting of Montenegro's latest AML/CFT law, namely, the extreme dynamism of the economy and the very large volume of real estate transactions. Subsequently, the FIU has prioritised its supervisory efforts with real estate agencies and construction companies as it extends coverage to designated non-financial businesses and professions. Beyond this, there has been little in the way of any formal assessment of systemic risks. For example, within the NPO sector there exists a lack of information of on which NPOs have a significant portion of the financial resources under the control of this sector and which have a substantial share of the sector's international activities. Without such information, the risks of terrorist financing in this vulnerable sector remain unknown.

386. It was noted that within the LPMLTF additional categories of obligor have been identifies (e.g. Motor vehicle trade, vessels and aircraft trade, etc.). This does indicate that some thought has been given to additional categories of obligors but there appear to be no empirical study to back this up. Furthermore, the overall lack of statistics around money laundering and terrorist financing (see Section 7.1 below) makes it difficult to form a clear view of the areas of risk and vulnerability.

387. Meanwhile, on the more micro level of risk assessments to be performed by reporting entities, Montenegro is proceeding with the development of how these should be accomplished. While the bylaws for such risk assessments are being considered by the Ministry of Finance, the Central Bank informed the evaluators that they were already preparing guidelines for their supervised institutions on the conduct of such risk assessments.

388. All in all, the evaluators concluded that the need exists for Montenegrin authorities to conduct a more formal risk assessment of the country's vulnerabilities to the threats posed by money laundering and the financing of terrorism. In doing this, particular regard should be given to risks confronting financial institutions, designated non-financial business and professions as well as non-governmental and non-profit organisations.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5

389. The new Law on the Prevention of Money Laundering and Terrorist Finance (LPMLTF) which entered into force in January 2008 appears to be robust and is generally in line with applicable international standards as regards customer due diligence measures. In meetings with representatives of financial institutions it appeared that the financial institutions were largely aware of their obligations under the law and had taken the necessary steps to comply with these requirements. The financial supervisors were also aware of the requirements and, at the time of the on-site visit, were not aware of any failure to comply with these requirements by financial

institutions. Although some of the Essential Criteria were not fully covered (as set out below), the main concern is on the actual implementation of the legal provisions, such as beneficial owner identification and PEPS.

Anonymous accounts and accounts in fictitious names

390. The Essential Criteria to Recommendation 5.1* requires the prohibition of the anonymous accounts or accounts for fictional names. The opening and the maintaining of the anonymous accounts or accounts for fictional names in banks and financial institutions in Montenegro is forbidden by Article 31 of the LPMLTF which states that *"An obligor may not, for a customer, open, or keep an anonymous account, a coded or bearer passbook or provide other service (banking product) that can indirectly or directly enable the concealment of a customer identity"*. Article 92 of the LPMLTF sets out the fines for breaches of this law in cases of opening of such accounts. These sanctions are administered by APMLTF. At the same time, the Central bank of Montenegro can also undertake measures against a bank for the breaches of Article 31, on the basis of Article 116 of the Law on banks. To date there have been no instances of such cases.

Customer due diligence

When CDD is required

391. Criteria 5.2* requires all financial institutions to undertake CDD when:

a.) establishing business relations;
b.) carrying out occasional transactions above the applicable designated threshold (USD/€ 15,000). This also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked;
c.) carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;
d.) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations; or
e.) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

392. In connection with criteria 5.2* the LPMLTF states in Article 9 that:

"An obligor shall undertake customer due diligence measures particularly in the following cases:
1. when establishing a business relationship with a customer;
2. of one or more linked transactions amounting to €15 000;
3. when there is a suspicion about the accuracy or veracity of the obtained customer identification data, and
4. when there are reasonable grounds for suspicion of money laundering or terrorist financing.
If the transactions from paragraph 1 item 2 of this Article are based on an already established business relationship, an obligor shall verify the identity of the customer that carries out the transaction and gather additional data."

393. It is the view of the Montenegrin authorities that Article 9 paragraph 1 Item 2 of the LPMLTF refers to all transactions regardless of the type of transactions. They have assured the evaluators that temporary wire transactions at the banks are required to be monitored and are viewed with due attention and with strict application of the indicators which are used for identifying suspicious

transactions. There is, however, no specific requirement to undertake CDD in respect of all wire transfers of EUR/USD 1,000 or more.

394. It is the view of the evaluators that the wording of the second point under Article 9 is too precise and could be interpreted to read that only transactions of exactly €15,000 require CDD. The evaluators consider that **"or more"** should be added in Article 9, Paragraph 1 number 2 in the LPMLTF.

Required CDD measures

395. Criteria 5.3* requires financial institutions to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers' identity using reliable independent source documents, data or information.

396. In relation with criteria 5.3* Article 6 of the LPMLTF establishes customer identification as a basic obligation for all subjects to the law. Furthermore, Article 7 of the LPMLTF defines customer identification as a double process including both identification and verification and states that:-

"*Customer identification shall be a procedure including:*

> *1. establishment of the identity of a customer or, if the identity has previously been established, verification of the identity on the basis of reliable, independent and objective sources, and*
>
> *2. gathering data on a customer, or if data have been gathered, verifying the gathered data on the basis of reliable, independent and objective sources."*

397. Article 14 of the LPMLTF sets out the procedures for establishing and verifying the identity of a natural person as:-

> *"An obligor shall establish and verify the identity of a customer that is a natural person or of his/her legal representative, entrepreneurship, or a natural person performing activities, by checking the personal identification document of a customer in his/her presence and obtain data from Article 71 item 4*[15] *of this Law. In case the required data cannot be established on the basis of the submitted identification document, the missing data shall be obtained from other valid official document submitted by a customer.*
>
> *Identity of a customer from paragraph 1 of this Article can be established on the basis of a qualified electronic certificate of a customer, issued by a certification service provider in accordance with the regulations on electronic signature and electronic business.*
>
> *Within establishing and verifying the identity of a customer in the manner determined in paragraph 2 of this Article an obligor shall enter the data on a customer from the qualified electronic certificate into data records from Article 70 of this Law. The data that cannot be obtained from a qualified electronic certificate shall be obtained from the copy of the personal identification document submitted to an obligor by a customer in written or electronic form, and if it is not possible to obtain all required data in that manner, the missing data shall be obtained directly from the customer.*

[15] Article 71.4 "name, address of permanent residence or temporary residence, date and place of birth and tax ID number of natural person or tax ID number of its representative, entrepreneur or natural person carrying out activities, and that establish business relation ship or execute the transaction, or natural person, for which is established business relationship or executed transaction, and number, kind and name of the competent body that issued the personal documents."

Certification service provider from paragraph 2 of this Article that has issued a qualified electronic certificate to a customer shall, upon an obligor's request, without delay submit the data on the manner of establishing and verifying the identity of a customer who is a holder of the qualified electronic certificate.

Establishing and verifying the identity of a customer using a qualified electronic certificate is not permitted when:

1. opening accounts at obligors from Article 4 paragraph 2 items 1 and 2 of this Law, except in the case of opening a temporary deposit account for paying in founding capital, and

2. there is suspicion of qualified electronic certificate misuse or when an obligor determines that the circumstances that have significant effect on the certification validity have changed.

If an obligor, when establishing and verifying the identity of a customer, doubts the accuracy of obtained data or veracity of documents and other business files from which the data have been obtained, he/she/it shall request a written statement from a customer"

398. Article 15 of the LPMLTF establishes the methodology for identifying and verifying the identity of a legal person:

"An obligor shall establish and verify the identity of a customer that is a legal person and obtain the data from Article 71 item 1[16] *of this Law by checking the original or certified copy of the document from the Central Register of the Commercial Court (hereinafter: CRCC) or other appropriate public register, submitted by an agent on behalf of a legal person.*

The document from paragraph 1 of this Article may not be older than three months of its issue date.

An obligor can establish and verify the identity of a legal person and obtain data from Article 71 item 1 of this Law by checking CRCC or other appropriate public register. On the register excerpt that has been checked an obligor shall state date and time and the name of the person that has made the check. An organisation shall keep the excerpt from the register in accordance with law.

An obligor shall obtain data from Article 71 items 2[17]*, 7*[18]*, 9, 10, 11, 12, 13 and 14*[19] *of this Law by checking the originals or certified copies of documents and other business files. If*

[16] Article 71.1 "name of the company, address, registered office of the company and personal identification number of the legal person, that establishes business relationship or executes transaction, or legal person for whom is established business relationship or executed transaction."

[17] Article 71.2 "name, address of permanent residence or temporary residence, date and place of birth and tax ID number of a representative or an authorized person, that for a legal person or other juristic person conclude the business relationship or execute transaction, number, kind and name of the authority that issued the personal documents."

[18] Article 71.7 "purpose and presumed nature of business relationship, including information on customer's businesses."

[19] Articles 71.9 to 71.14 "date and time of executing transaction ;

- the amount of transaction and foreign currency of transaction that is executed;
- the purpose of transaction and name and address of permanent residence or temporary residence, registered office of the company and residence of the person to which transaction is intended;

data cannot be determined by checking identifications and documentation, the missing data shall be obtained directly from an agent or authorised person.

If, during establishing and verifying the identity of a legal person, an obligor doubts the accuracy of the obtained data or veracity of identification and other business files from which the data have been obtained, he/she/it shall obtain a written statement from an agent or authorised person before establishing a business relationship or executing a transaction.

If a customer is a foreign legal person performing activities in Montenegro through its business unit, an obligor shall establish and verify the identity of a foreign legal person and its business unit."

399. Following on from the above assessment it would appear that the essential criteria in respect of Criteria 5.3* have been met in the LPMLTF.

400. Criteria 5.4 requires two specific issues to be covered in respect of the verification process with regard to legal persons.

401. The first is verification that any person purporting to act on behalf of the customer is so authorised, and the identification and verification of the identity of that person (criteria 5.4a of the Methodology). This is marked with an asterisk and needs to be in Law or Regulation.

402. Article 16 of the LPMLTF requires that

"An obligor shall establish and verify the identity of an agent and obtain data from Article 71 item 2 of this Law by checking the personal identification document of the agent in his/her presence.

If the required data cannot be determined from the personal identification document, the missing data shall be obtained from other official document submitted by the agent or authorised person.

If an obligor doubts the accuracy of the obtained data when establishing and verifying the identity of an agent, he/she/it shall require agent's written statement."

403. Article 17 of the LPMLTF on Establishing and verifying the identity of an authorised person states:

"If an authorised person establishes a business relationship on behalf of a customer that is a legal person, an obligor shall establish and verify the identity of an authorised person and obtain data from Article 71 item 2 of this Law by checking the personal identification document of an authorised person and in his/her presence. If the required data cannot be determined from the personal identification document, the missing data shall be obtained from other official document submitted by the authorised person.

An obligor shall obtain data from paragraph 1 of this Article on the agent on whose behalf the authorised person acts, from a certified written power of authorisation, issued by the agent.

- method of executing the transaction;
- data on assets and income sources, that are or will be the subject of transaction or business relationship;
- reasons for suspicion of money laundering."

If the transaction from Article 9 paragraph 1 item 2 of this Law is executed by an authorised person on customer's behalf, an obligor shall verify the identity of the authorised person and obtain data from Article 71 item 3[20] *of this Law on a customer that is a natural person, entrepreneurship or natural person, performing an activity.*

If an obligor doubts the accuracy of the obtained data when establishing and verifying the identity of an agent, he/she/it shall obtain agent's written statement."

404. Following on from the above assessment it would appear that the essential criteria in respect of Criteria 5.4a have been met in the LPMLTF.

405. Criteria 5.4b of the Methodology covers the second issue in relation to the verification process for legal persons. It is not marked with an asterisk but needs to be covered by other enforceable means. The verification of the legal status of the legal person or arrangement requires e.g. proof of incorporation or similar evidence of establishment and information on the customer's name, trustees (for trusts), legal form, address, directors and provisions regulating the power to bind the legal person or arrangement. Article 15 of the LPMLTF on establishing and verifying the identity of a legal person, covers most aspects of Criteria 5.4b of the methodology states:-

An obligor shall establish and verify the identity of a customer that is a legal person and obtain the data from Article 71 item 1 of this Law by checking the original or certified copy of the document from the Central Register of the Commercial Court (hereinafter: CRCC) or other appropriate public register, submitted by an agent on behalf of a legal person.

The document from paragraph 1 of this Article may not be older than three months of its issue date.

An obligor can establish and verify the identity of a legal person and obtain data from Article 71 item 1 of this Law by checking CRCC or other appropriate public register. On the register excerpt that has been checked an obligor shall state date and time and the name of the person that has made the check. An organisation shall keep the excerpt from the register in accordance with law.

An obligor shall obtain data from Article 71 items 2, 7, 9, 10, 11, 12, 13 and 14 of this Law by checking the originals or certified copies of documents and other business files. If data cannot be determined by checking identifications and documentation, the missing data shall be obtained directly from an agent or authorised person.

If, during establishing and verifying the identity of a legal person, an obligor doubts the accuracy of the obtained data or veracity of identification and other business files from which the data have been obtained, he/she/it shall obtain a written statement from an agent or authorised person before establishing a business relationship or executing a transaction.

If a customer is a foreign legal person performing activities in Montenegro through its business unit, an obligor shall establish and verify the identity of a foreign legal person and its business unit.

406. The above clauses do not require the obtaining of provisions regulating the power to bind the legal person or arrangement. Apart from this it would appear that the essential criteria in respect of Criteria 5.4b have been met in the LPMLTF.

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[20] Article 71.3 "name, address of permanent residence or temporary residence, date and place of birth and tax ID number of an authorized person, which requires or executes transaction for a costumer, and number, kind and name of the competent body that issued the personal documents;"

407. Criteria 5.5.1 and 5.5.2 (b) are also asterisked. Although these criteria are adequately covered in Article 10 of the LPMLTF. Article 20 of the LPMLTF states:

"*An obligor shall establish the beneficial owner of a legal person or foreign legal person by obtaining data from Article 71 item 15 of this Law.*

An obligor shall obtain the data from paragraph 1 of this Article by checking the original or certified copy of the documentation from the CRCC or other appropriate public register that may not be older than three months of its issue date or obtain them on the basis of the CRCC or other public register in accordance with Article 14 paragraphs 3 and 5 of this Law.

408. In discussions with financial institutions it was clear to the evaluators that the financial institutions relied upon the entries in the Commercial Trade Register for conducting CDD. Relying solely on a certificate from this register can be insufficient in properly identifying the beneficial owner and this situation, consequently, poses a strong threat of criminal infiltration throughout the system.

409. Criteria 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship (the business profile). Article 10 item 2 of the LPMLTF requires that the obligor, during the establishment of a business relationship with the client, is obliged to procure and examine data on the client, or the real owner, if the client is a legal entity, the purpose and nature of a business relationship or the transaction and other data in accordance with the law. Furthermore, Article 10 item 3 provides that "*When establishing a business relationship an obligor shall apply the following measures:*

- *to monitor regularly the business activities that a customer undertakes with the obligor and verify their compliance with the nature of a business relationship and the usual scope and type of customer's affairs.*"

It would therefore appear that Criteria 5.6 has been met.

410. According to Criteria 5.7* financial institutions should be required to conduct ongoing due diligence (which should include scrutiny of transactions to ensure that they are consistent with knowledge of the customer and the customer's business and risk profile) on the business relationship.

411. Article 22 of the LPMLTF on the monitoring of business activities states:

"*An obligor shall monitor customer's business activities, including the sources of funds the customer uses for business, in order to identify the customer more easily.*

Monitoring business activities from paragraph 1 of this Article at an obligor shall particularly include the following:

- *verifying the compliance of customer's business with nature and purpose of contractual relationship;*
- *monitoring and verifying the compliance of customer's business with usual scope of her/his affairs, and*
- *monitoring and regular updating of documents and data on a customer, which includes conducting repeated annual control of a customer in the cases from Article 24 of this Law.*

An obligor shall ensure and adjust the dynamics of undertaking measures from paragraph 1 of this Article to the risk of money laundering and terrorist financing, to which an obligor is exposed when performing certain work or when dealing with a customer."

412. Article 23 of the LPMLTF applies Article 22 to foreign legal persons and also contains additional instructions on repeated annual control of foreign legal persons which include annually:-

1. obtaining or verifying data on the company, address and registered office;
2. obtaining data on personal name and permanent and temporary residence of an agent;
3. obtaining data on a beneficial owner, and
4. obtaining a new power of authorisation from Article 17 paragraph 2 of this Law.

413. A further obligation on obligors for the undertaking of measures against money laundering and financing of terrorism is prescribed in Article 37 items 5 and 6. which require that *"An authorised person from Article 35 of this Law shall perform the following affairs of:*

5. monitoring and coordinating obligor's activity in the area of detecting and preventing money laundering and terrorist financing;
6. cooperating in establishing and developing information technology for carrying out activities of detecting and preventing money laundering and terrorist financing;"

414. It is the view of the evaluators that the requirements of Criteria 5.7* have been met.

<u>*Risk*</u>

415. Criteria 5.8 requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. Article 25 of the LPMLTF, on enhanced customer verification, stipulates that:

"Enhanced customer verification, in addition to the identification from Article 7 of this Law, shall include additional measures in the following cases:

- *on entering into open account relationship with a bank or other similar credit institution, with registered office outside the EU or outside the states from the list;*
- *on entering into business relationship or executing transaction from Article 9 paragraph 1 item 2 of this Law with a customer that is a politically exposed person from Article 27 of this Law, and*
- *when a customer is not present during the verification process of establishing and verifying the identity.*

An obligor shall apply a measure or measures of enhanced customer verification from Articles 26, 27 or 28 of this Law in the cases when he/she/it estimates, that due to the nature of a business relationship, type and manner of transaction execution, business profile of a customer or other circumstances related to the customer, there is or there could be a risk of money laundering or terrorist financing."

416. The above law is very specific and does not cover a number of the specified categories as set out in the essential criteria 5.8 to Recommendation 5, namely all non-resident customers, private banking, legal persons or arrangements such as trusts that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form.

417. Articles 29 and 30 of the LPMLTF provide for simplified customer verification in line with Criteria 5.9. It is however noted that Article 29.4 appears to go further than intended by Criteria 5.9 in that it permits simplified customer verification in respect of customers to "whom an insignificant risk of money laundering or terrorist financing is related" which could include a broader range of customers than those envisaged in Criteria 5.9.

418. In line with Criteria 5.10, financial institutions are permitted to apply simplified or reduced CDD measures to institutions with a registered office in the EU or in a state within a list to be determined by the Ministry. This would appear to be in line with the requirements of Criteria 5.10.

419. Concerning Criteria 5.11, Article 29 of the LPMLTF states that simplified CDD measures are only allowed when there are no grounds for suspicion of money laundering or terrorist financing in relation to a customer or transaction and, therefore, appears to be in line with the requirements of Criteria 5.11.

420. With regard to Criteria 5.12, according to Article 8 of the LPMLTF Financial institutions, are required to follow the risk guidelines issued by the Ministry in charge of financial affairs. The Montenegrin authorities are still in the process of designing the relevant risk guidelines.[21]

Timing of verification

421. According to Articles 10 and 11 of the LPMLTF, obliged institutions must verify the identity of the customer and beneficial owner before the establishment of a business relationship. Exceptionally they can apply these measures during the establishment of the relationship if this is necessary for the establishment of the relationship and if there is insignificant risk of money laundering or terrorist financing.

422. According to Article 11 of the LPMLTF, insurance companies can verify beneficial ownership after the conclusion of the contact, but not later than the time when the beneficiary can exercise his rights. In the view of the evaluators, Criteria 5.13 and 5.14 have been met.

Failure to satisfactorily complete CDD

423. No provisions appear to exist in order to comply with Recommendations 5.15 and 5.16 concerning the failure to satisfactorily complete CDD. It is the view of the Montenegrin authorities that Article 9 of the LPMLTF places an absolute requirement on obligors to satisfactorily complete CDD prior to entering into a business relationship and to conduct additional CDD in circumstances where:-

- There are one or more linked transactions amounting to €15,000;
- there is a suspicion about the accuracy or veracity of the obtained customer identification data, and
- there are reasonable grounds for suspicion of money laundering or terrorist financing

It is their view that no transactions can be entered into unless full CDD has been completed.

424. There is, however, no requirement to consider making a suspicious transaction report in circumstances where it has not been possible to conduct satisfactory CDD although Article 33 does require reporting "when there are reasonable grounds for suspicion of money laundering or terrorist financing related to the transaction (regardless of the amount and type) or customer". It is the view of the evaluators that a specific clause should be inserted into the LPMLTF requiring obligors to consider making a suspicious transaction report in circumstances where they have been unable to conduct satisfactory CDD.

425. Likewise there should also be a clause requiring obligors to terminate a business relationship in circumstances where they have been unable to conduct satisfactory CDD. This is particularly relevant in circumstances where CDD has not been possible for existing customers where there are one or more linked transactions amounting to €15,000, etc. as set out below.

Existing customers

[21] It was, however, noted that the Securities Commission has adopted an Instruction about Risk Analysis Money Laundering and Procedures "meet your client" and other Procedures for Recognizing suspicious transactions on its session held on November 28, 2008.

426. Recommendation 5.17 requires that financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. Some examples are given in the box in the Methodology of the times when this might be appropriate – e.g. when a transaction of significance takes place, when the customer documentation standards change substantially etc.

427. Articles 22 and 23 of the LPMLTF establish the obligation to monitor business activities. According to Article 22, obliged entities shall monitor customers activities:

- verifying the compliance of customer's business with nature and purpose of contract
- monitoring and verifying compliance of customer's business with usual scope of his affairs
- monitoring and regular updating of documents and data on a customer

428. Article 23 of the LPMLTF contains additional provisions for repeated annual control of foreign legal persons. There is, however no specific requirement to extend CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

429. Financial institutions are required to procure all of the prescribed data for the existing clients before a transaction is performed and to update all of the necessary data and information of significance in reference to the review and the monitoring of the existing clients. This obligation is placed on financial institutions, when:-

1) there is one or more linked transactions amounting to €15,000,
2) when the standards which refer to the documentation of the client change significantly,
3) when an important change exists in the manner in reference to the maintaining of the account,
4) when an institution finds out that there are no sufficient information on the existing client.

430. It is the view of the evaluators that the requirements of Criteria 5.17 are essentially met although the wording of the first point above is too precise and could be interpreted to read that only transactions of exactly €15,000 require CDD. Furthermore, the requirement is for CDD to be conducted when "a transaction of significance takes place." and in the context of Criteria 5.17 it is considered that this is more appropriate wording. Overall the evaluators consider that a separate clause should be inserted into the LPMLTF to specifically deal with the issue of CDD on existing customers.

Recommendation 6

431. Recommendation 6 Stipulates that financial institutions should be required to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person. Article 27 of the LPMLTF contains the definition of politically exposed persons. The definition incorporates both domestic and foreign politically exposed persons since it does not make a distinction and also includes close family members and close business contacts. According to this Article, obliged entities shall develop internal procedures, in accordance with the "guidelines of a competent authority", to the procedure of identifying a politically exposed person. A Questionnaire for Identifying a Politically Exposed Person has been issued by APMLTF.

432. Article 25 of the LPMLTF requires that enhanced customer verification is conducted on entering into business or executing transactions with a customer that is a politically exposed person. Such enhanced due diligence includes, in addition to the identification:

- obtaining information about the source of funds and assets from the customer. If the required data are not obtained in this manner, they can be obtained through a written statement by the customer.

- obtaining written consent of the responsible person before establishing a business relationship.
- after establishing a business relation with the client, monitor with special attention the transactions and other business activities carried out by the customer.

433. Although the essential elements of Recommendation 6 are covered by the LPMLTF, the evaluators found that most reporting entities which were interviewed had limited or no knowledge of their responsibilities in regard to PEPS. As a consequence of this financial institutions had not put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person.

Additional elements

434. Article 27 of the LPMLTF incorporates PEPS who hold prominent public functions domestically.

435. The United Nations Convention against Corruption has been ratified by the Republic of Montenegro. On October 23rd 2006 Montenegro deposed a Statement on Succession with the Secretary General of the United Nations.

Recommendation 7

436. Criteria 7.1 to 7.4 of the Methodology cover cross-border correspondent banking and other similar relationships and require the gathering of sufficient information about a respondent institution, assessing the adequacy of the respondent institution's AML/CFT controls, obtaining approval from senior management before entering new correspondent relations and documenting the respective responsibilities of each institution.

437. According to Article 35 of the LPMLTF when establishing an open account relationship with a bank or other similar credit institution that has a registered office outside the EU or outside the states from the list, the obliged entity shall carry out enhanced customer verification (Article 25).

438. According to Article 26 of the LPMLTF:

> *"When establishing an open account relationship with a bank or other similar credit institution that has a registered office outside the EU or outside the states from the list, an obligor shall carry out customer identification pursuant to Article 7 of this Law and obtain the following data:*
>
> - *issue date and validity of the license for providing banking services and the name and registered office of the competent state body that issued the license;*
> - *description of conducting internal procedures, related to detection and prevention of money laundering and terrorist financing, and in particular, customer verification procedures, determining beneficial owners, reporting data on suspicious transactions and customers to competent bodies, records keeping, internal control and other procedures, that a bank or other similar credit institution has established in relation to preventing and detecting money laundering and terrorist financing;*
> - *description of systemic organisation in the area of detecting and preventing money laundering and terrorist financing, applied in a third country, where a bank or other similar credit institution has a registered office or where it has been registered;*
> - *a written statement, that a bank or other similar credit institution in the state where it has a registered office or where it has been registered, under legal supervision and that, in compliance with legislation of that state, it shall apply appropriate regulations in the area of detecting and preventing money laundering and terrorist financing;*
> - *a written statement that a bank or other similar credit institution does not operate as a shell bank, and*

- *a written statement that a bank or other similar credit institution has not established or it does not establish business relationships or executes transactions with shell banks.*

Employed with an obligor that concludes contracts from paragraph 1 of this Article shall conduct an enhanced customer verification procedure and obtain written consent of an obligor's person in charge, before concluding the contract.

An obligor shall obtain the data from paragraph 1 of this Article from public or other available data records, or by checking documents and business files provided by a bank or other similar credit institution with a registered office outside the EU and outside the states from the list."

439. The requirements set out in Article 26 of the LPMLTF appear to adequately meet the essential criteria as set out in the FATF Methodology. It is, however, noted that Recommendation 7 refers to "cross-border correspondent banking and other similar relationships" whereas Article 25 of the LPMLTF has limited its scope to "a bank or other similar credit institution that has a registered office outside the EU or outside the states from the list". This is not in accordance with Recommendation 7. It is the view of the Montenegrin authorities that Banks which operate in Montenegro only have closed contracts correspondent relationship with banks from other countries that have received high ratings from independent external credit rating agencies (e.g. Standard and Poors).

Recommendation 8

440. Recommendation 8 requires that financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity and should have policies in place or take such measures as may be needed to prevent the misuse of technological developments. The essential criteria also stipulate that financial institutions should be required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and when conducting ongoing due diligence.

441. Article 8 of the LPMLTF carries a requirement that *"An obligor shall make risk analysis which determines the risk assessment of groups of customers or of an individual customer, business relationship, transaction or product related to the possibility of misusage for the purpose of money laundering or terrorist financing.*" Article 8 goes on to state that such risk analysis shall be prepared pursuant to the guidelines on risk analysis which are still under preparation. (See comments on Recommendation 5.12 above for further details). There are, however, 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. The evaluators were concerned that there needs to be specific requirements for obligors to assess and consider the risks of technological developments (e.g. electronic banking, emoney, etc.).

442. Article 28 of the LPMLTF contains provisions to address the risk of non-face to face relationships and transactions:

"*If a customer is not present during establishing and verifying the identity, an obligor shall, carry out enhanced customer verification, in addition to the identification from Article 7 of this Law, undertaking one or more additional measures, such as:*

- *to obtain additional documents, data or information, on the basis of which he/she verifies customer identity, and*

- *to verify submitted documents or obtain a certificate from a financial institution performing payment operations, that the first customer's payment has been made on the account opened with that institution."*

443. The evaluators noted that the above requirements did not establish the obligation to obtain information on the purpose and intended nature of the business relationship. This could lead to a significant money laundering risk particularly if customers are enabled to initiate electronic transactions remotely (e.g. via the internet).

444. Montenegro adopted the Law on Electronic Signature (Official Gazette of the Republic of Montenegro number 55/03 and 31/05) that regulates the usage of electronic signatures in legal trade, administrative, judicial and other proceedings, as well as all the rights, obligations, and responsibilities of natural and legal persons in relation to electronic certificates

445. In addition, the Law on Electronic Documents (Official Gazette of the Republic of Montenegro number 5/08) regulates the usage of electronic documents in legal trade, administrative and other judicial proceedings, as well as the rights, obligations, and responsibilities of all corporations, entrepreneurs, natural and legal persons, state and administrative institutions, institutions of the local self-government, and other institutions and organisations that exercise public authority in relation to the electronic documents. This law links in with Article 14 of which states that "*Identity of a customer from paragraph 1 of this Article can be established on the basis of a qualified electronic certificate of a customer, issued by a certification service provider in accordance with the regulations on electronic signature and electronic business"*.

446. The Central Bank of Montenegro has adopted the Decision on Performing Domestic Payment Electronically (Official Gazette of the Republic of Montenegro number 78/07). This regulation prescribes the means of conducting domestic payments as well as the responsibility for the validity of the electronic messages in the electronic payment cycle. The participants in the electronic domestic payment process are the Central Bank of Montenegro, banks and the clients of the Central Bank

3.2.2 Recommendations and comments

447. It is the view of the evaluators that the wording of the second point under Article 9 is too precise and could be interpreted to read that only transactions of exactly €15,000 require CDD. The evaluators consider that **"or more"** should be added in Article 9, Paragraph 1 number 2 in the LPMLTF. The CDD requirements do not cover a requirement to conduct CDD in respect of all wire transfers of EUR/USD 1,000 or more. The LPMLTF should therefore be amended to reflect the requirements of Essential Criteria 5.2 and SR VII.1.

448. There is no requirement to verify that persons purporting to act on behalf of a customer have the authority to act on behalf of the customer. The LPMLTF should be amended to reflect this requirement. Article 15 of the LPMLTF does not require the obtaining of provisions regulating the power to bind the legal person or arrangement. Apart from this it would appear that the essential criteria in respect of Recommendation 5.4b have been met in the LPMLTF. The evaluators consider that Article 15 of the LPMLTF should be amended to require the obtaining of copies of the document regulating the power to bind the legal person or arrangement.

449. In practice, heavy reliance on certificates from the commercial register for CDD purposes introduces doubts about the effectiveness of the system. The Montenegrin authorities should address this problem by establishing, on a risk based approach, procedures to address the limitations of the commercial register.

450. Article 29.4 of the LPMLTF appears to go further than intended by Criteria 5.9 in that it permits simplified customer verification in respect of customers to "whom an insignificant risk of money

laundering or terrorist financing is related" which could include a broader range of customers than those envisaged in Criteria 5.9. Article 29.4 should be amended to bring it into line with the essential criteria.

451. The evaluators note that the definition of beneficial owner in the LPMLTF would benefit from the incorporation of the FATF definition ("Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.") and particularly the inclusion of a requirement to identify and verify the "ultimate" beneficial owner would clarify the requirement.

452. Article 25 of the LPMLTF is very specific and does not cover a number of the specified categories as set out in Criteria 5.8, namely all non-resident customers, private banking, legal persons or arrangements such as trusts that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form. The evaluators consider that the LPMLTF should be amended to fully reflect all of the categories in Criteria 5.8.

453. Risk guidelines in accordance with Criteria 5.12 should be completed and published.

454. It is the view of the evaluators that a specific clause should be inserted into the LPMLTF requiring obligors to consider making a suspicious transaction report in circumstances where they have been unable to conduct satisfactory CDD. Likewise there should also be a clause requiring obligors to terminate a business relationship in circumstances where they have been unable to conduct satisfactory CDD. This is particularly relevant in circumstances where CDD has not been possible for existing customers where there are one or more linked transactions amounting to €15,000, etc..

455. There needs to be a specific requirement for obligors to assess and consider the risks of technological developments as part of their risk analysis. This should also be introduced in the guidelines to be produced by the supervisory bodies.

456. It is the view of the evaluators that the requirements of Criteria 5.17 are essentially met although the wording of the first point above is too precise and could be interpreted to read that only transactions of exactly €15,000 require CDD. Furthermore, the requirement is for CDD to be conducted when "a transaction of significance takes place." and in the context of Criteria 5.17 it is considered that this is more appropriate wording. Overall the evaluators consider that a separate clause should be inserted into the LPMLTF to specifically deal with the issue of CDD on existing customers..

457. The lack of awareness as regards PEPS and the consequent lack of proper procedures to address the risk should be addressed through proper training to be followed by the establishment of adequate procedures to address this risk.[22]

458. It is noted that Recommendation 7 refers to "cross-border correspondent banking and other similar relationships" whereas Article 25 of the LPMLTF has limited its scope to "a bank or other similar credit institution that has a registered office outside the EU or outside the states from the list". This is not in accordance with Recommendation 7. It is the view of the Montenegrin authorities that Banks which operate in Montenegro only have closed contracts correspondent relationship with banks from other countries that have received high ratings from independent external credit rating agencies (e.g. Standard and Poors). The evaluators consider that Article 25 of the LPMLTF should be amended to extend the requirement to all cross-border correspondent banking and other similar relationships.

[22] 2008 A seminar on the topic of establishing relationships with clients who are PEP-s, organized by FIU and OSCE., was held In December

459. A requirement for financial institutions to have policies and procedures to address the risk of misuse of technological developments in ML/TF schemes should be introduced.

460. Regulations should clearly establish the obligation to obtain information on the purpose and intended nature of the business relationship for non-face to face business.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**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.
R.6	**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.
R.7	**Largely Compliant**	• Scope limited to outside the EU.
R.8	**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.

3.3 Third Parties and introduced business (R. 9)

3.3.1 Description and analysis

461. Recommendation 9 stipulates that countries may permit financial institutions to rely on intermediaries or other third parties to perform specified elements of the CDD process or to

introduce business, provided that the specified criteria are met. Where such reliance is permitted, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.

462. It is the intention of the Montenegrin authorities that financial institutions should not rely on third parties to conduct CDD. To this end, the LPMLTF does not contain any provisions allowing financial institutions to rely on intermediaries or other third parties to perform specified elements of the CDD process. 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.

463. The evaluators considered that the financial institutions were aware of the law concerning CDD and did not come across any instances of financial institutions who were relying on intermediaries or other third parties to perform specified elements of the CDD process.

3.3.2 Recommendation and comments

464. The Montenegrin authorities should consider amending legislation to specifically prohibit financial institutions from relying on intermediaries or other third parties to perform specified elements of the CDD process. In such circumstances the criteria specified in the essential criteria to Recommendation 9 should be applied.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**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.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

465. Recommendation 4 stipulates that countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

466. The Security Commission requires that they have access to all confidential information held by licensed firms and individuals, and whose activities are monitored by the Commission. In accordance with Article 81 of the LPMLTF (see below) this requirement extends to APMLTF.

467. Section 5 of the Law on Banks, adopted at the beginning of 2008, defines the term 'banking secret' and sets out the responsibility for keeping such information. Article 86 stipulates that Parties that have obtained information that represents banking secrets shall use such information exclusively for the purpose for which they have been obtained and shall not make it available to third parties except in cases prescribed by the law.

468. Article 85 of the Law on Banks also stipulates that:

"1) the information that represents banking secret shall be disclosed to the following institutions:

- *the Central Bank;*
- *competent Court;*
- *other parties, based on explicit written approval of a client.*

2) The information in accordance with the law governing prevention of money laundering and terrorism financing may be disclosed to the competent authority for prevention of money laundering and terrorism financing"

469. Article 81 of the LPMLTF also sets out exceptions to the principle of confidentiality:

"During the process of providing data, information and documentation to the administration, in accordance with this Law, the obligation to protect business secrecy, bank secrecy, professional and official secrecy shall not apply to obligors, an organisation with public authorisation, state bodies, courts, lawyers or notaries and their employees.

Obligor, lawyer or notary and their employees shall not be liable for damage caused to their customers or third persons, if they are in accordance to this Law:

1. *providing data ,information and documentation on their customers, to the competent administration body*
2. *obtaining and processing data , information and documentation on their customers*
3. *carrying out the administration's order on temporary suspension of transaction, and*
4. *carrying out the administration's request on regular monitoring of customer's financial businesses*

Obligor's employees, lawyers or notaries shall not be disciplinary or criminally liable for breach of obligation of keeping data secrecy, if:

1 *they are providing data, information and documentation to the competent administration body, and in accordance to provisions of this Law*

2 *they are processing data, information and documentation, obtained in accordance to this Law, for the evaluation of customer and transaction, for which there are reasons for suspicion of money laundering and terrorism financing."*

3.4.2 Recommendations and comments

470. The requirements of Recommendation 4 are adequately covered.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**Compliant**	

3.5 Record keeping and wire transfer rules (R.10 and SR.VII)

3.5.1 Description and analysis

Recommendation 10

471. Recommendation 10 has three criteria under the Methodology which are asterisked, and thus need to be required by law or regulation. 10.1 requires that financial institutions should be required by law or regulation to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if properly required to do so) regardless of whether the business relationship is ongoing or has been terminated. Criteria 10.2* requires that financial institutions maintain all records of the

identification data, account files and business correspondence for at least five years following the termination of the account or business relationship (or longer if necessary) and the customer and transaction records and information.

472. Article 83 of the LPMLTF requires that relevant records as defined in the law and related documentation shall be maintained and retained for ten years after the termination of business relationship, executed transaction, entrance of the customer into room where special games on chance are organised or access to the safe deposit box. Such information to be maintained and retained includes identification data, account files and business correspondence.

473. It was noted that the requirement in the LPMLTF is merely to maintain and retain data. 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 in accordance with the requirements of essential criteria 10.1.1. It was, however noted that the Securities Commission has issued a regulation called "Rules on Conduct of Business of Licensed Participants at the Capital Market", dated 29th November 2001, which regulates the production and the type of records that are to be kept by the licensees. These rules, which carry sanctions for non-compliance, require among other things that:-

"*Data that licensee is obliged to maintain according to the rules, shall be maintained in a manner to ensure identification of each transaction, at any time, and observation of all trading process from initial order to the effect of order*". (Article 35); and

"*All data shall be kept, archived and notified in a manner to enable instant access to any document*" (Article 35);

474. The evaluators were not aware of any similar requirements issued by other supervisory bodies.

475. Criteria 10.3* requires that financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. Article 48 of the APLMTF requires that an obligor shall provide data, information and documentation as specified in the Article to the competent administration body without delay, and not later than eight days since the day of receiving a request for such information to be provided. Thus it would appear that this element of the essential criteria has been met.

SR.VII

476. The Methodology requires, for all wire transfers, that financial institutions obtain and maintain the following specified originator information together with the originator's address and to verify that such information is meaningful and accurate. The evaluation team was not provided off-site or on-site with any information on the implementation of Special Recommendation VII. The LPMLTF does not appear to contain any provisions implementing Special Recommendation VII. It is therefore the view of the evaluators that the requirements of Special Recommendation VII have not been implemented in Montenegro.

477. It was noted that for foreign payments internationally accepted SWIFT standards are implemented. This is merely a business requirement and is not required by law or other enforceable means.

3.5.2 Recommendation and comments

478. 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 in accordance with the requirements of essential criteria 10.1.1.. The LPMLTF should be amended to take this requirement into account.

479. The requirements of Special Recommendation VII should be incorporated into the legislation of Montenegro.[23]

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**Largely Compliant**	• No requirement that transaction records should be sufficient to permit reconstruction of individual transactions
SR.VII	**Non Compliant**	• the requirements of Special Recommendation VII have not been implemented

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11

480. Recommendation 11, which requires financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, needs to be provided for by law, regulation or other enforceable means.

481. Article 6 of the LPMLTF establishes as a basic duty of obliged entities to:
"compile and regularly keep up-to-date a list of indicators for identifying suspicious transactions, for which there are reasonable grounds for suspicion of money laundering or terrorist financing"

482. Article 45 of the LPMLTF requires that:
"When establishing reasonable grounds for suspicion of money laundering or terrorist financing and other circumstances related to the suspicion, an obligor, lawyer or notary shall use list of indicators for identifying suspicious customers and transactions.

483. Article 46 of the LPMLTF requires that:
"The list of indicators for identifying suspicious customers and transactions shall be defined by the Ministry on the professional basis prepared by the competent administration body in cooperation with other competent bodies."

[23] The evaluators were advised that changes were being considered to the Law on National Payment Operations to give effect to special Recommendation VII.

484. Although indicators can provide some examples of complex or unusual transactions, the lack of a generic mandate is missing in the legislation or other enforceable means, as is the obligation to examine, as far as possible, the background and purpose of each transaction and keep any findings in writing.

Recommendation 21

485. Recommendation 21 requires 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. This should be required by law, regulation or by other enforceable means. It places an obligation on financial institutions to pay close attention to transactions with persons from or in any country that fails or insufficiently applies FATF Recommendations and not just countries designated by FATF as non-co-operative (NCCT countries).

486. The suspicious transaction indicator list issued by the Ministry of Finance contains the following items:

- *Transactions with a country that is considered as non-cooperative by FATF or business relationship with customers with permanent residence in such countries.*
- *Clients that carry out transactions within countries known for high level of bank and business secrecy, except in case of countries that have accepted international standards on money laundering prevention.*
- *Clients that carry out electronic fund transfer in/from free or off shore zones, even if this activity is not usual for client's business activities.*
- *Client natural or legal person that inquires or carries out real estate transactions for natural and legal persons, residents and non residents, that come from the off shore destinations, or for off shore companies, and also from countries known for drug production and distribution, states that don't have arranged identification systems and systems for prevention of money laundering and countries from so called "black list", countries that are suspect to encourage terrorist activities and terrorism financing.*

487. There is no requirement to examine the background and purpose of transactions which have no apparent economic or visible lawful purpose.

488. The APMLTF web site (www.gov.me/eng/aspn/) contains FATF statements about countries which do not or insufficiently apply the FATF Recommendations. In addition, another AMPLTF website (http://www.uprava-spn.vlada.cg.yu/) contains details of FATF statements concerning countries that suspended or have certain deficiencies in the system of applying measures for the prevention of money laundering and terrorist financing. APMLTF has also written to its reporting entities advising them to pay significant attention to risks of money laundering and terrorist financing, when executing transactions with the financial institutions operating on the territory of Iran and identifying clients on any basis.[24] The evaluators were not aware of any other measures taken to alert obligors to any new additions or persons or countries which had been removed from the relevant lists.

3.6.2 Recommendations and comments

489. Montenegro should require financial institutions to examine as far as possible the background and purpose of unusual transactions. Enforceable requirements to set forth the finding of such

[24] APMLTF also wrote to all reporting entities advising them of the MONEYVAL public statement on Azerbaijan.

examinations in writing should equally be provided. In addition specific enforceable requirement should be put in place for financial institutions to keep such findings available for authorities and auditors for at least five years.

490. Financial institutions should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations. Effective measures should be put in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries and consideration should be given to the development of appropriate countermeasures as set out in the essential criteria to Recommendation 21.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**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.
R.21	**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.

3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 and Special Recommendation IV

491. Essential Criteria 13.1, 13.2 and 13.3 are asterisk marked and are required by law or regulations. These stipulate that:

- A financial institution should be required by law or regulation to report to the FIU (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. At a minimum, the obligation to make a STR should apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. This requirement should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions,

whether by reason of possible prosecution for a ML offence or otherwise, so called indirect reporting is not acceptable.

- The obligation to make a STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.
- All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction.

492. The legal basis for the obligation of monitoring entities to report suspicious transactions and transactions above the threshold of €15,000 is provided in Article 33 of the LPMLTF which stipulates that "An obligor shall provide to the competent administration body data…. on any transaction carried out in cash in the amount of €15,000 or more".

493. Following Article 33, Para 2 in the LPMLTF, financial institutions (and other reporting entities) shall report to APMLTF without delay when there are reasonable grounds for suspicion of money laundering or terrorist financing related to a transaction (regardless of the amount and type) or customer before the execution of the transaction. The reporting financial institution shall provide data in accordance with Article 71 of the LPMLTF (which enumerates the contents of the reporting entities records) and state the deadline within which the transaction is to be executed. The statement could also be provided via telephone, but it has to be sent to APMLTF in a written form not later than the following working day from the day of providing the statement.

494. The terminology for applying the reporting obligation in Article 33, Para 2 of the AML/CFT referring to suspicious transactions "...before the execution of the transaction…." does not appear to cover the full width of the reporting obligation as set out in FATF Recommendation 13. Thus, the reporting obligation does not appear to fully cover money laundering or financing of terrorism if the suspicious transaction has been performed. During the on-site visit, the evaluation team was advised that in practice, STRs are filed to APMLTF no matter whether the suspicion arises before or after the transaction has been performed. However, as this is an asterisked criteria the obligation to report suspicious transactions that have been performed should be explicitly provided for in either law or regulation.

495. The reporting obligation covers both subjective based suspicion as well as cases of objective based suspicions ("reasonable grounds to suspect").

496. Additionally the Ministry of Finance has, as already noted, issued a "Book of Rules on the manner of reporting cash transactions with the value exceeding €15,000 and suspicious transactions to the APMLTF" under an authority in the former AML/CFT Law. The Book of Rules was published in the Official Gazette in October 2005. The Book of Rules enumerates the reporting entities (the number of reporting entities has, however, been widened in the current AML/CFT Law) and describes very briefly that cash transaction exceeding €15,000 and several connected transactions exceeding €15,000 may be forwarded by fax, registered mail, personal delivery or courier, floppy disk or CD ROMS, secure email in a format prescribed and approved in advance by APMLTF. The Book of Rules does not, however, mention the reporting of suspicious transactions in the body of the text. Reporting forms for banks; stock exchanges; brokers and funds; the Central Depositary Agency; merchant intermediaries; customs; and other reporting entities are attached to the Book of Rules. The reporting forms contain spaces for suspicions of money laundering and suspicions of terrorist financing. The Book of Rules also addresses terrorist financing although the rules are issued under an authority in the former AML/CFT Law which does not address terrorist financing.

497. The Book of Rules does not set out enforceable requirements with sanctions for non-compliance. The Book of Rules is not considered to be Regulations or "other enforceable means".

498. Criteria 13.2 requires that the obligation to make an STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for

terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. The obligation to report does cover the terrorism financing offence. Article 3 in the LPMLTF provides the definition of terrorist financing in the context of the LPMLTF. The evaluators consider the definition to cover the requirements in criteria 13.2.

499. At the time of on-site visit no STR regarding financing of terrorism were reported by financial institutions.

500. Supervisory authorities are not reporting entities under Article 4 in the LPMLTF. However, Article 89 of the LPMLTF provides that supervisory authorities shall inform APMLTF on measures taken in the process of supervising in accordance with the LPMLTF within 8 days from the date on which the measures were taken. The evaluators do not consider this provision to be a reporting obligation on suspicion of money laundering or terrorist financing.

501. The requirement to report attempted suspicious transactions is covered by Article 33, Paragraph 3 of the LPMLTF, which stipulates that "the obligation from paragraph 2 of this Article shall refer to the "announced transaction" as well, regardless of whether it is executed later or not". In the English version of the LPMLTF it is stated "reported transaction" but the Montenegrin authorities informed the evaluators that in the original version of the LPMLTF the word "announced" was used.

502. The LPMLTF defines money laundering to include laundering of money or property from any criminal activity. The STR regime operates for all categories of crime, including tax matters. There is no financial threshold in relation to suspicious transaction reporting.

503. As already noted APMLTF has issued guidance on "Suspicious Transaction Indicators" in March 2007. Special indicators of suspicious transactions have been developed for the stock market; the banks, customs administration; tax administration; and legal and natural persons, business organisations and entrepreneurs involved in performing payment transactions. [25].

504. The low number of STRs outside the banking sector raises issues of the effectiveness of implementation.

Safe Harbour Provisions (Recommendation 14)

505. Recommendation 14 sets out a requirement for safe harbour provisions for financial institutions and their directors, officers and employees for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU.

506. According to Article 81 of the LPMLTF:

"During the process of providing data, information and documentation to the administration, in accordance with this Law, the obligation to protect business secrecy, bank secrecy, professional and official secrecy shall not apply to obligors, an organization with public authorization, state bodies, courts, lawyers or notaries and their employees.

Obligor, lawyer or notary and their employees shall not be liable for damage caused to their customers or third persons, if they are in accordance to this Law :

[25] In December 2008, APMLTF, in cooperation with other competent bodies and reporting entities, prepared a professional opinion for a new List of Indicators of Suspicious Transactions and Customers which was delivered to the Ministry of Finance. According to Article 46 of the LPMLTF the Ministry of Finance defines the list of indicators based on the professional opinion prepared by the Administration in cooperation with other competent bodies.

1. *providing data, information and documentation on their customers, to the competent administration body*

2. *obtaining and processing data , information and documentation on their customers*

3. *carrying out the administration's order on temporary suspension of transaction, and*

4. *carrying out the administration's request on regular monitoring of customer's financial businesses*

"Obligor's employees, lawyers or notaries shall not be disciplinary or criminally liable for breach of obligation of keeping data secrecy, if:

1. *they are providing data, information and documentation to the competent administration body, and in accordance to provisions of this Law*

2. *they are processing data, information and documentation, obtained in accordance to this Law, for the evaluation of customer and transaction, for which there are reasons for suspicion of money laundering and terrorism financing."*

Tipping off (Recommendation 14)

507. Recommendation 14 also requires that financial institutions and their directors, officers and employees (permanent and temporary) should be prohibited by law from disclosing ("tipping off") the fact that an STR or related information is being reported or provided to the FIU.

508. Obliged entities employees are prohibited by law from disclosing the fact that a STR or related information is being reported or provided to the competent administration body or that an investigation has been initiated. Article 80 of the LPMLTF) states:

"Obligors and obligor's employees, members of authorised, supervising or managing bodies, or other persons, to which were available data from Article 71 of this Law, shall not reveal to a customer or third person:

1. *that data, information or documentation on the customer or the transaction, from Article 33 paragraph 2, 3 and 4, Article 43 paragraph 1, Article 48 paragraph 1, 2 and 3, Article 49 paragraph 1 and 2 of this Law, are forwarded to the competent administration body ;*
2. *that the competent administration body on the basis of Article 51 of this Law, temporarily suspended transaction or in accordance with that gave instructions to the obligor;*
3. *that the competent administration body on the basis of Article 53 of this Law demanded regular supervision of customer's financial business;*
4. *that against customer or third party is initiated or should be initiated investigation for the suspicion of money laundering or terrorist financing "*

Additional elements

509. There do not appear to be any provisions in the laws or regulations or any other measures to ensure that the names and personal details of staff of financial institutions that make a STR are kept confidential by APMLTF.

Recommendation 19

510. Recommendation 19 requires that countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a

computerised data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.

511. According to Section 7 Article 33 of the LPMLTF, obliged entities must provide the competent administration body data on any transaction carried out in cash in the amount of €15,000 or more.

Recommendation 25

512. APMLTF has provided reporting entities with a list of indicators for suspicion transactions. The feed-back is provided by APMLTF to reporting entities according to Article 57 from LPMLTF which states "after obtaining and analysing data, information and documentation that are in relation to transactions or persons, for which there are reasonable grounds for suspicion of money laundering or terrorist financing or established facts, that may be connected with money laundering or terrorist financing, the competent administration body shall, in written form, give a notice to obligor or person that submitted the initiative, unless the competent administration body evaluates that notification may cause detrimental effects on the course and outcome of the proceeding." This is a case-by-case feedback, except for cases when the FIU evaluates that notification may cause detrimental effects on the course and outcome of the proceeding. In practice, the feedback is provided on regularly basis through communication by phone, the compliance officers are informed if there as a valid suspicion and if it was confirmed as a STR. APMLTF does not provide feedback in hard copy.

513. APMLTF does not provide general feedback containing statistics on the number of disclosures, information on current techniques and sanitised examples.

3.7.2 Recommendations and comments

Recommendation 13

514. The reporting obligation in Article 33 of the LPMLTF provides an obligation to report suspicious transactions before the execution of the transaction. The reporting obligation does not seem to cover the full width of the reporting obligation as set out in R 13. The reporting obligation does not appear to cover the money laundering reporting obligation if the transaction has been performed. The evaluators have noted that reporting entities in practice seem to be reporting suspicions arising after the execution of the transaction. However, as this is an asterisk criteria, the need for the reporting obligation if the transaction has been performed should be provided for in either law or regulation.

515. The Book of Rules, should be endorsed in law with sanctions for breaches in order to become "other enforceable means".

516. The low number of STRs filed by a limited number of financial institutions raises the issue of the effectiveness of the reporting requirement.

Recommendation 14

517. Recommendation 14 is complied with, however, a provision should be introduced to ensure that the names and personal details of staff of financial institutions that make a STR are kept confidential by APMLTF.

Recommendation 19

518. Recommendation 19 is complied with.

Recommendation 25

519. It is recommended that APMLTF provides regular general feedback to all obligors which should contain:

(a) statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures;
(b) information on current techniques, methods and trends (typologies); and
(c) sanitised examples of actual money laundering cases.

Special Recommendation IV

520. The reporting obligation in Article 33 of the LPMLTF does not appear to fully cover terrorist financing if the transaction has been performed (see comments under Recommendation 13). The obligation needs to be widened.

521. There are no reports on financing of terrorism which raises question of effectiveness of implementation.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR IV

	Rating	Summary of factors underlying rating
R.13	**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.
R.14	**Compliant**	
R.19	**Compliant**	
R.25	**Largely Compliant**	• APMLTF does not provide general feedback containing statistics on the number of disclosures, information on current techniques and sanitised examples.
SR.IV	**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.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15

Generally

522. Recommendation 15 requires that financial institutions develop programmes against money laundering and financing of terrorism. Such programmes can be provided for by law, regulation or other enforceable means.

523. The LPMLTF defines the risk of money laundering and terrorist financing as being the risk that a customer will use the financial system for money laundering or terrorist financing, or that a business relationship, a transaction or a product will indirectly or directly be used for money laundering or terrorist financing.

524. Article 35 of the LPMLTF requires that obligors that have more than three employees shall designate an authorised person and his/her deputy for the affairs of detecting and preventing money laundering and terrorist financing. For obligors with less than four employees, such functions can be performed by a director or other authorised person. Article 36 requires that such a authorised person:

- is permanently employed for carrying on affairs and tasks that are in accordance with the enactment on systematisation organised in the manner ensuring fast, qualitative and timely performance of tasks defined by this Law and regulations passed on the basis of this Law;
- has professional skills for performing affairs of preventing and detecting money laundering and terrorist financing and has professional competencies for obligor's operation in the areas where the risk of money laundering or terrorist financing exists, and
- has not been finally convicted of a crime act for which punishment of imprisonment longer than six months is provided for, and which makes him/her inadequate for performing affairs of prevention of money laundering and terrorist financing..

525. Article 37 requires that such authorised person shall perform the following duties:

- taking care for establishing, functioning and developing the system of detecting and preventing money laundering and terrorist financing;
- taking care for proper and timely data provision to the competent administration body;
- initiating and participating in preparing and modifying operational procedures and preparing obligors' internal enactments related to the prevention and detection of money laundering and terrorist financing;
- cooperating in preparation of guidelines for carrying out verifications related to the prevention of money laundering and terrorist financing;
- monitoring and coordinating obligor's activity in the area of detecting and preventing money laundering and terrorist financing;
- cooperating in establishing and developing information technology for carrying out activities of detecting and preventing money laundering and terrorist financing;
- make initiatives and proposals to the competent administration body or managing or other body of an obligor for the improvement of the system for detecting and preventing money laundering and terrorist financing, and
- preparing programs of professional training and improvement of the employed at obligors in the area of detecting and preventing money laundering and terrorist financing.

526. The authorised person is required to be directly accountable to the administration or other managing or other obligor's body, and functionally and organisationally shall be separated from other organisational parts of an obligor. In the case of their absence or inability to attend to his/her duties, the authorised person shall be substituted by the person determined by a general enactment of an obligor (deputy of the authorised person). The authorised person shall, in accordance with the regulations for implementation of the Law on prevention of money laundering and terrorist financing, inform its employees with the procedures and measures for implementation of the law on prevention of money laundering and Terrorist financing.

527. A "Book of rules on the manner of work of the compliance officer, the manner of conducting internal control, keeping and protecting data, the manner of recordkeeping and training of the employees" (see Annex V) which provides additional guidance and direction has also been produced..

528. With regard to essential criteria 15.4, Article 36 of the LPMLTF stipulates requirements for designated persons for detecting and preventing money laundering. Apart from this, the evaluators were not aware of any requirements which required financial institutions to put in place screening procedures to ensure high standards when hiring employees.

529. The evaluators found, with regard to the banking sector, that these requirements had been implemented. Furthermore, the examination procedures of the Central Bank contain requirements to include the following in reviews of banks:

- Review of internal controls
- Review of internal audit program that covers independent testing of transactions, evaluations as to the effectiveness of the program…
- Review the bank's internal audit and determine if it covers the bank's responsibilities

530. It was noted that nine on-site inspections were conducted by the central bank in both 2006 and 2007 and 4 till the end of August 2008.

Other financial institutions

531. With regard to the insurance sector, given the recent establishment of the supervisor and its lack of training on AML/CFT related issues it was considered by the evaluators that it was not possible to establish the effectiveness of the implementation of Recommendation 15 in the sector. No violations on AML/CFT had been reported by the insurance supervisor, although it was noted that five companies are conducting life insurance business.

Additional elements

532. The above provisions of the LPMLTF with regard to the duties of the designated authorised person appear to require that they are able to act independently and to report to an appropriately senior level.

Recommendation 22

533. The LPMLTF regulates measures and actions undertaken for the purpose of detecting and preventing money laundering and terrorist financing in business units or companies in majority ownership of the obligor in foreign countries.

534. Article 34 of the LPMLTF requires that a reporting entity shall ensure that measures of detection and prevention of money laundering and terrorist financing, as defined by the LPMLTF, "are applied to the same extent both in business units or companies in majority ownership of the obligor, whose registered offices are in other state, if that is in compliance with the legal system of

the concerned state. If the regulations of a state do not prescribe the implementation of measures of detection and prevention of money laundering or terrorist financing to the same extent defined by this Law, an obligor shall immediately inform the competent administration body on that and undertake measures for removing money laundering or terrorist financing risk."

Additional elements

535. The evaluators are of the opinion that there are sufficient provisions in place to require financial institutions to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

1.1.2 Recommendation and comments

Recommendation 15

536. Requirements should be developed that require financial institutions to put in place screening procedures to ensure high standards when hiring employees.

537. The inspection procedures that have been introduced by the Central Bank should be adopted by other financial services supervisors.

Recommendation 22

538. The requirements of Recommendation 22 have been complied with.

3.8.2 Compliance with Recommendations 15 and 22

	Rating	**Summary of factors underlying rating**
R.15	**Largely Compliant**	• There is no requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees.
R.22	**Compliant**	

3.9 Shell banks (R.18)

3.9.1 Description and analysis

539. Article 5 of the LPMLTF defines a shell bank as a credit institution, or other similar institution, registered in a country in which it does not carry out activity and which is not related to a financial group subject to supervision for the purpose of detecting and preventing money laundering or terrorist financing.

540. Shell banks are forbidden by law under the Law of amendments to the Law of banks and other financial institutions (Official Gazette of the Republic of Montenegro No. 32/02) and in 2006 the Law of Foreign Companies established and operating under special terms is put out off force. Article 4 from the Law on Banks (Official Gazette of the Republic of Montenegro no.17/08), stipulated that no natural person or legal person in Montenegro may engage in the profession or activity of banking, without required license or approval of the Central Bank of Montenegro.

541. Furthermore, in accordance with the Law on Foreign Companies that are Established and Operating in Montenegro ((Official Gazette of the Republic of Montenegro No. 23/96 and 62/02)

all foreign companies that are established and operating in Montenegro are required to be registered with the Commercial Register thus establishing control over all foreign companies that are established and operating in Montenegro.

542. Article 32 of the LPMLTF prescribes that an obligor may not establish correspondent or open account relationship with a bank that operates or could operate as a shell bank or with other similar credit institution known for allowing shell banks to use its accounts. Furthermore, Article 26 requires that financial institutions obtain a written statement that a bank or other similar credit institution does not operate as a shell bank, and a written statement that a bank or other similar credit institution has not established or it does not establish business relationships or executes transactions with shell banks. The evaluators did not find any indication of shell banks operating in Montenegro or of financial institutions entering into business relationships with shell banks operating overseas.

3.9.2 Recommendations and comments

543. The requirements of Recommendation 18 appear to have been met.

3.9.3 Compliance with Recommendation 18

	Rating	**Summary of factors underlying rating**
R.18	**Compliant**	•

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs'/ Role, functions, duties and powers (including sanctions) (R.23, 29, 17 and 25)

3.10.1 Description and analysis

Recommendation 23 (overall supervisory framework: criteria 23.1, 23.2)

544. The essential criteria for Recommendation 23.1 and 23.2 require that Countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF Recommendations and that a designated competent authority or authorities has/have responsibility for ensuring that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing.

545. The supervisory regime for financial institutions is described in some detail in Section 1.5 above as well as at the commencement to Section 3. The Central Bank of Montenegro is the regulator of the banking sector, the Securities Commission supervises the capital market and the Insurance Supervision Agency (ISA) is responsible for the regulation and supervision of insurance companies.

546. Securities Commission, Central Bank and Insurance Supervision Agency are regulators and supervisory bodies as per Article 86 of the LPMLTF.

Central Bank

547. The Law on Banks governs the foundation, management, operations and supervision of banks and micro-credit financial institutions and credit unions and it governs the conditions and supervision of operations of parties involved in credit and guarantee operations with the purpose of establishing and maintaining safe and sound banking system that provides protection of interests of depositors and other creditors. This law provide the necessary authority for the Central Bank to issue licenses and evaluate directors and senior management on the basis of "fit and proper criteria" as well as to conduct ongoing supervision.

548. Supervision by the Central Bank is based on on-site inspections (9 on 2006, 9 on 2007 and 4 in 2008 until August). The Central Bank receives an internal controls report every 6 months from banks which includes AML/CFT issues. The Central Bank also requests quarterly data on prudential risks and ALM/CFT.

549. As a result of the supervisory tasks, the Central Bank imposed 8 sanctions in 2006, 8 sanctions in 2007 and 3 in 2008 (until August).

Securities Commission

550. The Law on Securities regulates the types of securities, the issue of securities and trade in those securities, the rights and obligations of entities on the securities market, and the organisation, scope and powers of the Securities Commission of the Republic of Montenegro. This law provides the necessary authority for the Securities Commission to issue licenses and conduct ongoing supervision. The law does, however, only entitle the Securities Commission to evaluate the CEOs of securities companies on the basis of "fit and proper criteria".

551. The Securities Commission makes around 20 on-site inspections every year and also receives a quarterly report from Capital market businesses.[26]

552. At the time of the on-site visit, no sanctions had been imposed by the Securities Commission.

Insurance Supervision Agency

553. The law on Insurance regulates the conditions and method of performing insurance business and the supervision of the performance of insurance business. This law provide the necessary authority for the Insurance Supervision Agency to issue licenses and evaluate directors and senior management on the basis of "fit and proper criteria" as well as to conduct ongoing supervision.

554. The Insurance Supervision Agency conducts on-site inspections (5 in 2008) and also receives monthly, quarterly and yearly reports from insurance companies.

555. At the time of the on-site visit, no sanctions had been imposed by the Insurance Supervision Agency.

Recommendation 30 – (Structure, funding, staffing, resources, standards and training)

556. Recommendation 30 requires that FIUs, law enforcement and prosecution agencies, supervisors and other competent authorities involved in combating money laundering and terrorist financing should be adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions. Adequate structuring includes the need

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[26] The Securities Commission adopted Instruction about Risk Analysis, Money Laundering And Procedures "meet your client" and other Procedures for Recognizing Suspicious Transactions at a session held on November 28, 2008.

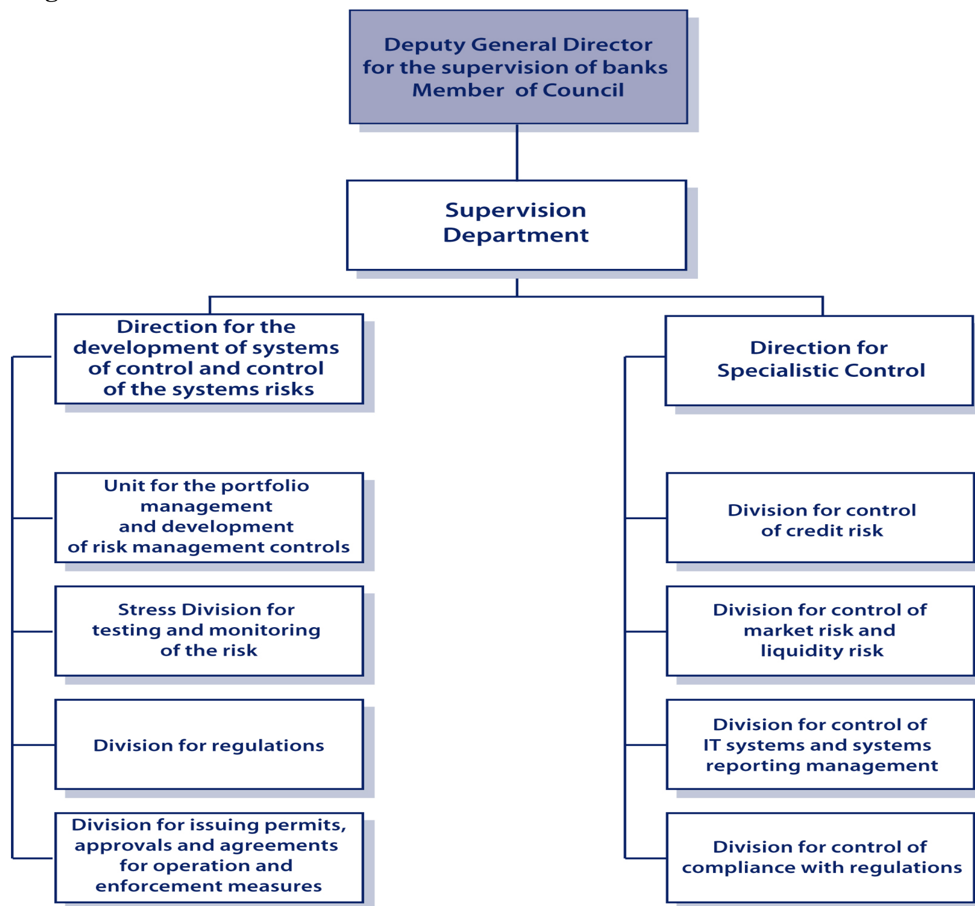
for sufficient operational independence and autonomy to ensure freedom from undue influence or interference. Furthermore, staff of competent authorities should be required to maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled. Staff of competent authorities should also be provided with adequate and relevant training for combating money laundering and terrorist financing.

The Central Bank of Montenegro

557. The Central Bank of Montenegro (CBM), as one of the earliest participants in the country's anti-money laundering efforts, has become a reasonably proficient supervisor of the banking sector. The same is not necessarily true for several other supervisory agencies, some of which are more recently established.

558. A Compliance Division has been established within the Bank Supervision Department of the CBM established which is responsible for the supervision of harmonisation of banks' and other financial institutions' operations with regulations related to the prevention of money laundering and terrorism financing.

Organisational structure



559. Regular training is arranged for employees who are responsible for the supervision to prevent money laundering and financing terrorism. Training is conducted though seminars both in Montenegro and abroad. All employees in the Bank Supervision Department have signed the Ethical Code by which employees are obliged to keep high professional and experts standards, including standards related to keeping the business secret. In addition, all employees in the Compliance Division who supervise harmonisation with regulations related to prevention of

money laundering and terrorist financing are required to have a university degree relating to either economic or legal sciences.

The Insurance Supervision Agency

560. The Insurance Supervision Agency which provides for the supervision of insurance companies was established in January of 2008 and appears to be still coming to terms with its obligations regarding AML/CFT supervision. Although the agency's examiners have had training in the prudential aspects of insurance supervision under a USAID program, they have had no training in AML/CFT. They have no direct sanction authority but would refer deficiencies to the FIU for further action. They only have direct sanction authority for deficiencies in compliance with the insurance law which does not reference AML/CFT. This agency has yet to define its relationships with other competent authorities either through memoranda of understanding (MOUs) or other means and, essentially, is at a very early stage in developing a practical competence in the field of AML/CFT supervision.

The Securities Commission

561. The Securities Commission, although informing the FIU of irregularities found in the area of AML/CFT, also needs to target more comprehensively this particular area during their onsite and offsite reviews.

Recommendation 29 – Authorities powers

562. Recommendation 29 requires that Supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections. Furthermore, they should be authorised to compel production of any information from financial institutions that is relevant to monitoring such compliance, and to impose adequate administrative sanctions for failure to comply with such requirements.

563. The powers to monitor and ensure compliance with requirements to combat money laundering and terrorist financing of the Central Bank, Securities Commission and Insurance Supervision Agency derives clearly from Article 86 of the LPMLTF and also from the respective laws that govern the regulators (Law on banks, Law on securities and Law on insurance) as set out under Recommendation 30 above.

564. The laws that govern the regulators provide them with the authority to conduct on-site inspections and to obtain all the necessary data and documents necessary to the role without restriction.

565. Under Article 91 of the LPMLTF, APMLTF is the only authority which can apply sanctions under the LPMLTF. It was, however noted by the evaluators that the financial regulators can themselves impose other sanctions as per their respective regulating laws. Article 116 of the Law on Banks sets out the measures that the Central Bank may apply if it establishes that a bank has not managed the risks to which it has been exposed in its operation in an adequate manner or contrary to regulations. Article 113 of the Law on Securities sets out the penal provisions that can be applied against securities companies. Article 130 of the Law on insurance sets out the actions to correct illegalities and irregularities and Article 132 sets out the measures for non-compliance with risk management rules.

566. The evaluators are of the view that the financial supervisors appear to have been granted by laws enough powers to ensure compliance by financial institutions of AML/CFT regulations.

Recommendation 17 – Sanctions

567. Recommendation 17 requires that countries should ensure that effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons covered by these Recommendations that fail to comply with anti-money laundering or terrorist financing requirements.

568. Article 92 of the LPMLTF includes penalty provisions imposed for misdemeanours related to breaching the provisions of this Law. A fine for the misdemeanour ranges from fifty-fold to three hundred-fold of the minimum monthly wages in Montenegro. Fines are also provided both for legal persons and for authorised person of the legal person. It is further noted that The Law on Banks, Law on Securities and Law on Insurance all contain board and flexible disciplinary sanctions which can be applied by the financial services supervisors.

569. The FIU is empowered to conduct the proceedings for imposition of the fine as the first instance body. As such, it is authorised to impose any sanction provided by the LPMLTF for both, legal persons and authorised person of legal persons. If the decision of the FIU on a sanction is contested by an appeal, the Court for Misdemeanours is authorised to conduct the appeal proceedings. The same procedure is in place for natural and for legal persons. Considering the lack of information on any final decisions on fines imposed, it remains questionable if the system is operating effectively and in a timely fashion.

570. The misdemeanours are less serious than criminal offences, but none-the-less they are considered to be criminal violations in their nature. Therefore sanctions for misdemeanours are also criminal sanctions in their nature and a central registry of all entities which were subject of a fine is maintained.

571. The range for the possible fines is wide and flexible enough to cover a variety of different situations and to provide appropriate sanctioning for differing severity of offences. But fines are the only type of sanctions available and there are no less severe sanctions available to cover less severe cases (disciplinary sanctions, restriction or suspension of licence of financial institution, etc.).

Recommendation 23 Market entry (criteria 23.3, 23.5 23.7 licensing/registration elements only)

572. The essential criteria to Recommendation 23.3 requires that supervisors or other competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in a financial institution. Furthermore, directors and senior management of financial institutions subject to the Core Principles should be evaluated on the basis of "fit and proper" criteria including those relating to expertise and integrity

573. The essential criteria to Recommendation 23.5 requires that natural and legal persons providing a money or value transfer service, or a money or currency changing service should be licensed or registered.

574. The essential criteria to Recommendation 23.7 requires that financial institutions should be licensed or registered and appropriately regulated, and subject to supervision or oversight for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in that sector i.e. if there is a proven low risk then the required measures may be less.

Central Bank

575. Article 4 of the Law on Banks states that "*No natural person or legal person in Montenegro may engage in the profession or activity of banking, without required license of the Central Bank of Montenegro.*".

576. Articles 9 to 20 contain rules for granting a banking license. Article 21 sets out the information that is required to support the application for a license which includes "*documents, data and information on natural persons with qualified participation in a bank, which specifically contain their names and addresses of permanent or temporary place of residence and other identification data, appropriate evidence on sources of financial amount of founding capital, bank related parties and their connected interest*" and "*biography data on proposed members of the board of directors that as a minimum contain the following: information on identification, professional qualifications and working experience and information on their achieved and planned education*". Article 24 sets out grounds for denial of application which include "*the proposed members of the board of directors do not meet the conditions to be elected as members of the board of directors as determined by this Law;*" and "*one or more founders owning more than 5% of participation in bank's capital or voting rights do not meet the conditions for acquisition of qualified participation in a bank as specified by this Law.*" .

577. Article 31 sets out the requirements for the appointment of board members which includes requirements that A member of the Board of Director may not be:

> "*4)a person whose assets has been subject to bankruptcy proceedings or significant enforcement has been conducted over personal property;*
> *5) a person who had been on leading positions in a bank or other business organisation at the time when such organisation was subject to bankruptcy or liquidation proceedings, unless the Central Bank establishes that the person was not responsible for such bankruptcy or liquidation;*
> *7) a person who has been subject to a safety measure prohibiting further conduct of professional work, business activity or duty, imposed by a competent court;*
> *8) a person who has been sentenced for a crime which makes him or her not worthy of performing the function of member of the Board of Directors;*"

578. Furthermore, Article 37 sets out the requirements for the appointment of executive directors and requires that "*An executive director in a bank shall be a person that meets the following requirements, in addition to those prescribed for a board member by this law:*

> *1)university degree, and*
> *2)competences and professional experience on managing positions in the financial sector, corresponding in relevance and time to the characteristics of key areas of operation and size of that bank.*"

579. Articles 9 to 20 contain rules on acquiring a qualified participation (defined as being 20% or more) in a bank. Article 9 states that "*No legal or natural person may acquire qualified participation in a bank without prior approval of the Central Bank*.". Article 11 sets out the criteria for granting the approval for acquiring qualified participation and Article 12 sets out reasons for denial of granting the approval. These reason for denial include:-

- "*the business activities of the applicant may cause significant risk for safe and legitimate management of a bank or a banking group;*
- *it is not possible to determine the applicant's sources of funds for the acquisition of bank's shares;*
- *there are other facts that point out that the applicant would adversely influence on the risk management in a bank or hinder the accomplishment of supervisory function of the Central Bank*."

580. Article 17 sets out the grounds for revoking the approval for acquisition of qualified participation which include "*any of the circumstances as listed in Article 12 of this Law occurs*".

581. Articles 105 to 138 contain provisions concerning the supervision of banks. Article 106 places a responsibility on the Central Bank to supervise banks and Article 109 sets out the methods of supervision to be employed which includes both off-site and on-site reviews. Article 112 requires that banks should "*enable the Central Bank's authorised examiners a free insight in business books, other business documentation and records, insight in the functioning of information technology and computer database, and it shall provide, upon the request of authorised examiners, copies of business books, other business documentation and records, in hard and/or electronic copy."*

Securities Commission

582. The Law on Securities sets out the scope of responsibility and powers of the Securities Commission as well as setting out the criteria for licensing of participants in the securities market.

583. Article 8 sets out the responsibilities of the Securities Commission which include:-

> *9)to approve nomination of executive directors of the entities licensed by the Commission to set general requirements to be met by natural persons professionally engaged in trade in securities;*
> *10) to promote and encourage high standards of investor protection and integrity among licensees;*
> *11) to monitor and enforce Rules for the conduct of business by licensees including the suspension and revocation of licenses;*
> *12) to support the operation of an orderly, fair and properly informed securities market;*
> *13) to regulate the manner and scope of trading on a securities market;*
> *15)to take all reasonable steps to safeguard the interests of persons who invest in securities and to suppress illegal, dishonourable and improper practices in relation to dealings in securities;*
> *16) to take actions and perform control and examination to prevent any frauds on the securities market;*

584. Articles 62 to 86 set out the rules for licensing of market participants. Article 63 clearly stipulates that "*Securities business can be carried out only by licensed participants on the securities market."* and Article 65 states that "*No person may carry on securities business unless he is licensed to do so by the Commission"*. Article 68 sets out the information that needs to be provided to support an application for a license which includes *"information on individuals with special authorisations and responsibilities and other information and evidence prescribed by the Commission regarding the share capital and fulfilment of other conditions depending on the type of activity, personnel, technical, financial and organisational capability of the company applying for the license."* Article 74 sets out the grounds for revoking licences which include for companies failing to "*comply with any condition applicable in respect of the license"* and *"the company contravenes the provisions of this law"* For individuals grounds for revoking licences include "*fails to comply with any condition applicable in respect of the license; contravenes the provisions of this law;"* and *" is convicted with an unconditional custodial sentence or of an offence which disqualifies him from engaging in the business for which he has been licensed."*

585. Articles 108 to 112 set out the powers of the Securities Commission to require information and inspect and investigate securities firms. In particular Article 108 states that "*The Commission may by notice in writing require licensees to furnish it with such information as it may reasonably require for the exercise of its functions under this Law within such reasonable time and verified in such manner as it may specify."* Article 110 sets out the power of the Securities Commission to

carry out inspections and Article 111 sets out the power of the Securities Commission to conduct investigations; the powers set down appear to be sufficiently comprehensive to enable the Securities Commission to adequately fulfil its obligations.

Insurance Supervision Agency

586. The Law on Insurance sets out the scope of responsibility and powers of the Insurance Supervision Agency as well as setting out the criteria for licensing of participants in the insurance sector. Article 7 stipulates that insurance supervision shall be carried out by the Insurance Supervision Agency.

587. Article 4 requires that persons engaged in insurance business are to be licensed by the Insurance Supervision Agency. This is reinforced by Article 16 that states "*Insurance activities in the Republic may be conducted only by insurance companies licensed by the regulatory authority to engage in such activities, in accordance with this law*." Articles 16 to 41 set out the licensing requirements. In particular, Article 30 sets out the information which is required to support an application which includes:

> *"6)list of shareholders with their family name, name and address, or name of the company and its head office address, total nominal value of the shares and percentages of participation in the initial capital of the insurance company;*
> *7) for shareholders –the qualified shareholders legal entities:*
> - *evidence of registration from a relevant registration authority;*
> - *list of founders, total nominal value of their shares and percentages of participation in the initial capital of the insurance company;*
> - *financial reports with the certified auditor's report, for the last three years;*
>
> *8) for shareholders – qualified shareholders natural persons:*
> - *evidence that the person has not been a member of the board of directors or individual endowed with special authority in a legal entity which has undergone the liquidation or bankruptcy procedure, for the past three years;*
> - *evidence that the person has not been unconditionally sentenced to imprisonment for more than three months due to the economic, property or malpractice and corruption offense,*
> - *evidence of payment of the total amount of income and property taxes during the past three years, issued by relevant authority.*
>
> *9) list of entities related to the qualified shareholder with the description of the nature of such relations as defined in Article 24 hereof;*
> *10) for the persons proposed to be nominated members of the Board of Directors, Executive Director and Secretary:*
> - *evidence they meet the requirements in terms of his/her education, skills and professional experience,*
> - *evidence that the person has not been a member of Board of Directors or person with special authorities in a legal entity which has undergone the liquidation or bankruptcy procedure, for the past three years,*
> - *evidence that the person is not limited as defined in Articles 48 and 49 hereof;*
> - *evidence that the person has not been unconditionally sentenced to imprisonment for more than three months,*
> - *evidence of the relevant authority on the amount of paid property and income taxes for the past three years;*
>
> *11) name and family name of the person nominated certified actuary with the data as defined in item 10 of this paragraph, or pre-contract on rendering actuary services signed*

with the certified actuary company and evidence of professional actuary liability insurance;
12) evidence that the company has the prescribed organisational, personnel and technical capacity for the conduct of business to be licensed."

588. Article 36 sets out the grounds for rejecting a license application which include failure to fulfil the conditions set out in Article 30 (see above) and also if "*members of the managing bodies of the insurance company do not submit the necessary evidence for their eligibility or nominated persons do not meet the prescribed conditions;*" or " *if, on the basis of the bylaws and other submitted documents, and other acts and information, it can be concluded that the insurance company does not have organisational, staffing and technical capacity to perform insurance activities in the scope projected in its business plan.*"

589. Articles 51 to 81 set out similar requirements for insurance brokers and insurance agents.

590. Articles 115 to 143 set out the powers and responsibilities of the Insurance Supervision Agency. In particular Article 115 states:-

- *The regulatory authority shall exercise supervision, in accordance with this law and Core Principles for Efficient Insurance Supervision, over the operations of insurance companies, foreign insurance company affiliates, insurance broker companies, insurance agents, insurance ancillary service providers and the legal persons referred to in Article 80 of this Law.*
- *The regulatory authority may inspect business records of legal entities which are related to the insurance company, as well as the business records of all participants in a transaction that is subject to supervision if it is considered necessary in order to supervise the insurance company's operations."*

591. Article 118 sets out the manner of performing supervision which shall be performed by:-

- *collecting, monitoring and analysing reports, data and notices that the insurance company is obliged to submit to the regulatory authority by the provisions of the Law;*
- *on-site examination of the operations of insurance companies;*
- *following up implementation of measures imposed in accordance with this Law and by bringing charges to competent authorities if there is reasonable doubt that the illegality and irregularities found have the characteristics of a criminal offence, commercial violation or minor offence.* .

592. Articles 144 to 147 set out the procedure for revocation of licenses. Grounds for revoking licenses include

"1) illegalities and irregularities in operations of the company have been established, and further engaging in insurance activities would jeopardise interests of policyholders and other insurance beneficiaries;
3) the company does not conduct its business activity in accordance with trade rules, best business practices and business ethics;
13) the company fails to comply with a measure imposed by the regulatory authority within the prescribed time, or fails to remove reasons for imposing such a measure;"

Recommendation 23 Ongoing supervision and monitoring (criteria 23.4, 23.6 23.7 (supervision /oversight elements only))

593. The essential criteria to Recommendation 23.4 requires that for financial institutions that are subject to the Core Principles, the regulatory and supervisory measures that apply for prudential

purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes, except where specific criteria address the same issue in this Methodology.

594. Article 86 of the LPMLTF places a responsibility on the designated financial supervisors to take responsibility for the implementation of the provisions of the LPMLTF within their respective sectors. The powers and responsibilities of the financial supervisors are set out in the foregoing paragraphs of this section. It is the view of the evaluators that all of the supervisory bodies considered have adopted suitable regulatory and supervisory measures for:

- licensing and structure;
- risk management processes to identify, measure, monitor and control material risks;
- ongoing supervision and
- global consolidated supervision where required by the Core Principles.

595. The essential criteria to Recommendation 23.5 requires that natural and legal persons providing a money or value transfer service, or a money or currency changing service should be subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.

596. Most money or value transfer services, and a money or currency changing services are provided by the banks who are subject to the regulatory regime described in this sector. In addition some of these services are provided by the Post Office which is subject to supervision by the Agency for Telecommunication and Postal Services which is also required under Article 86 of the LPMLTF to take responsibility for the implementation of the provisions of the LPMLTF within post offices.

597. The Montenegrin Post, in consultations with the Agency for Electronic Communications and Postal Services, has been conducting professional training of the employees encompassed by the Programme against money laundering and terrorist financing, and the content of the training mainly covers the following topics:

- legal obligations of the Post;
- dangers of money laundering and risks for the Post;
- personal responsibility of employees,
- learning about new forms of money laundering;
- recognition of suspicious transactions by use of the indicator list;
- the system of internal controls.

The Agency for Electronic Communications and Postal Services has recently given its approval on the application of the forms that obligors will use in the procedure of identification of politically exposed persons.

598. The essential criteria to Recommendation 23.7 requires that financial institutions should be licensed or registered and appropriately regulated, and subject to supervision or oversight for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in that sector i.e. if there is a proven low risk then the required measures may be less.

599. The licensing regime for financial institutions is described above. It is the view of the evaluators that this comprehensive regime taken with the responsibilities of the supervisory bodies under Article 86 of the LPMLTF is sufficient to ensure that financial institutions are licensed or registered and appropriately regulated, and subject to supervision or oversight for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in their respective sectors.

600. Overall the evaluators were satisfied that not only were there adequate powers in place but also considered that the relevant supervisory bodies were aware of their responsibilities and had adequate resources to meet these.

Recommendation 25

601. Recommendation 25 requires that the competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.

Ministry of Finance

602. In accordance with the requirements of Article 8 of the LPMLTF, the Ministry of Finance is required to adopt a regulation on risk analysis. At the time of the on-site visit a working group was established with the aim of drafting the Regulation on risk analysis with participation of representatives from the Ministry of Justice, APMLTF, the Ministry of Finance and the Bank Association.

Central Bank

603. After having performed an on-site inspection the Central Bank drafts a report. This report also contains recommendations for the supervised bank. Such recommendations are considered to be guidelines. No typologies are disseminated to supervised banks by the Central Bank.

604. During the on-site visit the evaluators were informed that it is the intention of the Central Bank to issue guidelines for AML/CFT risk analysis in accordance with Article 8 of the LPMLTF Law. Such guidelines shall be determined pursuant to the regulation adopted by the Ministry of Finance. The Ministry of Finance has set up a working group for the drafting of this regulation. The regulation shall determine more specific criteria for guidelines development (the reporting entity's size and composition, scope and type of affairs, customers, or products and the like), as well as the type of transactions for which, due to the risk of money laundering and terrorism financing, it is not necessary to carry out customer identification in the context of the LPMLTF.

Agency for Telecommunication and Postal Business Operations

605. The Agency for Telecommunication and Postal Business Operations has adopted a Programme against Money laundering (No.00010-1174/9-1 dated 09.03.2005), and, pursuant to the LPMLTF, has issued Guidelines on the implementation of the LPMLTF.

606. Some representatives from the financial sector with whom the evaluators met expressed their concern about not being part of the working group set up within the Ministry of Finance. The evaluators were, however advised by the Montenegrin authorities that representatives of the financial system are involved in drafting by-laws.

607. There is a need to provide more guidance on AML/CFT issues, with particular focus on the non-banking sector. There is a leaflet created by APMLTF in relation to enhanced due diligence which also refers to the identification of PEPs. The Ministry of Finance has formed a Working Group that is preparing the draft instruction for the guidelines on AML/CFT.

608. The Securities Commission has developed guidance on AML/CFT issues entitled "Instruction about risk analysis money laundering and procedures „meet your client" and another procedures for recognising suspicious transactions" on its session held on November 28, 2008.

Recommendation 30

609. Recommendation 30 requires that countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of those authorities are of high integrity.

610. The Bank Supervision Department of the Central Bank of Montenegro has 33 employees all of whom have university degrees. The level of employees' training is high and all of them are included in some of the educational forms and training organised by foreign institutions and organisations, as well as through internal forms of education. The growth and development of the banking sector and its compliance with the new standards in bank supervision have resulted in the periodical hiring of new employees.

611. At the time of the on-site visit there were 13 persons employed with the Securities Commission. The Commission plans to employ another 17 persons within the next 2 years. The Rules on Internal organisation and Systematisation of the Securities Commission prescribes the maximum number of employees, which is 42 persons. The evaluators have subsequently been advised that there are now 29 individuals employed at the Securities Commission, of which 24 have the higher educational qualifications (university degree or higher, of which two persons have PhD and one is a master of science) and 5 employees have lower degrees.

612. The Insurance Supervision Agency is structured in three organisational parts:

- insurance market supervision
- regulation, development and cooperation and
- general affairs.

At the time of the on-site visit the ISA had 8 employees but there are plans to increase the number of staff to 17.

613. Overall the evaluators were satisfied that not only were there adequate powers in place but also considered that the relevant supervisory bodies were aware of their responsibilities and had adequate resources to meet these.

3.10.2 Recommendations and comments

614. The relevant financial services supervisors appear to have adequate powers as set out in their respective legislation to adequate perform their functions. Furthermore, it would appear that they have been provided with sufficient resources. The recent establishment of the Securities Commission and the Insurance Supervision Agency did, however, mean that it was not possible for the evaluators to reach a conclusion as to their effectiveness.

615. The APMLTF and other supervisory authorities are required to provide methodological assistance to financial institutions. APMLTF provides general information on criteria for detection of suspicious activity as required in the LPMLTF. No guidelines referring to specific AML/CFT risk factors and measures to mitigate such risks are provided.

616. APMLTF has given examples of typologies in training sessions with representatives from financial institutions and DNFBP. The evaluation team noted, however, that the typologies are not presented to reporting entities in a structured manner to have an efficient result.

617. There is a need to provide more guidance on AML/CFT issues, with particular focus on the non-banking sector. No guidelines tailored to the particular sector.[27]

3.10.3 Compliance with Recommendations 17, 23, 29 and 30

	Rating	Summary of factors underlying rating
R.17	**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
R.23	**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.
R.25.1	**Largely Compliant**	• No guidelines tailored to particular sectors
R.29	**Compliant**	

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

618. Special Recommendation VI requires that each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

619. The evaluation team was advised by representatives of the Central Bank of Montenegro that only one money remittance company, Western Union, offers this type of service and it is accomplished solely through banks. These banks are supervised for AML/CFT purposes by the Central Bank of Montenegro.

620. While the evaluators agree that the respective laws on banks and payment operations adequately provide for licensing of persons (natural or legal) who do or intend to formally provide money or value transfer services (MVT services), there is a lack of coverage of those who may informally be providing such services through non-bank financial institutions or other business entities or any other mechanism either through the regulated financial system or through a network or mechanism that operates outside the regulated system. Two of the core elements of SR. VI, as explained in its interpretative note, involve licensing or registering persons who may provide MVT services through informal systems as well as having the ability to sanction such MVT service providers operating without a license or registration or failing to comply with relevant FATF Recommendations. While the money remittance services of Western Union and the post

[27] The Evaluators were advised that the Securities Commission issued Instructions on Risk Analysis, Money Laundering, “meet your client” Procedures and other Procedures for Recognising Suspicious Transactions on 28 November 2008.

offices of Montenegro, conducted through banks, are adequately licensed and supervised, the existence of informal systems or alternative remittance services is not readily recognized in Montenegro's AML/CFT regime. In Montenegro, should an informal MVT service provider be discovered, the only possible sanction that may apply would be for prosecutors to charge the person with a violation of Section 266 of the criminal code – performing a forbidden banking service. Neither the Central Bank nor any other financial supervisor would have any supervisory or sanctioning authority in this instance. Since providing money transfer services is not, in the opinion of the evaluators, exclusively a banking service, even the application of this sanction would be problematic. In sum, the need to bring all money or value transfer services, whether formal or informal, within the ambit of certain legal and regulatory requirements in accordance with the relevant FATF recommendations is not currently being addressed. Neither study of nor outreach to informal MVT service providers had been undertaken at the time of the onsite visit.

3.11.2 Recommendations and comments

621. The evaluators were of the view that the requirements of Special Recommendation VI had been not been complied with.

622. The Montenegrin authorities should introduce legislation to enforce the licensing/registration of all MVT service providers together with appropriate sanctions.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**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.

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

623. Article 4 of the LPMLTF identifies 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 (DNFBPs) identified in the Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations as well as financial institutions. Their obligations, therefore, are the same as those applying to financial institutions and as set out in Section 3 above. These DNFBP obligors are identified in the law as:

- Organisers of lotteries and special games of chance;
- Audit companies, independent auditors and legal or natural persons providing accounting and tax advisory services;
- Persons engaged in the activity or business of the real estate trade;
- Persons engaged in the activity or business of trading in precious metals when payment is made in cash in the amount of €15,000 or more in one or more interconnected transactions; and,
- Persons engaged in the activity or business of trading in precious stones when payment is made in cash in the amount of €15,000 or more in one or more interconnected transactions.

624. Section III of the LPMLTF lays out the particular tasks and obligations of another category of DNFBP, namely, lawyers and notaries. These are also subject to obligations regarding anti-money laundering and counter-terrorist financing but they are not obligors in the same sense as the financial institutions and other DNFBPs who are identified in the first section of the law.

625. Trust and company service providers are not designated as obligors or otherwise obligated or mentioned under the LPMLTF. The Montenegrin authorities informed the evaluation team that individuals and entities corresponding to this category of DNFBP do not exist in the jurisdiction. Legal persons or practitioners may register companies, but may not:

- as a way of business form companies or other legal persons (be owners on behalf of other natural or legal persons),
- act or arrange for another person to act as a director or secretary of a company (directors or secretary of the company may be just a natural person nominated by the shareholders meeting and may not act on behalf of other persons nor have agents to act on their behalf, since their role is *intutitu personae*);
- providers of registered offices, business addresses, accommodation or correspondence addresses for businesses other than sole proprietors;
- be individual or firm providing nominee director, nominee company secretary or nominee shareholder services or other similar services designed to ensure the confidentiality of the true ownership or control of a company or corporate body, or to act in these roles on behalf of another person or firm; Firms in Montenegro may just open custody account for securities trading held within custodian banks who are obliged to reveal the name of the true owners of the account on whose behalf they act.

626. Foreign trusts are not permitted to operate in Montenegro.

627. The LPMLTF also identifies as obligors such other DNFBPs as:

- Pawnshops;
- Humanitarian, non-governmental and other non-profit organisations;
- Persons engaged in the activity or business of travel organisations;
- Persons engaged in the activity or business of the motor vehicle trade;
- Persons engaged in the activity or business of the vessel and aircraft trade; and,
- Those conducting auctions or trading in works of art when payment is made in cash in the amount of €15,000 or more in one or more interconnected transactions.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

628. 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.

Casinos

629. A newly formed Administration for Lottery and Gaming is supervised by the Ministry of Finance. The authority for forming the Administration for Games of Chance was made on April, 18th 2008. by the Direction of Organisation and manner of work of State Administration ("Official Gazette of Montenegro", No 26/08). The Act on the Internal Organisation and Systematisation of the Administration for Games of Chance was adopted by the Government of Montenegro and put into the force on August, 1st 2008. The Administration for Games of Chance started working on August, 1st 2008, and we expect that it will be fully operational within a one-year period. At the time of the on-site visit, this Administration had six employees. The six employees had formerly been employed by the Ministry of Finance which was the former supervisory authority for casinos, lottery and gaming.[28]

630. At the time of the on-site visit there were four casinos in Montenegro out of which one casino was located in the capital, Podgorica. When issuing a licence for a casino the authority checks that the formalities are fulfilled, including that the owner is a resident in Montenegro. The authorities do not check who the beneficial owner is or whether the casino is controlled by foreign criminals.

631. Under the previous version of Montenegro's AML law, casinos were required to perform customer identification in cases where the customer had a gain or loss exceeding €1,000 and/or for each customer who bought, brought or exchanged chips in that value. This specific application for casinos has been eliminated in the LPMLTF. Currently casinos, as a class of obligors under the LPMLTF, are subject to the same customer due diligence requirements as financial institutions as noted and discussed in Section 3.2 above. Although the FATF Methodology for Assessing Compliance states that casinos should be made to comply with the requirements set out in Recommendation 5 (and its criteria 5.1 to 5.18) when their customers engage in financial transactions equal to or above €3,000, no such threshold exists in Montenegro.

[28] The evaluators have been informed that the staff complement has increased to seventeen employees in the Administration, of whom six are inspectors.

632. According to Article 18 of the LPMLTF, a casino customer's identity shall be established or verified when the customer enters the premises of the casino. Article 71 defines this identification by obliging the casino to obtain the name, address, date and place of birth as well as recording the date and time of entering the casino. Customer identification and verification is carried out when entering the casino on the base of reliable documents (such as identity card, driving license, passport, etc.).

633. In discussions with representatives of the casino industry, the evaluators were informed that all natural persons are identified upon entry into the casino. The casino representatives stated that they utilise an internal guideline that was developed with the assistance of APMLTF. Full identification of the customer includes scanning of documents such as a driver's license and/or passport. The customer also completes a questionnaire with that information being proprietary to each casino. Pervasive video camera surveillance in the casinos also offers further identification of customers and Article 49 **o**f the Law on Games of Chance requires that "*the concessionaire shall be obliged to provide supervision of the entrance – exit in casino along with registration of the visitors and permanent reception audio – video surveillance (control), and recording the entrance –exit in casino.*" It is the view of the Montenegrin authorities that, in view of the video surveillance now introduced, casinos can adequately link the incoming customers to individual transactions. As this is a recently introduced requirement the evaluators consider that it is too early to assess whether casinos can adequately link the incoming customers to individual transactions.

634. The evaluators were concerned that more attention need to be given to raising awareness and enforcing compliance in casinos. Although casinos are required to keep CDD records for ten years in accordance with the requirements of the LPMLTF, the evaluators met with a representative of the casino industry who claimed that some records are only kept for one year.

635. For the most part, Montenegro's casinos have been governed in their operations by Montenegro's Law on Games of Chance (Official Gazette of the Republic of Montenegro No. 52/04 of 02 August 2004). This law and its bylaws, issued by the Ministry of Finance in the form of various Rulebooks, are concerned mostly with gaming industry standards and tax matters. Most of the anti-money laundering and counter-terrorist financing obligations of casinos, including those with regard to customer identification and recordkeeping are contained in the LPMLTF. As the Administration for Lotteries and Gaming, the supervisory agency for casinos, is only in the process of being established, knowledge by casinos of AML/CFT responsibilities and their applications is evolving and still very dependent upon direct interaction with APMLTF.[29]

Dealers in precious metals and dealers in precious stones

636. Subsequent to the on-site visit, the evaluation team was informed by the authorities in Montenegro that an Association of Traders in Precious Metals and Stones had just recently been established. It is the estimate of this nascent association that there are approximately 35 such traders (dealers) in Montenegro.

637. Dealers in precious metals and stones are defined as obligors in Article 4 of the LPMLTF of Montenegro and, as such, must take measures to detect and prevent money laundering and terrorist financing. Specifically, they are defined as any business organisations, other legal persons, entrepreneurs and natural persons engaged in an activity or business of organising and conducting auctions or trade in precious metals and stones and related products when payments are made in cash in the amount of €15,000 or more in one or more related transactions. When engaging in

[29] It was noted by the evaluators that AMPLTF, in conjunction with the Administration for Lotteries and Gaming is organising various awareness raising initiatives with casinos.

such cash transactions, their obligations are the same as those imposed on financial institutions as discussed in Section 3.2 above.

638. For AML/CFT purposes, the supervision of these dealers in precious metals and stones is assigned to APMLTF's Reporting Entities and Control Department.

639. The evaluation team's planned meeting with representatives of this sector did not take place during the on-site visit. Consequently, the effectiveness of AML/CFT measures in the matter of customer due diligence and record-keeping taken by these professions could not be assessed.

Real estate agents

640. During its on-site visit, the evaluation team met with one representative of a real estate agency. This individual was an accountant with the agency who was charged with its anti-money laundering and counter-terrorist financing compliance responsibilities. The team was informed by this individual that the banks and APMLTF had explained the agency's obligations under the law. These obligations are the same as those applying to financial institutions under the LPMLTF and the observations in Section 3.2 above are also applicable here.

641. The representative of the real estate agency explained that the firm's clients were mostly Russian nationals and that the firm dealt mostly with residential real estate. Foreign nationals who wish to purchase real estate in Montenegro usually first establish a company, such as a joint liability company, to purchase the property. If land is to be purchased the setting up of a joint stock company is necessary. The representative of the agency noted that approximately one fifth of the clients of the firm make payment in cash. Apartments or condominiums can be purchased by foreign nationals without the necessity of setting up a company in Montenegro.

642. The real estate company informed the evaluation team that it checked the origin of the money and transactions equal to or above €15,000 were reported to the APMLGFT.

643. The real estate company did not check whether a client was acting on behalf of another person nor did it perform any CDD on beneficial ownership.

644. The representative of the real estate agency who was interviewed by the evaluation team was unaware of any lists of terrorists, terrorist organisations or their supporters to be consulted in screening the firm's clients. As such there appears to be little likelihood of this real estate agency undertaking customer due diligence based upon a suspicion of terrorist financing. The Montenegrin authorities assured the evaluators that all reporting entities are notified in written on their obligation for verification. The indicators of suspicious transactions provide situations related to terrorism and the UN lists of terrorist are posted on the APMLTF website.

645. No training on AML/CFT issues related to real estate agencies had taken place at the time of the on-site visit.[30]

Lawyers and notaries

646. Under the LPMLTF lawyers and notaries are not listed as obligors under Article 4 and are not consequently charged with the basic duties of obligors enumerated in Article 6. Instead, in accord with Article 41 of the LPMLTF, lawyers and notaries must take similar measures to detect and prevent money laundering and terrorist financing whenever they engage in certain activities specified in the Article. These activities include whenever they assist in planning and executing customer transactions related to:

[30] The evaluators were, however, advised that seminars, specifically organised for estate agents, were organised by APMLTF in November 2008.

- The purchase or sale of real estate or a business;
- Managing money, securities or other property of the customer;
- Opening and managing a bank account, securities account or savings deposit;
- Collecting funds for the creation of a business organisation or dealing with or managing a business organisation; and,
- Creating, dealing with or managing an institution, fund, business organisation or other similar organisational form.

647. Lawyers and notaries are also required to take measures for detecting and preventing money laundering and terrorist financing whenever they execute a financial transaction or transaction concerning real estate on behalf of a customer. When the activities of a lawyer or notary trigger the obligation to take measures to detect and prevent money laundering and terrorist financing, their obligations are similar to those of all other obligors.

648. The customer identification requirement for lawyers and notaries is referred to in the LPMLTF as customer verification and is defined in Article 42. This Article describes for lawyers and notaries just what constitutes customer identification, customer due diligence, the application of enhanced customer due diligence and establishing the beneficial owner when the customer is a legal person. What should constitute the customer identification records of a lawyer or notary is specified in Article 73.

649. The evaluation team met with one advocate who was active in the Lawyers' Association of Montenegro. There are approximately 520 lawyers in Montenegro. All lawyers have to be members of the Bar Association. The Association's independence is guaranteed by the Constitution. The Bar Associations has established a disciplinary court. This individual informed the team that APMLTF had had some correspondence with his association regarding how to inform lawyers of their obligations under the LPMLTF. He noted some perception of a conflict between the LPMLTF and code of ethics for lawyers as well as Montenegro's Law on Advocates. He informed the evaluators that lawyers in Montenegro do establish companies for foreigners. When asked if there are company service providers operating in Montenegro, he only offered that they should all be lawyers. He also reported that lawyers in Montenegro keep records for a minimum of five years in accord with the Law on Advocates. According to Article 83, Paragraph 3 of the LPMLTF lawyers and notaries are required to keep records for a period of ten years after the verification of the client identity has been carried out.

650. The evaluators were informed that the LPMLTF requires that attempts to launder money be reported to APMLTF but this requirement is in general considered to be very controversial by the lawyers. Moreover it should be noted that it was often considered to be dangerous to file an STR. Finally the evaluators were told that there is a great need of training on AML/CFT issues not only for lawyers and notaries but also for prosecutors and courts.

Auditors and accountants

651. Auditors and accountants are obligors under Article 4 of the LPMLTF. As such, they are responsible for the same CDD and record-keeping requirements with regard to AML/CFT as exist for financial institutions and covered in Section 3.2 above.

652. Unlike lawyers and notaries, this DNFBP class of auditors and accountants is obligated to take measures to detect and prevent AML/CFT in all activities of the professions.

653. During the on-site visit the evaluation team met with a representative of Montenegro's Institute of Accountants and Auditors. The Institute is a relatively new and independent institution established in 2002 in the wake of an auditing/accounting reform in Montenegro. The individual noted that the Institute has developed a Code of Ethics with the assistance of the United States Agency for International Development. Rules of good practices have also been issued and international

auditing and accounting standards have been implemented. The Institute is disseminating information about obligations under the LPMLTF to all of its members through seminars and the publication of Articles in its magazine. APMLTF has provided it with a list of indicators of suspicious transactions for auditors and accountants.

654. The Ministry of Finance issues licences for auditors and accountants. The sectors are registered with the Institute but it is not mandatory and not all auditors and accountants are members. The Ministry of Finance supervises the activities of the auditors and accountants but a new monitoring body is being planned. The customs and the Tax Administration is informed if any irregularities are found. APMLTF is notified if any transactions performed reach the threshold of €15,000 or more. A report is filed to APMLTF if any of the indicators on the list of indicators of suspicious transactions for auditors and accountants are met. The Institute has participated in the drafting of the list of indicators.

655. A seminar on AML/CFT and anti-corruption has been arranged by the Institute for Auditors and Accountants together with APMLTF.

Trust and company service providers

656. Trust and company service providers are not designated anywhere under the LPMLTF. The Montenegrin authorities informed the evaluation team that these entities do not exist, as such, in the country. Assistance with company formation, however, can be offered by lawyers to their clients. Lawyers can provide services regarding companies that can be established in accordance with the Law on business organisations, but not regarding trusts as such type of organisations is not prescribed by the Law on Business Companies.

Other DNFBP

657. As already mentioned under the general remarks in this section there are a number of other DNFBP that goes beyond the FATF definition. These other DNFBP are identified in Article 4 of the LPMLTF and they are considered obligors which implies that they have to comply with the same obligations as financial institutions and the DNFBP covered by the FATF definition.

4.1.2 Recommendations and comments

658. Trust and Company Service Providers are not designated as obliged parties although in practice there are no such entities operating in Montenegro.

659. The same concerns in the implementation of Recommendation 5 apply equally to DNFBP. In practice the requirement to identify the beneficial owner does not seem to be understood nor met.

660. For casinos, CDD is not required above the €3,000 threshold, and it is not clear that casinos can link the incoming customers to individual transactions.

661. There is a lack of effective systems for monitoring and ensuring compliance with CDD requirements across most of the DNFBP sectors (applying R 5).

662. Any recognition on the part of DNFBPs of their obligations under Recommendation 6 with respect to politically exposed persons is lacking. Although the LPMLTF devotes the entirety of Article 27 to the subject of politically exposed persons and what additional customer due diligence and verification is required in these cases, it is left to an obligor's internal enactment to determine the procedure to identify a politically exposed person. The guidelines of competent supervisory authorities should be helpful in this undertaking but have yet to be forthcoming for any of the DNFBPs in Montenegro. The practical result of this situation is lack of application of Recommendation 6 among the DNFBPs defined as obligors in Article 4 of the LPMLTF as well as

among the lawyers and notaries whose tasks and obligations are enumerated in Section III of this same law (Articles 41 through 44) (applying R 6). It is therefore recommended that a training programme be undertaken concerning the risks and controls necessary concerning dealings with politically exposed persons.

663. There is no obligation for DNFBP to have policies in place to prevent the misuse of technological developments in ML/TF (applying R 8).

664. For DNFBPs, as for financial institutions, there are no enforceable obligations with regard to introduced business. Relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business is not prohibited (applying R 9).

665. More attention need to be given to raising awareness and enforcing compliance in casinos. Although casinos are required to keep CDD records for ten years according to the LPMLTF, the evaluators met with a representative of the casino industry who claimed that some records are only kept for one year. The FATF recommendations require that records should be kept at least five years following completion of the transaction (applying R 10)

666. There are no specific requirements for DNFBPs to pay special attention to complex and unusual transactions (applying R 11).

4.1.3 Compliance with Recommendation 12

	Rating	**Summary of factors underlying rating**
R.12	**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.

4.2 Suspicious transaction reporting (R.16)

(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

Applying Recommendation 13 - Suspicious transactions reporting

667. Article 33, Paragraph 2 of the LPMLTF clearly requires that all reporting entities, including DNFBPs, shall provide data from Article 71 of the LPMLTF (contents of reporting entities records) to APMLTF, without delay, when there are reasonable grounds for suspicion of money laundering or terrorist financing related to the transaction (regardless of the amount and type) or customer, before the execution of the transaction and state the deadline within which the transaction is to be executed. The statement could also be provided via telephone, but is has to be sent to the FIU in a written form as well, not later than the following working day from the day of providing the statement.

668. The terminology for applying the reporting obligation in Article 33, Paragraph 2 of the LPMLTF referring to suspicious transactions "...before the execution of the transaction…." does not appear to cover the full width of the reporting obligation as set out in FATF Recommendation 13. Thus, the reporting obligation does not appear to fully cover money laundering or financing of terrorism if the suspicious transaction has been performed. During the on-site visit, the evaluation team was advised that in practice, STRs are filed to APMLTF no matter whether the suspicion arises before or after the transaction has been performed. However, as this is an asterisked criteria the obligation to report suspicious transactions that have been performed should be explicitly provided for in either law or regulation.

669. The LPMLTF defines money laundering to include laundering in relation to any criminal offence. Tax matters are included for these purposes and are not excluded for STR reporting purposes. There is no financial threshold in relation to suspicious transaction reporting.

670. The obligation to report attempted suspicious transactions are covered in Article 33, Paragraph 3 of the LPMLTF.

671. At the time of on-site visit no STR regarding financing of terrorism was reported.

Casinos

672. According to Article 4, item 9 of the LPMLTF, casinos are reporting entities and the general requirements of the law, including the reporting obligation are applicable. During the on-site visit the evaluators were informed that in practice, if there is a suspicion, the client will be asked to leave the casino.

673. Some representatives from casinos were not aware of their obligation to file cash reports or suspicious transaction reports.

674. At the time of the on-site visit casinos have not filed any suspicious transaction reports to APMLTF, although AMPLTF have stated that they have received cash reports from casinos.

675. The FIU should strengthen the training provided to casinos in order to increase the awareness on measures to combat money laundering and financing of terrorism.[31]

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[31] An agreement was reached following a seminar on 24-28 November that OSCE will support the initiative of the Administration for Games of Chance and APMLTF and hold seminars which will be attended by the

Dealers in precious metals and dealers in precious stones

676. According to Article 4, item 15 last indent of the LPMLTF, traders in precious metals and stones are considered to be reporting entities when the payment is made in cash in the amount of €15,000 or above. This is in conformity with Recommendation 16.

677. The APMLTF has provided dealers in precious metals and dealers in precious stones with a reporting template.

678. At the time of the on-site visit no suspicious transaction report had been filed to APMLTF by dealers in precious metals and dealers in precious stones.

Notaries

679. The evaluators were advised that, at the time of the on-site visit, notaries were not operating in Montenegro, although provisions on notaries have been inserted in the LPMLTF in anticipation of notaries being established in Montenegro in the future.[32]

Real estate agents

680. According to Article 4, item 15 of the LPMLTF, real estate agencies are reporting entities and they have to comply with general requirements of the law, including the reporting obligation in Article 33.

681. At the time of the on-site visit no suspicious transaction report had been filed to APMLTF by real estate agents.

Lawyers

682. According to Article 43 of the LPMLTF, lawyers and notaries are reporting entities and they have to comply with general requirements to report suspicious transactions.

683. At the time of the on-site visit no suspicious transaction report had been filed to APMLTF by lawyers.

Auditors and accountants

684. According to Article 4, item 12 of the LPMLTF audit companies, independent auditors and legal or natural persons providing accounting and tax advice services are reporting entities. These entities have to comply with the requirements of the law, including the reporting obligation.

685. At the time of the on-site visit no suspicious transaction report had been forwarded to APMLTF by auditors or accountants.

Trust and company service providers

686. As previously stated, trusts are not permitted under the law in Montenegro. Lawyers do provide company service provider services and are subject to the reporting requirements of the LPMLTF but

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representatives of casinos. The Administration for Games of Chance have confirmed that their inspectors, during inspection control visits, are also in contact with casino operators and are reminding them of their obligations under the LPMLTF.

[32] A Law on Notaries was published in the Official Gazette of Montenegro No. 68/05 of 15 November 2005 and 49/08 amendments of 15 August 2008.

other unregulated entities which are permitted to register companies at the Commercial Register are not subject to the LPMLTF.

Applying Recommendation 14

687. FATF Recommendation 14 is a two part recommendation that, firstly, calls for a safe harbour provision for those who report suspicious activity to the FIU and, secondly, prohibits the tipping off of the subject of a suspicious transaction report that such a report has been sent to APMLTF. The LPMLTF addresses both these parts of Recommendation 14 in Article 81 (safe harbour) and Article 80 (tipping off).

688. Under Article 81 of the LPMLTF, other existing obligations to protect business secrecy, bank secrecy, professional and official secrecy do not apply to DNFBP obligors (including lawyers and notaries) when they are providing information and documents in accordance with the LPMLTF. Additionally, they are not liable for damages to their customers or third parties if they are providing or obtaining information or documents in accord with the LPMLTF or suspending a transaction or regularly monitoring customer business at APMLTF's request.

689. Article 81 goes on to state that DNFBP obligors (including lawyers and notaries) shall not be disciplined or criminally liable for the breach of other secrecy obligations if they are providing information and documents in accord with the LPMLTF or if they are using information, data and documents obtained according to the LPMLTF to evaluate a transaction for which there may exist a suspicion of money laundering or terrorist financing.

690. The prohibition on tipping off is traceable to Article 80 of the LPMLTF. In this Article, DNFBP obligors and their employees, members of authorised, supervisory or managing bodies, or other persons shall not reveal to a customer or third person that a suspicious transaction report has been sent to the competent administration body, or that a transaction has been suspended, or that regular supervision of the customer's business has begun, or an investigation has been initiated or should be initiated. Such information is considered to be officially secret and is so designated. This information can be released if necessary for establishing facts in criminal proceedings or is required by a supervisory body as named in the LPMLTF (Article 86).

Casinos

691. Casinos are identified as obligors in Article 4 of the LPMLTF under the category of *organisers of lottery and special games of chance*. Their employees are, therefore, not bound by other secrecy obligations when reporting under the LPMLTF and they are also prohibited from tipping off customers or third parties when carrying out their obligations under the law. The safe harbour provisions of Article 81 and the prohibitions against tipping off in Article 80 apply in full to casinos. During the on-site visit, one casino representative informed the evaluation team that a cashier would initially complete a suspicious transaction report, send it forward to the AML/CFT compliance officer for the casino and then on to APMLTF.

Real estate agents

692. Real estate agents are also identified as obligors in Article 4 of the LPMLTF where they are covered by the category of *business organisations, legal persons, entrepreneurs and natural persons engaged in an activity or business of…[the] real estate trade*. As obligors they are subject to the safe harbour protections of Article 81 and the prohibitions on tipping off of Article 80.

Dealers in precious metals and dealers in precious stones

693. These DNFBPs are listed as obligors in Article 4 of the LPMLTF when payments are made in cash in the amount of €15,000 or more in one or more interconnected transactions. They are protected from civil and criminal liability for the breach of any other restrictions on disclosure of information under the law and are prohibited from tipping off that an STR has been forwarded to APMLTF.

Auditors and accountants

694. This category of DNFBPs are defined as obligors in Article 4 of the LPMLTF where they are identified as *audit companies, independent auditor and legal or natural persons providing accounting and tax advice services.* As obligors, they are, therefore, protected by the safe harbour provisions of Article 81 and prohibited from tipping off by Article 80.

Lawyers and notaries

695. Lawyers and notaries, although not listed as obligors in Article 4 of the LPMLTF, are subjected to many of the same obligations by Articles 41, 42, 43, 44, 49, 72 and 73. In addition to other DNFBP obligors, they are specifically mentioned in Article 81 as protected by the safe harbour provisions of the law. They are not mentioned in Article 80 with regard to the prohibition on tipping off. Lawyers should be specifically mentioned in this Article to ensure that the prohibition against tipping off also applies to them when they are engaging in professional activities subject to the obligations of the LPMLTF.

Applying Recommendation 15

696. For DNFBPs, Recommendation 15 calls for the institution of internal programs against money laundering and the financing of terror. These should include three basic elements, namely, internal policies procedures and controls, ongoing employee training and an audit function to test the system.

697. For most DNFBP obligors designated under Montenegro's LPMLTF, the pertinent requirements for fulfilling the responsibilities contained in Recommendation 15 are found in Section 9 of the law, *Designating an authorised person and his/her deputy*. Articles 35 through 40 in Section 9 detail just what is expected of the authorised person.

698. The authorised person is similar to what would be considered a compliance officer in other AML/CFT systems.

699. Article 35 of the LPMLTF stipulates that obligors, including most DNFBPs, with more than three employees shall designate an authorised person and deputy. Those with less than four employees shall have these tasks performed by a director or another authorised person. Furthermore, per Article 36, the authorised person must be permanently employed, have appropriate professional skills and not have been convicted of a criminal act punishable by imprisonment of longer than six months.

700. The authorised person's tasks are enumerated in Article 38. Although several of these appear to be overlapping, they do, however, appear to cover what is required by essential criteria 15.1.1 and 15.3. These tasks include:

- Establishing and developing the entity's AML/CFT system;
- Providing timely data to the competent administration body;
- Preparing and modifying operational procedures and internal enactments;
- Preparing guidelines for customer verification (identification and CDD);

- Monitoring the entity's activity regarding AML/CFT;
- Helping to establish and develop necessary IT systems;
- Initiating and proposing improvements to the AML/CFT system; and,
- Preparing professional training programs for employees.

701. Working conditions for the authorised person of the DNFBP are noted in Article 38 and address requirements of essential criteria 15.1.2. These include:

- Access to appropriate organisational parts of the entity;
- Appropriate authority to perform these tasks;
- Appropriate material and working conditions;
- Sufficient technical support;
- Opportunities for professional improvement in AML/CFT areas; and,
- Availability of a deputy during absences.

702. Professional training is expanded upon in Article 39 which calls for the obligor to ensure regular training of all employees in AML/CFT and that such a program of professional training should be prepared no later than the end of the first quarter of the business year. Article 40 concerns itself with the internal controls regarding AML/CFT that should be undertaken by an obligor, including DNFBP obligors. This Article only states that such internal control shall be regular and that the authorised person's method of work in exercising such internal control shall be defined by regulation of the Ministry.

703. At the time of this evaluation visit, a requirement did not exist to maintain an adequately resourced and independent audit function to test compliance with the DNFBP's AML/CFT structure, thus not fulfilling the element of essential criteria 15.2.

704. At the time of the previous mutual evaluation, the Ministry of Finance was more directly involved in the supervision of obligors in Montenegro. Now, much of that responsibility has devolved to APMLTF and other supervisory administrations. The Finance Ministry, however, still originates the bylaws and rulebooks that give effect to the LPMLTF. At the time of this evaluation visit, rulebooks on the role of the compliance officer (authorised person), internal controls, protection of data, training of employees, delivery of data on cash transactions of €15,000 or more as well as suspicious transactions and instructions for customer due diligence were all in various stages of development.

Casinos

705. As obligors under Article 4 of the LPMLTF, casinos must have the designated personnel and programs called for under Section 9 (Articles 35 through 40) of the law. Casino representatives informed the evaluation team that they have internal enactments regarding compliance with AML/CFT obligations. They also noted that they have corporate training in these areas for their employees and inspectors. When asked about indicators of suspicious transactions, they stated that only customers from specific foreign jurisdictions would trigger automatic suspicions. Casino operators acknowledged that APMLTF had helped them in their development of their own internal enactments regarding AML/CFT.

Real estate agents

706. As obligors, real estate agents are required to have compliance personnel and internal procedures as outlined in Section 9 (Articles 35 through 40) of the LPMLTF. The authorised person with the real estate agency that the evaluation team interviewed volunteered that all AML/CFT training had been provided either by the banks or APMLTF. No familiarity with nor knowledge of any type of terrorist list existed. For this DNFBP category, it appeared that there was a great amount of

reliance on banks assisting with the relevant transactions to implement many of the procedures designed to prevent and/or detect money laundering and terrorist financing.

Dealers in precious metals and dealers in precious stones

707. Also considered as obligors under the law, these dealers in precious metals and stones must have designated an authorised person with appropriate AML/CFT duties. Since the evaluation team did not meet with any representatives of this DNFBP category, no assessment could be made of how effectively Recommendation 15 and its essential criteria were being applied. It might be inferred, however, that among the 35 or so such dealers in Montenegro Recommendation 15 is only in a very primitive stage of implementation since their supervisory authority in this area, APMLTF's Reporting Entities and Control Department, had only begun their outreach and educational efforts with the real estate sector in the summer of 2008.

Auditors and accountants

708. Auditors and accountants are obligors and must have an authorised person or persons responsible for AML/CFT efforts. The representative from the Montenegro's Institute for Accounting who met with the evaluation team was unsure of how suspicious transaction reports would be made to APMLTF beyond noting that criminal activity would be reported by members to APMLTF, the Finance Ministry and the Tax Administration.

Lawyers and notaries

709. Lawyers and notaries only have AML/CFT responsibilities when they engage in the activities listed in Article 41 of the LPMLTF. They are not obligors as identified in Article 4. The responsibilities of the authorised person (Articles 35 through 40) at a DNFBP refer mainly to DNFBPs who are identified as obligors and do not necessarily include lawyers and notaries (with the exception of Article 40 which specifically references lawyers and notaries). The representative of the Lawyers' Association who spoke with the evaluation team stated that, excluding judges and prosecutors, there are slightly more than 500 lawyers in Montenegro. He further stated that it was not until the late 1990s that law firms first appeared in Montenegro. It may be assumed that most lawyers are sole proprietorships with the lawyer also being the AML/CFT authorised person for his or her business. Although generally aware of obligations under the LPMLTF, there was no evidence of lawyer and/or law firms currently complying with the elements of the essential criteria of Recommendation 15.

Applying Recommendation 21

710. There were no provisions in the LPMLTF and no evidence on effectiveness of DNFBPs compliance with general obligations on special attention and other actions related to business relationship with persons from countries with no or insufficient level of implementation of the FATF recommendations

4.2.2 Recommendations and comments

711. The reporting obligation in Article 33, Para 2 of the LPMLTF referring to suspicious transactions "...before the execution of the transaction…." does not appear to cover the full width of the reporting obligation as set out in FATF Recommendation 13. The reporting obligation does not appear to fully cover money laundering or financing of terrorism if the suspicious transaction has been performed. During the on-site visit, the evaluation team was advised that in practice, STRs are filed to APMLTF no matter whether the suspicion arises before or after the transaction has been performed. However, as this is an asterisked criteria the obligation to report suspicious transactions that have been performed should be explicitly provided for in either law or regulation.

712. The evaluation team is concerned about the absence of STRs from sectors normally considered to be vulnerable to money laundering and financing of terrorism (such as real estate agencies, legal and accountancy professionals, and casinos). The complete lack of STRs from the DNFBP sector appears to indicate a low level of effectiveness of the AML/CFT regime in this area so far.

713. A prohibition against tipping off should be made specifically applicable to lawyers.

714. More targeted training to sectors that pose the greatest risk should be considered.

4.3.3 Compliance with Recommendation 16

	Rating	**Summary of factors relevant to s.4.2 underlying overall rating**
R.16	**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.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and analysis

715. Recommendation 24 defines what type of regulatory and supervisory measures should apply to designated non-financial businesses and professions. Recommendation 25 describes how competent authorities should assist financial institutions and DNFBPs in applying measures to combat money laundering and terrorist financing and, particularly, to detect and report suspicious transactions. Montenegro has instituted regulatory and supervisory measures for its DNFBPs and has begun to provide necessary assistance to ensure a fully functioning system.

Supervision by APMLTF

716. According to Article 86 of the LPMLTF the reporting entities supervised by APMLTF are:

- humanitarian, non-governmental and other non-profit organisations,
- other business organisations, legal persons, entrepreneurs and natural persons engaged in an activity or business of:
  - sale and purchase of claims;
  - factoring;
  - third persons' property management;
  - issuing and performing operations with payment and credit cards;
  - financial leasing;
  - travel organisation;
  - real estate trade;
  - motor vehicles trade;
  - vessels and aircrafts trade;
  - safekeeping;
  - issuing warranties and other guarantees;
  - crediting and credit agencies;
  - granting loans and brokerage in loan negotiation affairs;
  - brokerage or representation in life insurance affairs, and
  - organising and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of €15,000 or more, in one or more interconnected transactions.

717. At the time of the on-site visit the supervisory role of APMLTF was quite new. The Reporting Entities Control Department was established in May 2008 and the number of staff was only 4 employees, including the Head of Department. APMLTF started the inspection activity by focusing on real estate agents. The evaluation team were informed that NGOs, including NPOs were next to be supervised.

718. There is no database or register concerning the reporting entities being supervised by APMLTF, but the evaluation team was advised that there are a very large number of such entities. For example, there are about 600 real estate agencies. For real estate agencies the Control Department provides 3 types of inspections (3 levels):

I. regular inspections;
II. occasional inspections; and
III. ad-hoc inspections, which are done on a sample basis in order to check whether the real estate agency really exists and functions at the headquarters or whether it was only set up on paper.

719. In 2005 and 2006 APMLTF requested the commercial banks to provide details of all transactions carried out by NGOs. This enabled APMLTF to identify those NGOs which were carrying out large numbers of transactions. APMLTF's Analytics Department then monitored the ongoing activities of the selected NGOs and transactions that were not in accordance with the business activity of those NGOs were identified. As a result of this analysis further on-site visits were conducted and in one case the findings were referred to the police and tax authorities.

720. APMLTF does have direct access via the internet to the Central Register of the Commercial Court and, for NPOs, the internet site of the Ministry of Justice. In addition, the Central Register of the Commercial Court also contains data on persons who are the founders of a legal person and persons who are authorised to represent that legal person.

721. In order to find more information related to the identification of supervised entities by APMLTF, official requests for information are sent to the Statistical Data Centre in Montenegro and the police administration.

722. The evaluation team was informed that in the absence of any electronic or manual register of reporting entities supervised by APMLTF, on-site inspections are selected on the basis of the amount of income in these entities. This information is provided by the tax authorities. It was noted that The Department for Reporting Entities Control possesses a database of reporting entities whose business activities are related to real estate trade as this business activity is assessed as high risk activity in relation to money laundering and terrorist financing. Currently, this database is maintained in paper form and it includes about 600 reporting entities. Steps are under way to create an electronic database

723. The evaluators were advised that NGOs were also recognised as representing a potential ML/TF risk and controls have been put in place. However, NGOs are considered to be a lower risk than certain other sectors (especially in relation to activities connected to real estate trading and the construction industry which have expanded significantly in the last two years in Montenegro). Nonetheless, in cooperation with other competent state authorities an NGO database is being compiled by APMLTF. A list of registered NGOs has been supplied by the Register of the Commercial court in Podgorica and from that APMLTF has created an electronic data base of NGOs which is used for planning the control of NGOs.

Casinos

724. Casinos are directly licensed by the Government of Montenegro with the Minister of Finance signing each licence. As part of the process of obtaining a license or commission, a police records check is conducted for owners and managers to help prevent criminals or their associates from holding these positions. For AML/CFT purposes, the supervision of casinos is accomplished by the Administration for Games of Chance. At the time of this on-site visit, this Administration had been operating for just over four months and had six employees. Two on-site inspections were conducted at casinos in 2008, and three casinos had had on-site inspections in 2007.

Dealers in precious metals and dealers in precious stones

725. APMLTF's Reporting Entities and Control Department supervises dealers in precious metals and dealers in precious stones. The evaluation team did not meet with any representatives of these dealers and therefore were unable to evaluate whether these businesses are subjected to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing.

Lawyers and notaries

726. The Bar Association is the regulatory body for lawyers. The Bar Association is not identified as a supervisor for money laundering purposes under Article 86 of the LPMLTF and there was little evidence that the Bar Association provides any type of supervision regarding AML/CFT when

lawyers engage in activities that obligate them to take measures to counter money laundering and terrorist financing. As stated above Articles 41 to 44 of the LPMLTF set out specific AML/CFT requirements for lawyers. Under the LPMLTF it appears that APMLTF has responsibility for supervising AML/CFT controls. APMLTF had only recently entered into correspondence with the Bar Association to inform them of obligations under the LPMLTF. It appeared to the evaluators that there was a lack of clarity about the division of responsibilities. Article 90 of the LPMLTF stipulates that "*On submitted request on commencing misdemeanour's procedure for the reasons of acting contrary to the propositions of this Law, the competent administrative body*[33] *shall inform competent supervising body or The Bar Association in case when the request has been submitted against the lawyer.*"

Real estate agents

727. Supervised by APMLTF's Reporting Entities and Control Department, real estate agents had only begun to receive education concerning their AML/CFT responsibilities in the summer of 2008. They had not yet been subjected to effective systems for monitoring and ensuring compliance with AML/CFT requirements. No analysis of comparative risk for these or other categories of DNFBPs had been undertaken.

Auditors and accountants

728. Auditors are licensed by the Ministry of Finance who also have responsibility for AML/CFT supervision under Article 86 of the LPMLTF.. The representative of the Accountants' Association who met with the evaluation team during the course of the on-site visit, did note having received a list of suspicious transaction indicators from APMLTF. At best, only a rudimentary system for monitoring and ensuring compliance with AML/CFT requirements appears to exist with this category of DNFBP.

Trust and company service providers

729. As previously stated, trusts are not permitted under the law in Montenegro. Lawyers do provide company service provider services and are subject to the reporting requirements of the LPMLTF but other unregulated entities which are permitted to register companies at the Commercial Register are not subject to the LPMLTF.

4.3.2 Recommendations and comments

730. The lack of a register on reporting entities to be supervised by APMLTF is considered to have a negative impact on the effectiveness of the supervision activity of the AMPLTF.

731. Since APMLTF is now also responsible for the AML/CFT supervision of reporting entities that have no other supervisory authority, 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.

732. At the time of this on-site visit, Montenegro's LPMLTF was far ahead of the practice of ensuring effective AML/CFT systems for DNFBPs. Casinos and other DNFBPs do have designated competent authorities for supervision and regulation but effective systems for monitoring and ensuring compliance are not yet operational.

[33] APMLTF

733. In terms of feedback, there appears to be a supervisory deficiency in both general input on techniques, methods and trends, and on specific and case-by-case feedback. Such information could improve the overall compliance with the LPMLTF throughout the DNFBP sector.

734. 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. Adequate and appropriate feedback on suspicious transaction reporting does not yet exist for most DNFBPs, since there is little or no suspicious transaction reporting from these entities.

735. In order to improve overall compliance, further guidance and feedback to the DNFBP sector should be considered. The APMLTF said such guidance is part of training, but the assessors were not presented with any written guidance.

4.3.3 Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBP)

	Rating	**Summary of factors relevant to s.4.5 underlying overall rating**
R.24	**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 APMLTF.
R.25	**Largely Compliant**	• Need of ongoing guidance on trends and typologies of AML//CFT for DNFBP.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

736. The essential criteria 20.1 to Recommendation 20 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing. Montenegro’s LPMLTF does obligate other non-financial businesses beyond those specified in Recommendations 12 and 16. Among these included are:

- Post offices;
- Pawnshops;
- Institutions for issuing electronic money;
- Humanitarian, nongovernmental and other non-profit organisations; and,
- Businesses and others engaged in sale and purchase of claims; factoring; third persons’ property management; travel organisations; motor vehicle trade; vessel and aircraft trade; safekeeping; issuing warranties and other guarantees; and, trading in works of art or other goods when payment is made in cash in amounts of €15,000 or more in one or more related transactions.

737. 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. The evaluators were concerned that 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.

738. The essential criteria 20.2 to Recommendation 20 requires that countries take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. Montenegro's adoption of the euro as its currency demonstrates its commitment to not issuing very large denominations of banknotes. Montenegro was also reducing reliance on cash by expanding opportunities to use debit and credit cards throughout the country and by making available secure automated transfer systems for commercial transactions. It was noted by the evaluators that all state employees now have to have a bank account into which their salary is transferred.

4.4.2 Recommendations and comments

739. Montenegro has extended its AML/CFT obligations to other non-financial businesses, however, a regulatory and supervisory framework needs to be developed to ensure that FATF Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 are being adhered to by these non-financial businesses.

740. Montenegro should undertake a risk analysis to determine which of its other non-financial businesses and professions are at greatest risk of being misused for money laundering and/or terrorist financing. Based upon the results of such analysis, the authorities of Montenegro should direct priority outreach and educational efforts to those other non-financial businesses at the highest levels of risk.

4.4.3 Compliance with Recommendation 20

	Rating	**Summary of factors underlying rating**
R.20	**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.

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

741. The Central Registry of the Commercial Court in Podgorica is specifically designed to contain all the relevant information concerning the setting up, the nature and the activity of legal persons. Registration at the Central Registry is a prerequisite for the incorporation of legal persons.

742. Joint stock companies and limited liability companies acquire the status of a legal person upon registration.

743. 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.

744. Joint stock companies, limited liability companies and limited partnership registrations are effective for a limited amount of time (1 year) and should be renewed by the re-registration, which should take place within 14 months following the expiration period. If re-registration is not filed the business is de-registered ex-officio.

745. In accordance with Article 3 of the Law on Securities, 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. Accounts of all owners of securities are kept at the Central Depository Agency.

746. As to the beneficial ownership of companies, notwithstanding Article 20 of the LPMLTF, there is no general obligation to disclose the relevant information to the Central Registry. This could cause difficulties in identifying the underlying interests and actual controllers of legal persons, especially for foreign legal persons and legal persons owned by foreign entities.

747. Despite a clear definition of beneficial owner and the obligation to establish such owner in Article 20 of the LPMLTF, practically none of the institutions (especially casinos and real estate agencies) conducts such identification. This is particularly evident in cases of clients, who are foreign legal entities. In such cases, as a general rule, agencies are satisfied with the data on ownership of a legal entity that is entering the business and do not request further documentation to establish the natural person who is ultimately the beneficiary.

748. 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. For the time being, as stated by the Montenegrin authorities, no cases of such shares have been detected.

749. Regarding access to companies' information, the Police have access to all the data in the Central Registry, and this access goes beyond that which is publicly available. The same access is also granted to FIU in cases of reasonable grounds for suspicion of ML/TF activity.

5.1.2 Recommendations and comments

750. Transparency of legal entities and of the ownership of companies in Montenegro appears to be at a high level.

751. The acquisition of information on beneficial owners by the agencies and institutions which deal with clients form abroad seems to be less effective. Considering the very intensive involvement of foreign legal entities on the Montenegrin real-estate market and rather poor information on beneficial ownership in such entities, this might present a considerable risk of abuse of such legal entities for money laundering and terrorist financing.

752. Another potentially vulnerable area although to a much lesser extent, seems to be the uncertain situation regarding bearer shares issued abroad and brought to Montenegro. Additional awareness in this respect is advisable.

5.1.3 Compliance with Recommendation 33

	Rating	**Summary of factors underlying rating**
R.33	**Partially Compliant**	• Insufficient implementation of obligation of establishing beneficial owners, particularly regarding foreign legal entities.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

753. Recommendation 34 requires countries to take measures to prevent the unlawful use of legal arrangements for the purposes of money laundering and terrorist financing particularly by ensuring that there is adequate, accurate and timely information on express trusts, including information on the settler, trustee and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities.

754. 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.

5.2.2 Recommendations and comments

755. Trusts cannot be established in Montenegro. Given uncertainty about whether foreign trusts operate in Montenegro, authorities should determine that foreign trusts do not operate in Montenegro having registered as branches of foreign institutions. Recommendation 34 is not applicable as trusts cannot be established in Montenegro.

5.3.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**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.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

756. The Montenegrin Authorities explained to the evaluators that all non-profit organisations (NPOs) in Montenegro fall within the scope of non-governmental organisations (NGOs). Consequently the regulation of NGOs applies to all NPOs operating in Montenegro.

757. In Montenegro NGOs are regulated by Law on Non Governmental Organisations (LNGO), (Official Gazette, No. 27/99, 30/2002 and 11/2007) (See Annex VI). This Law regulates the procedure of founding, registering, operating, joining and cessation of non-governmental organisations. The term non-governmental organisations in the LNGO encompasses non-governmental associations and non-governmental foundations.

758. NGOs are established as an association or a foundation. An **association** is a not-for-profit membership organisation which can be established by domestic and foreign natural or legal persons for the purpose of accomplishing individual or common interests, or for the purpose of accomplishing and promoting public interests. A **foundation** is a not-for-profit organisation without members which can be established by domestic or foreign natural and legal persons, intended to manage certain property for the accomplishment of public benefit goals. A foundation may also be established by a will.

759. NGOs are established by a memorandum of incorporation, which contains names and addresses of the founders, the goal (aim) of the organisation, the duration of the organisation and names of the representatives. The names of the president and members of the managing board must also be included in the memorandum. A NGO shall have by-laws. A decision on registration and on the liquidation of a non-governmental organisation shall be published in the "Official Gazette of the Republic of Montenegro.

760. 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. Some of these exempted organisations are frequently considered as potentially posing a high level of risk in relation to the fighting against terrorism financing.

761. The evaluators were informed that the Ministry of Justice (Department for registration of NGOs) is responsible for the registration of *foreign* NGOs and the Ministry of Internal Affairs (Department for registration of NGOs and political parties) is responsible for the registration of *domestic* NGOs. There are 4,486 domestic NGOs in Montenegro out of which 4,353 are associations and 133 are foundations. Domestic NGOs cannot be financed from abroad. Foreign NGOs are not registered in Montenegro but their subsidiaries and branches are. At the time of the on-site visit there were 105 subsidiaries and branches of foreign NGOs.

762. There are no special provisions concerning terrorism financing in the LNGO. The law requires all NGOs to have their own by-laws and there are some requirements regarding the content of such by-laws, but there are no requirements related to terrorism financing prevention or control.

763. In accordance with Article 25, of the Law on Non Governmental Organisations ("Official Gazette of Montenegro 11/07) NGOs that are realising revenues from business activity exceeding €4,000

are required to register with the Central Registry of the Commercial Court, in order to carry out business activity. Authorised ministries are registering and maintaining registers on NGOs. NGOs are required to submit their financial statements to the Tax Administration.

764. NGOs are obliged to submit annual data to the Ministry of Finance. No audit is performed. Control concerning whether the funds of the organisation are used in line with its objectives, is left to the supervisory bodies of NGOs. NGOs who are registered for carrying out business activity, are required to submit their financial statements to the Central Registry of the Commercial Court and to the Tax Administration The Central Register of NGOs has 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.

765. 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.

766. The FATF Methodology gives the following definition of non-profit organisations in the Glossary: "The term *non-profit organisation* or *NPO* refers to a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good work". As already noted Montenegro defines all NGOs as being NPOs. There is no classification by purpose. The evaluators are not convinced that all NGOs operating in Montenegro fall within the definition for NPOs as set out in the Glossary. Definitions of NGOs in the Law on Non Governmental Organisations are too general for the conclusion, that all entities as defined in FATF Methodology are covered with definition of NGO. Additionally to that, the Montenegrin legislation is inconsistent with regard to nomination of such entities. For instance, in accordance with Article 86 of the LPMLTF, APMLTF is the supervisor of "humanitarian, non-governmental and other non-profit organisations". The provision underpins the fact that it is not possible to identify NPOs in Montenegro.

767. Furthermore it appears not to be possible to identify those NGO, which might primarily engage in raising and distributing funds for purposes of "good work" in order to identify the NPOs as there is no electronic register of NGOs. This concern is combined with the fact that the objectives of the NGOs are not registered.

768. AMPLTF has conducted a risk analysis of the various categories of entities for which it has responsibility. As a result of this review, the view was taken that NGOs represent a relatively low level of risk at the present time and resources are directed at areas with a higher risk profile (e.g. Real estate, construction, etc.). As a consequence of this, at the time of the on-site visit, no on-site visits to and controls on NPOs had been undertaken. The evaluators were informed that the funds which are operated by the NGOs are small and mainly focused on the promotion of NGOs. Moreover, APMLTF stressed that it intended to start performing supervision of NGOs in the autumn of 2008[34].

769. Humanitarian, non-governmental and other non-profit organisations are reporting entities under the LPMLTF, and they are obliged to keep data in accordance with Article 83 in the same manner as all other Reporting Entities.

770. Montenegro has not yet reviewed the adequacy of domestic laws and regulations that relate to NPOs 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.

[34] It follows from statistics received after the on-site visit it is noted that 1 on-site visit in a NGO has taken place before mid December 2008.

771. Montenegro has not yet undertaken any 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.

772. The evaluators were informed that APMLTF regularly includes NGOs in their general seminars on money laundering and terrorism financing. At the time of the on-site visit no special seminars for the NPO sector had taken place.

5.3.2 Recommendations and comments

773. Montenegro should conduct a review of the adequacy of its legal framework that relates to NPOs that can be abused for terrorism financing.

774. Montenegro should implement measures to ensure that terrorist organisations cannot pose as legitimate NPOs.

775. Montenegro should also reach out to the NPO sector with a view to protecting the sector from terrorist financing abuse. This outreach should include i) raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; and ii) promoting transparency, accountability, integrity, and public confidence in the administration and management of all NPOs.

776. Additionally Montenegro should take more proactive steps to promote effective supervision or monitoring of NPOs. Authorities should ensure that detailed information on the administration and management of NPOs are available during the course of an investigation or on request internationally. Montenegro should also implement effective sanctions for violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**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.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R.31)

6.1.1 Description and analysis

777. Recommendation 31 requires that countries should ensure that policy makers, the FIU, law enforcement and supervisors have effective mechanisms in place which enable them to co-operate, and where appropriate coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. Essential criteria 31.1 clarifies that such cooperation should encompass both operational and policy matters.

778. The legal basis for cooperation between APMLTF and law enforcement authorities regarding exchange information is described in Articles: 55,56 , 68 and 69 of the LPMLTF.

779. APMLTF cooperates with other supervisory bodies (as set out in Article 86 of the LPMLTF), which include the Central Bank of Montenegro, the Securities Commission, the Insurance Supervision Agency, the Tax authorities, etc. on the implementation of the LPMLTF. These bodies are required to inform APMLTF on measures taken in the process of supervising in accordance with the law and within 8 days from the date on which measures were taken (Article 89 from LPMLTF).

780. APMLTF has signed an MoU with the Securities Commission and the Customs Authority. The aim of this memorandum is cooperation and exchange of information within the powers stipulated by the LPMLTF and the Securities Law.

781. According to Article 8, item 17 of the Law on securities, the Securities Commission has the responsibility of cooperation with other related authorities in Montenegro and elsewhere.

782. The Securities Commission has concluded a MoU with the Tax Authorities and at the time of the on-site visit MoUs with the Central Bank of Montenegro and the Ministry of Internal Affairs were being prepared as well as a MoU between the Central Bank of Montenegro and the Securities Commission.

783. According to Article 128 of the Law on insurance, which deals with cooperation with other supervisors and regulatory bodies, the Insurance Commission should conclude MOUs, but for the time of on site visit, no agreements were concluded.

784. The Law on banks, under Article 107 (Cooperation with Other Institutions), stipulates that in performing its supervisory function, the Central Bank shall cooperate with domestic authorities and institutions responsible for the supervision of financial operations, with which it has concluded appropriate cooperation and confidentiality agreements regarding the exchange of information. The exchange of information referred above "*shall not be considered as revealing a secret*."

785. The Central Bank of Montenegro has concluded an MoU with APMLTF and at the time of on-site visit was preparing agreements with the Securities Commission and the Police Administration.

786. Also, in October 2007, through a decision of the Deputy Prime Minister of the Government, a Tripartite commission was constituted, composed of 2 representatives of police, prosecution and courts, for elaborating a unique methodology of statistical analyses of data regarding organised crime and corruption and providing recommendations for the promotion of inter-institutional cooperation in this area.

Effectiveness issue

787. Although formal cooperation does take place, there is still room for improvement in more effective inter-agency cooperation. Solid outcomes didn't always seem to result from the different working groups set up and agreements concluded. The authorities should aim to continue the inter-

departmental coordination and to release periodically analysis which will enable the Montenegrin authorities to develop and implement policies and activities to combat money laundering and financing of terrorism at a national level.

Additional Elements

788. An inter-institutional coordination group has been established which is headed by the Ministry of Finance and comprises representatives of all key bodies and institutions, including private sector involved in AML/CFT measures. Its aim is to issue regulations and guidelines requested by the LPMLTF for reporting entities and to facilitate strategic and operational cooperation.

6.1.2 Recommendations and comments

789. The cooperation between policy makers, FIU, law enforcement and supervisory bodies in the AML/CFT area seems appropriate and only adequate at the strategic level. Although formal cooperation may take place, there is still room for improvement in more effective inter-agency cooperation.

790. The Montenegrin authorities claim to have excellent cooperation at the operational level. To the evaluation team, however, it appears to be purely informal. The evaluators recommend that additional formal agreements be concluded in order to define the type of information to be exchanged, timeliness of the exchange, the names of contact person, etc.. The Montenegrin authorities should aim to continue interdepartmental coordination and to release periodically analysis which will enable them to develop and implement policies and activities to combat money laundering and terrorist financing at a national level.

791. The evaluation team recommended to the Montenegrin authorities to review periodically the performance of the system as a whole against some key strategic performance indicators and review, collectively, as much as possible, the available statistical information to better carry out each agency's task and enhance AML/CFT framework.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**Largely Compliant**	• In the AML field mechanism of operational coordination of the key stakeholders should be further developed.

6.2 The Conventions and United Nations Special Resolutions (R.35 and SR.I)

6.2.1 Description and analysis

792. Recommendation 35 requires that countries should take immediate steps to become party to and implement fully the Vienna Convention, the Palermo Convention, and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries are also encouraged to ratify and implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism.

793. The 1988 United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) was ratified at the level of Socialist Federal Republic of Yugoslavia in 1990 (Official Gazette of SFRJ, International Contracts, 14/90) and transposed into national law. The level of the transposition, however, remains to be subject to findings and limitations as set out in section 2.1.1. of this report.

794. The 2000 United Nations Convention against Transnational Organised crime (Palermo Convention) has been ratified on the level of the Socialist Republic of Yugoslavia (Official Gazette of SRJ, International Contracts, no.6/2001 dated June 27.th 2001) and transposed into national law. The level of the transposition, however, remains to be subject to findings and limitations as set out in section 2.1.1. of this report.

795. The 1999 United Nations International Convention for the Suppression of Financing of Terrorism has been ratified on the level of Socialist Federal Republic of Yugoslavia in 2002 (The Law on confirming the international conventions on combating terrorism financing, Official Gazette of SFRJ, International Contracts, 7/2002) and transposed into national law.

796. The United Nations resolutions relating to prevention and suppression of the financing of terrorist acts, such as the UNSC resolutions 1267 and 1373 have not been fully implemented in Montenegro (see item 2.4.1 above). 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 in accordance with S/RES/1267 (1999). Furthermore, Montenegro has not designated any persons who should have their funds or other assets frozen in accordance with S/RES/1373 (2001). Neither does Montenegro examine and give effect to actions initiated under the freezing mechanisms of other countries.

6.2.2 Recommendations and comments

797. 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. As was already stated under 2.1 above the incrimination is limited to actions, defined as "business operations", which is narrower than the convention and this formulation should be further refined.

798. Regarding financing of terrorism there are more problems present. Besides the narrower definitions of the financing of terrorism offence, the main shortcoming is inadequate implementation of UN Resolutions, primarily S/RES/1267 (1999). Regarding the incrimination of terrorist financing, the most important outstanding issues are: existing limitation of criminalisation on financing to concrete terrorist offences and, linked to that, inability of the present definition of criminal offence to also include the funds intentioned for terrorist organisations or individual terrorists.

799. 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) should be put in place.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**Largely Compliant**	• Implementations of Vienna and Palermo Conventions are not fully adequate due to narrower incrimination of money laundering offence.
SR.I	**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.

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1 Description and analysis

800. In January 2008 a new special law (The Law on International Legal Assistance in Criminal Matters) was adopted and entered into force (Official Gazette of Montenegro, 04/08) (hereinafter: MLA Law)[35](See Annex IX).

801. Provisions of the MLA Law are secondary to regulations on mutual legal assistance in criminal matters as provided for in respective international agreements. With the entering into force of the MLA Law, all the provisions on international legal assistance in the Criminal Procedure Code shall be applied *mutatis mutandis* for the situations not covered by the MLA Law, while the provisions of the old Criminal Procedure Code regarding mutual legal assistance (chapters XXX and XXXI) ceased to be valid.

802. All the necessary forms of legal assistance are provided for (including the production, search and seizure of information, evidence and documents either form natural or legal persons, taking statements of witnesses, experts and suspected /accused). Additionally to that, APMLTF is enabled to provide data, information and documentation about persons or transactions and, in cases of reasoned written initiative by a foreign body, it can also suspend a transaction for up to 72 hours.

803. Articles 10-33 of the MLA Law set out the procedures for extradition. Money laundering as well as terrorist financing are extraditable offences under the MLA Law; both offences are punishable with imprisonment of more than 6 months and thus meet the criteria for extradition in Article 13, paragraph 1 of MLA Law.

804. Mutual legal assistance is subject to conditions of double criminality and reciprocity. The condition of reciprocity is set up in a flexible manner, because even in cases where there is no reciprocity de-facto established, if it can be expected that foreign competent authority would execute the letter rogatory in such cases (Article 2(2) MLA Law). More problems in practical application can be expected from the condition of double criminality, due to somewhat narrow incriminations of money laundering and terrorist financing offences (as already described under 2.1.1. in 2.2.1 above). On the other hand, as stated by the Montenegrin authorities, the condition of double criminality is satisfied if Montenegro also criminalises the conduct underlying the offence, irrespective of how the offence is qualified.

805. Except in cases that attract legal professional privilege or legal professional secrecy, no request for legal assistance in criminal matters will be denied. Montenegro will also not refuse legal assistance solely on the basis of the offence being a fiscal matter.

806. Mutual legal Assistance is within the competence of the Ministry of Justice and the criminal courts (Higher Courts, in cases of criminal matters). The Ministry of Justice is a central authority for distribution of incoming requests to competent courts and for providing the replies to requesting authorities. The Higher Courts are primarily responsible for execution of requests of mutual legal assistance.

807. For the purpose of execution of requests for mutual legal assistance, courts are empowered to exercise any investigative measures as provided in the Criminal Procedure Code for domestic investigations, including the production, search and seizure of information, documents or evidence from natural and legal persons as well as from financial institutions. They are also empowered for the taking of evidence and statements from persons, effective service of judicial documents, identification, freezing, seizure or confiscation of assets laundered (or intended to be laundered), as well as proceeds of crime.

[35] The Law on International Legal Assistance was revised on Jan 23rd 2009

808. Execution of mutual legal assistance in money laundering and terrorist financing matters is regulated by general provisions; there are no special provisions or procedures for timely and effective execution of such requests, when they are related to identification, freezing, seizure or confiscation of proceeds and instrumentalities of money laundering and terrorist financing crime. The same system also applies in cases when property of corresponding value is in question. However, for the time being, no problems have been detected in practice in serving the requests in a timely fashion. Furthermore, in accordance with Article 508 of the Criminal Procedure Code, all competent authorities are obliged to act expeditiously in all the cases of criminal offences which fall within the definition of organised crime. Criminal offences of money laundering and terrorist financing regularly fall within this definition.

Additional Elements

809. If the criteria for direct contacts are meet (i.e. if so provided by the international agreement, Art 4(4)) there are no limitations for the domestic competent judicial authorities to act on the request of the foreign judicial or law enforcement authorities. In this respect the foreign authorities are considered the same as the domestic ones.

Statistics

810. The ministry of Justice of Montenegro, as a central authority, provided the following statistics on mutual legal assistance:

	Total number of rogatory letters (criminal matters)	**Foreign requests regarding Money Laundering**			**Domestic requests regarding Money Laundering**		
		Number received	**Number executed**	**In progress**	**Number sent**	**Number executed**	**In progress**
2005	465	1	1	-	1	1	-
2006	933	6	3	3	0	0	-
2007	1769	2	1	1	0	0	-
2008*	2211	0	0	-	1	-	1

* Note: Information for number of requests in 2008. is referring to period January-October 2008

811. There are no cases of mutual legal assistance related to financing of terrorism, neither incoming nor outgoing. Requests to date by foreign authorities have been for checks on whether named individuals hold bank accounts or have executed transactions etc.. No requests for freezing or confiscation have been received to date. Some of the requests are outstanding due to the fact that additional rogatory letters, regarding the same subject and seeking additional information, have been received. In accordance with standard procedures these rogatory letters are forwarded to the Higher Courts, and then the relevant information is sought from the relevant financial institutions.

812. Regarding the time limitations related to execution of mutual legal assistance, the law does not provide for any special regulations. Due to rather flexible system of direct contacts (if so provided by international agreement, Article 4(4) MLA Law), possible use of Interpol in urgent cases and under the reciprocity principle (Article 4(5)) and possibility use of modern means of communications, including electronic communications (Article 6(2)), for distribution of letters rogatory, the system, as determined by the law, appears to be rather effective. But analysis of the statistical data on mutual legal assistance, provided by the Ministry of Justice, reveals, that in practice the efficiency of the system is not up to the expectations (one half of all incoming requests for assistance from the years 2006 and 2007 are still not finalised at the time of the on-site visit).

6.3.2 Recommendations and comments

813. 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.

814. There is still some room for improvements of the statistics; especially in the sense differentiating of cases related to money laundering and those related to predicate offences. The statistics also do not differentiate between the requests on which the legal assistance was provided and those in which the assistance was declined.

815. Somewhat narrow definitions of money laundering and terrorist financing offences, together with the lack of incriminations of some predicate offences (see 2.1.1. in 2.2.1 above) leave some space for the possible denials of mutual legal assistance (which would not be in line with international standards). However, the evaluators were not aware of any such situations and the Montenegrin authorities have asserted that mutual legal assistance would be performed even in absence of international or agreement provided that there is reciprocity or, even where there is no reciprocity if it can be expected that the foreign state would execute a letter rogatory for international legal assistance of the Montenegrin judicial authorities.

816. The establishment of an asset forfeiture fund, which is under consideration, should be encouraged.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**Compliant**	
R.37	**Largely Compliant**	• Narrow incriminations of MLA/FT offences facilitate potential absence of double criminality condition.
R.38	**Largely Compliant**	• Reservations remain with respect to enforcing foreign confiscation orders related to insider trading and market manipulation, as these offences are not properly criminalised in the national legislation. • No asset forfeiture fund established.
SR.V	**Compliant**	

6.4 Extradition (R.37 and 39, SR.V)

6.4.1 Description and analysis

817. In Montenegro, extradition is regulated by the same law as mutual legal assistance (MLA LAW, entered into force in January 2008, Official Gazette of Montenegro, 04/08).

818. The provisions of the MLA Law on extradition are secondary to regulations as provided for in international agreements. With the entering into force of the MLA Law, all the provisions on extradition in the Criminal Procedure Code shall be applied *mutatis mutandis* for the situations not

covered by the MLA Law, while the provisions of old Criminal Procedure Code regarding mutual legal assistance and extradition (chapters XXX and XXXI) ceased to be valid.

819. Within the Montenegrin judiciary system, both money laundering and terrorist financing offences are offences that are extraditable. Extradition of an accused and sentenced person is defined and performed in accordance with the European Convention on Extradition. Furthermore Part II of the Law on International legal assistance defines extradition of accused and sentenced persons and Article 10-33 of the Law, defines conditions for such process and procedures as well as the roles of the Ministry of Justice, competent courts etc..

820. In Montenegro, extradition is regulated by numerous bilateral agreements and multilateral conventions from which the most important is European Convention on extradition (1957.) with two additional protocols. This convention is in practice the most frequently used legal basis for dealing with these demands. It is important to emphasise that this Convention puts off force norms of bilateral agreements in the field of extradition, leaving the possibility for countries conclude bilateral agreements to fulfil the additional details of the procedure.

821. Extradition of Montenegrin citizens is constitutionally not allowed. In cases of refusal, there is the possibility for a foreign authority to waive its jurisdiction and the Montenegrin authorities to take over the prosecution (Article 6 MLA Law). It is not clearly defined by the law who makes the decision on taking over of such cases, but it seems that it is a prosecutor, if the case is at the stage of a police investigation, and the court if the case is at a later stage (Article 34(2) MLA Law). Cooperation on procedural and evidential aspects is ensured through mutual legal assistance.

822. Extradition is also subject to conditions of double criminality and reciprocity. The condition of reciprocity is set up in a flexible manner, because even in cases where there is no reciprocity de-facto established, if it can be expected that the foreign competent authority would execute the letter rogatory in such cases (Article 2(2) MLA Law). More problems in practical application can be expected from the condition of double criminality, due to somewhat narrow incriminations of money laundering and terrorist financing offences (as already described under 2.1.1. in 2.2.1 above). On the other hand, as stated by the Montenegrin authorities, the condition of double criminality is satisfied if Montenegro also criminalises the conduct underlying the offence, irrespective of how the offence is qualified.

823. Concerning extradition the following statistics were provided:

	Total number of extradition requests (both domestic and foreign)	**Domestic extradition requests (Money Laundering and Terrorist Financing)**		**Foreign extradition requests (Money Laundering and Terrorist Financing)**	
		Number sent	**Number executed**	**Number received**	**Number executed**
2006	9	0	0	0	0
2007	32	1	0	1	1
2008*	29	0	0	0	0

*Note: Information for number of requests in 2008. is referring to period January-October 2008.

824. Until the time of the on-site visit, there were no extradition cases related to terrorist financing.

825. Regarding the speed and effectiveness of the extradition procedures, no specific data was provided by the competent Montenegrin authorities. The MLA Law provides some time limitations, but those only apply to proceedings where the requested person is detained. These time limitations seem rather lengthy (6 months with the possibility of prolongation for another two months), but the statistics provided by the Ministry of Justice offers no grounds for the conclusion that requests for extradition are not being served in a reasonably timely manner (the request form 2007 had already been executed at the time of the on-site visit). There are no cases of rejected (denied) requests for extradition related to money laundering or terrorist financing offences.

826. Extradition is complex and long procedure, therefore, in order to make this procedure more efficient, short court proceeding (defined by Law on International legal assistance) have been established, and can be used if the person whose extradition is required agrees.

Additional elements

827. In the case of the consent of the person requested, the extradition can be executed in a summary manner. This simplified procedure is court supervised and based on the consent of the requested person under all necessary safeguards.

6.4.2 Recommendations and comments

828. There is still some room for improvement of the statistics; especially in the sense of differentiating the underlying offences for incoming and outgoing requests. Furthermore, there is no clear differentiation of cases where the extradition has been declined and where the person was extradited and no specification whether the persons have been detained.

829. Somewhat narrow definitions of money laundering and terrorist financing offences, together with the lack of incriminations of some predicate offences (see 2.1.1. in 2.2.1) also leave some space for the possible denials of extradition (which would not be in line with international standards). However, no such situations have yet been detected.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	**Summary of factors relevant to Section 6.4 underlying overall rating**
R.37	**Compliant**	
R.39	**Largely Compliant**	• Narrow incriminations of ML/TF offences facilitate potential absence of double criminality condition.
SR.V	**Compliant**	

6.5 Other Forms of International Co-operation (R.40 and SR.V)

6.5.1 Description and analysis

Prosecutorial authorities

830. The Supreme State Prosecution of Montenegro is a member of the network of Prosecutors SEEPAG with its seat in Bucharest. The following memorandums have been signed:

- Memorandum on cooperation with the Public Prosecution of Serbia

- Memorandum on cooperation with the Prosecution of Albania
- Memorandum on cooperation with the Prosecution of Russian Federation
- Memorandum on cooperation with the Public Prosecution of Macedonia
- Memorandum on cooperation in Mutual Legal Assistance in criminal matters between South East Europe and Middle Asia
- Memorandum on cooperation with the Prosecution of the Republic of Croatia
- Memorandum on cooperation with the Prosecution of the Republic of Bosnia and Herzegovina

All of those memorandums provide for direct cooperation between the Prosecutions offices from counterpart countries and they support urgent procedure in the request for the mutual legal assistance.

Law enforcement co-operation

831. In the Police Administration a Department for International Police Cooperation and European Integration has been established. This Department cooperates with the liaison officers of foreign countries (diplomatic representatives in charge of security problems), as well as Montenegrin police officers abroad.

832. This organisational unit is in charge of the cooperation with international organisations (United Nations, OSCE, Council of Europe, INTERPOL, EUROPOL, SECI Center and etc.) and with the International Criminal Tribunal for the Former Yugoslavia in The Hague.

833. The Department plans, prepares and implements projects for the ”screening” period before joining the European Union, implements directives of the EU, cooperates with EUROPOL and plans and delivers international and domestic training of police staff.

834. Montenegro has established communications with the UNMNIK police, KFOR and KPS from Kosovo, FBI and other law enforcement agencies from the USA, police from Sweden, Belgium, Austria, Germany, Albania, etc..

835. Montenegro gained independence in 2006, and because of this liaison officers are still based in Belgrade (Serbia) and are responsible for the Montenegrin cooperation. Currently there are two officers (Republic Slovenia and Republic Italia)

836. Montenegrin liaison officers are appointed in INTERPOL, SECI Center and EUROPOL; however, for technical reasons, they have not started working yet. The Montenegrin authorities anticipate that these difficulties will be overcome by the end of the 2009.

837. The Police Administration have concluded MoU, agreements and protocols as following:

- Agreement on cross border police cooperation with Albania.
- Protocol on holding regular meetings of borders offices o the national, regional and local level with Serbia, Albania and Bosnia and Herzegovina
- Protocol on common patrols on the borders with Albania and Bosnia and Herzegovina
- Agreement o cooperation between Ministry of Interior of Montenegro and OSCE Mission in Montenegro and Serbia
- Agreement on cooperation in combating all crimes between the Government of Montenegro and Government of Bulgaria.
- Agreement on cooperation in combating all crimes between the Government of Montenegro and Government of Albania
- Agreement on police cooperation between the Government of Montenegro and Government of Turkey

838. There is no statistical data available showing the level of informal international police assistance.

FIU to FIU co-operation

839. APMLTF has broad capacities to co-operate with foreign FIUs. APMLTF co-operates and exchanges information with any type of foreign competent authority and there are no legal restrictions on the exchange of information with foreign FIUs. Details of information requests sent and received are set out in Section 2.5 above.

840. Before submitting personal data to a foreign FIU, APMLTF is required to carry out verification of whether the foreign FIU, to which it intends to forward required data, possesses an arranged system for personal data protection and obtain assurances that the data shall only be used for the required purpose, unless it is otherwise provided by the international agreement.

841. APMLTF may conclude agreements on financial and intelligence data, information and documentation exchange with foreign countries FIUs and international organisations in accordance with concluded international agreements.

842. APMLTF has concluded Memoranda of Understanding with the following foreign counterparts:

- Serbia - Administration for the Prevention of Money Laundering
- Croatia - Anti-Money Laundering Office
- Slovenia - Office for Money Laundering Prevention
- Bosnia and Herzegovina - Financial Intelligence Department
- Macedonia - Money Laundering Prevention Directorate
- Bulgaria - Financial Intelligence Directorate of National Security Agency
- Albania - General Directorate for Prevention of Money Laundering
- Portugal –Unidade de Informação Financeira
- Russian Federation - Federal Service for Financial Monitoring
- Poland - General Inspector of Financial Information
- Romania - National Office for the Prevention and Control of Money Laundering
- United States - Financial Crimes Enforcement Network (FinCEN)
- Kosovo - Financial Information Centre of UNMIK (United Nations Mission in Kosovo)

843. At the Second Regional Conference of FIU Heads from the Region, held in Podgorica 23-25th April, 2008, representatives of the FIUs in Montenegro, Albania, Serbia, Croatia, and the Investigation and Protection Agency in Bosnia and Herzegovina, signed "The regional protocol on the fight against money laundering and financing of terrorism".

844. APMLTF is a member of the Egmont Group and it uses the Egmont Secure Web for information exchange with foreign counterparts.

845. APMLTF also exchanges information with FIUs that are not members of the Egmont Group. It was specified that in cases of exchange of information with FIUs that are not connected to the Egmont Secure Web APMLTF uses diplomatic channels, through the Ministry of Foreign Affairs and the Montenegrin Embassies in the respective States, in order to ensure the protection and confidentiality of the information. Such information exchanges can be made upon requests or spontaneously. APMLTF has exchanged data with the Financial Intelligence Centre -UNMIK Kosovo even though it is not a member of EGMONT Group. APMLTF have also exchanged data with the Office of Foreign Assets Control of the US Department of the Treasury (OFAC), and have agreed on the cooperation with the Italian Guardia di Finanza.

846. APMLTF submits requests, within its jurisdiction, from the FIU of a foreign state, data, information, and documentation necessary for detection and prevention of money laundering or

terrorist financing. APMLTF may use such data, information and documentation obtained, only for the purposes provided for by the LPMLTF, without previous approval of the FIU of the foreign state from which such data was obtained.

847. APMLTF may self-initiatively provide data, information and documentation on a customer or transaction, for which there are reasonable grounds for suspicion of money laundering or terrorist financing, that are obtained or processed in accordance to the provisions of the LPMLTF, and may provide data to a foreign FIU under reciprocal conditions.

848. The competent administration body, in the process of providing data under its self-initiative, may prescribe conditions and limits under which a foreign competent authority for detection and prevention of money laundering or terrorism financing, may use such data.

849. It should be noted that APMLTF, according to Article 62 of the LPMLTF, may, under mutual conditions, and by reasoned written initiative of a foreign competent authority, by written order temporary suspend transactions for a period of 72 hours.

850. A special Department for International and National Cooperation is in charge of processing the exchange of information with foreign counterparts within APMLTF.

Request for information sent by APML/FT during the period 2004-2008
(the statistics reflect the entire year 2008)

Year	Number sent	Number replied	Spontaneous disclosure
2004	8	8	
2005	58	52	
2006	44	36	4
2007	46	32	1
2008	60	50	

Out of 44 requests, sent by APML/FT to foreign FIUs in 2006, 43 requests were related to suspicions for money laundering and 1 requests were related to suspicion of terrorist financing.

Request for information received by FIUs during the period 2004-2008

Year	Number received	Number replied	Spontaneous disclosure
2004	9	9	
2005	23	23	
2006	24	24	1
2007	42	42	
2008	39	34	2

Out of 24 requests, received by foreign FIUs in 2006, 22 requests were related to suspicions for money laundering and 2 requests were related to suspicion of terrorist financing.

Financial Supervisors

851. The financial supervisory authorities all have the possibility of exchanging information with their foreign counterparts.

Central Bank of Montenegro

852. Article 107 (Cooperation with Other Institutions) of the Law on Banks, stipulates that, in performing its supervisory function, the Central Bank shall cooperate with representatives of foreign institutions responsible for bank supervision and with domestic authorities and institutions responsible for the supervision of financial operations, with which it has concluded appropriate cooperation and confidentiality agreements regarding the exchange of information. The exchange of information referred above shall not be considered as revealing a secret.

853. Based upon this provisions the MoUs concluded between the Central Bank of Montenegro and foreign supervisory authorities are listed below:

National Bank of Serbia
Bank of Slovenia
Bank of Albania
National Bank of Republic Macedonia
National Bank of Hungary
Central Bank of Bosnia and Hercegovina, Agency for Banking of Republic Srpska i Agency for Banking BIH
Central Bank of Russian Federation
Supervisors from South East Europe (Bank of Greece, Bank of Albania, Bank of Bulgaria, Central Bank of BIH, Central Bank of Cyprus, National Bank Republic Macedonia, National Bank Romania, National Bank Serbia, Agency for Banking of BIH, Agency for Banking Republic Serbia)
Bank of France

The Securities Commission

854. The supervisory authority of the capital market can provide, based on mutual conditions, assistance to foreign regulating authorities in order to fulfil their tasks. The Securities Commission is an Ordinary Member of IOSCO. Upon becoming a member of IOSCO in April, 2005, the procedure for becoming of signatory of the IOSCO Multilateral Memorandum of Understanding (MMoU) was initiated. The application for to become a signatory of the IOSCO MMoU together with the analysis of all relevant legal issues was submitted to IOSCO in July, 2008 and the evaluators have subsequently been advised that the IOSCO verification team has forwarded a recommendation that the Securities Commission become a signatory to the IOSCO MMoU.

855. Article 18a of the Law on Securities regulates international cooperation between the Securities Commission and foreign regulatory and supervisory bodies. This Article is prescribed in a very wide manner and states "*At the request of competent state body or foreign body competent for supervision of trade in securities, the Commission shall be obliged to submit necessary data and information. Exchange of data and information referred to in paragraph 1 of this Article shall not be considered as disclosure of business secret.*"

856. Furthermore, the Securities Commission has concluded the following MoUs:

- Memorandum of Understanding and Mutual Cooperation with the Securities and Financial market Commission of the Republic of Macedonia, signed on June, 24th, 2004..

- Memorandum of Understanding and Mutual Cooperation with the Securities Commission of the Republic of Croatia, signed on October 27th, 2004;
- Memorandum of Understanding and Mutual Cooperation with the Securities Commission of the Republic of Romania, signed on October 22nd, 2004;
- Memorandum of Understanding and Mutual Cooperation with the Securities Commission of the Bosnia and Herzegovina Federation, signed on September 15th, 2005;
- Memorandum of Understanding and Mutual Cooperation with the Securities Commission of Serbia, signed on November 3rd, 2005;
- Memorandum of Understanding and Mutual Cooperation with the Securities Commission of Albania, signed on December 5th, 2005;
- Memorandum of Understanding and Mutual Cooperation with the Capital Market Board of Turkey, signed on February 16th, 2005;

857. The Securities Commission is an ordinary member of IOSCO. The Securities Commission is well advanced in the process of signing an MMOU with IOSCO.

Insurance Supervision Agency

858. The Insurance Supervision Agency co-operates with foreign counterparts. Montenegro is not yet a member of the International Association of Insurance Supervisors. The Insurance Supervision Agency is able to contact and exchange information with any corresponding supervisory authority in a country where Montenegrin insurance companies have established subsidiaries or branches. They have concluded no agreements or MoUs with supervisory counterparts.

Custom Authority

859. The Custom Authority cooperates on a reciprocal basis with custom authorities of other countries in order to prevent and combat customs frauds.

860. The exchange of information between the Customs Authority and other customs administrations are based on the concluded protocols. Furthermore there are customs-to-customs information exchanges between customs and other relevant agencies on cross-border transportation reports and cash seizures. The Custom Authority has concluded 24 agreements with governments of foreign countries for mutual assistance on customs issues including AML/CFT issues and the investigation and suppression of custom fraud.[36]

861. Montenegro has been a member of the World Customs Organisation since 2007. They are also members of Regional Intelligence Liaison Offices for Central and Eastern Europe, Regional Centre of Cooperation Initiative in the South East of Europe, CARIN and MARINFO.

862. The protection of the exchange of information is assured by the Law on Secrecy of Data published in the Official Gazette 14/08 of 29 February 2008. In addition there are other laws that protect professional secrecy as set out in section 3.4.1 above.

863. Requests for cooperation involving fiscal matters cannot be refused according to legal provisions in Montenegro.

[36] Poland, France, Germany, Austria, Greece, China, USA, Russian Federation, “The Former Yugoslav Republic of Macedonia”, Bulgaria, Czech Republic, Romania, Hungary, Slovakia, Bosnia & Herzegovina, Italy, Turkey, Serbia, UNMIK, Croatia, Albania, Iran, Slovenia and Moldova.

6.5.2 Recommendation and comments

864. Montenegro appears to have the powers to exchange information on AML/CFT with other countries. The evaluators have no information on how quickly and how fully requests of information are answered. Statistical information should be kept.

865. Although adequate mechanisms appear to be in place, the evaluators have not received sufficient information to analyse the capacity to exchange information between the supervisory authorities and were not provided with statistics on the exchange of information between supervisory authorities.

6.5.3 Compliance with Recommendations 32 and 40 and SR.V

	Rating	**Summary of factors relevant to Section 6.5 underlying overall rating**
R.40	**Largely Compliant**	• Lack of statistics on cooperation undermines the assessment of effectiveness
SR.V	**Largely Compliant**	• Lack of statistics on cooperation undermines the assessment of effectiveness

7. OTHER ISSUES

7.1 Resources and Statistics (R.30 and 32)

Recommendation 30

866. The evaluators noted that, at the time of the on-site visit, the overall framework for combating money laundering and terrorist financing in Montenegro was still in the process of being developed. In particular the establishment of new regulatory and supervisory bodies as well as the development of a new FIU has meant that these bodies are still in the process of building up their internal capacity and establishing operating practices.

867. At the time of the on-site visit, APMLTF had twenty seven employees out of a budgeted headcount of thirty four. It was noted that 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. The technical infrastructure makes it possible to use the most modern data processing software for handling data, supporting management decisions, permitting staff to work on specific cases and protecting information. It was noted, however, that APMLTF has a broad range of responsibilities and the evaluators were concerned that it was not staffed sufficiently to supervise the very large number of reporting entities.

868. Within the financial services sector the Central Bank appeared to have a good complement of highly trained staff and was regularly hiring new staff. The Insurance Supervision Agency only had eight staff at the time of the on-site visit but there were plans to expand this staff complement to seventeen. The Securities Commission only had thirteen staff at the time of the on-site visit; the evaluators have subsequently been advised that, since the on-site visit, this number has increased to twenty nine with one remaining vacancy.

869. At the time of the on-site visit, the evaluators were concerned that the special department within the Supreme State Prosecution required more staffing and adequate premises as only two positions (Head and Deputy Head of Department) out of six budgeted positions are filled. Subsequent to the on-site visit, the evaluators have been advised that on September 15th 2008 the Prosecutors Council of Montenegro named four more Deputies of the Special Prosecutor for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes, so at this moment The Department has 1 Special Prosecutor and 5 deputies. The Montenegrin authorities consider that this number of the prosecutors and deputies is sufficient for current requirements taking into account the total population of Montenegro and the trends in criminality in the past few years. The Department is fully staffed and premises have now been provided.

<u>Recommendation and comments</u>

870. 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.

	Rating	Summary of factors underlying rating
R.30	**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 APMLTF 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.

Recommendation 32

871. 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. In particular:-

- Clear comprehensive and well-structured statistics regarding confiscation, freezing and seizing of proceeds of crime should be kept systematically. Such statistics should differentiate the amounts of assets, types of measures, duration of measures and primarily request/imposition ratio and relations between temporary measures/final confiscations. Due to lack of comprehensive and structured statistics, as well as final convictions, it is not possible to fully measure the effectiveness of the system of confiscation, freezing and seizing of proceeds of crime.

- No specific statistics were provided regarding money laundering cases. Montenegro Supreme State Prosecution, Department For Combating Organised Crime, Corruption, Terrorism and War Crime only provided some data in the form of plain text.

- Very limited statistics were provided concerning confiscation, freezing and seizing of proceeds of crime. Montenegro Supreme State Prosecution, Department For Combating Organised Crime, Corruption, Terrorism And War Crime provided some data in the form of plain text and tables.

- Very limited statistics were provided on the number of STRs that result in investigation, prosecution and conviction. This is largely due to the fact that FIU information is mixed with other information at the law enforcement and prosecution stages.

- With regard to prosecutions, Montenegro does not keep full statistics on the number of STRs that result in investigation, prosecution and conviction. Once again, this is largely due to the fact that FIU information is mixed with other information at the law enforcement and prosecution stages.

- There is no differentiation between cases related to money laundering and those related to predicate offences.

- There is still some room for improvements of the statistics on mutual legal assistance cases, especially in differentiating between cases related to money laundering and those related to predicate offences. Furthermore, there appeared to be no statistics differentiating between how many mutual legal assistance requests on which the legal assistance was provided and those in which the assistance was declined. This same criticism also applied to extradition requests.

872. Although adequate mechanisms appear to be in place, the evaluators did not receive sufficient information to analyse the capacity to exchange information between the supervisory authorities, either domestically or internationally, and were not provided with statistics on the exchange of information between supervisory authorities. 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.

Recommendation

873. Clear comprehensive and well-structured statistics should be kept systematically. Such statistics should differentiate the amounts of assets, types of measures, duration of measures and primarily request/imposition ratio, etc.. These statistics should then be utilised to measure the effectiveness of the system of confiscation, freezing and seizing of proceeds of crime.

	Rating	Summary of factors underlying rating

R.32	**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.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations

	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 APMLTF.
25. Guidelines and Feedback	**Largely Compliant**	• APMLTF 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 APMLTF'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 APMLTF employees to disseminate information after the cessation of working with APMLTF. • The low number of STRs filed to law enforcement authorities in comparison with the number of analysed STRs brings into question the effectiveness of the APMLTF.
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 APMLTF 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**	• Narrow incriminations of MLA/FT offences

	Compliant	facilitate potential absence of double criminality condition.
38. MLA on confiscation and freezing	**Largely Compliant**	• Reservations remain with respect to enforcing foreign confiscation orders related to insider 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	**Largely**	• No explicit requirement to cover terrorist

reporting	**Compliant**	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.

Table 2: Recommended Action Plan to improve the AML/CFT system

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• The money laundering offence as defined by the Criminal Code is basically sound, but it lacks further refinement; the current formulation of criminalised behaviour (conversion/transfer and concealment/disguise) is narrower than the requirements in the Vienna and Palermo Conventions and should be clarified in the Criminal Code. • The Criminal Code should be amended to clearly include insider trading and market manipulation offences as predicate offences for money laundering. • There is relatively strict regulation of extraterritoriality in the case of offences committed by persons who are not citizens of Montenegro against a foreign state. This also raises the question of inclusion of "all serious offences" in the predicate offences. This is subject to incriminations in those countries and if offences are not punishable with at least 5 years imprisonment, the offence would not be considered a predicate offence in Montenegro. Abolition of this limitation (5 years imprisonment) would prevent such situations.
2.2 Criminalisation of Terrorist Financing (SR.II)	• A definition of "funds", which includes "assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit." should be laid down in the Criminal Code. • The reference to specific criminal offences (terrorism, international terrorism and hostage taking) in Article 449 should be brought into line with the scope of the Terrorist Financing Convention and the Interpretive Note to SR II, as the scope which constitutes the criminal offence becomes narrower. Under Articles 365 and 447, only the acts, intended to *cause harm* (to the constitutional order of Montenegro, or the foreign state/international organisation) are criminalised, while the convention requires the incrimination of any acts of violence which purpose is to *intimidate* a population or *compel* a government or international institution (to do/to abstain from doing). • The Criminal Code should be amended to incorporate the incrimination of funding of terrorist organisations and individual terrorists. • The solution of relating the existence of the terrorist

	financing offence to specific criminal offences, found under other Articles of the CC is also appropriate (IN 6). Under current legislation, terrorist financing is only considered to be a criminal offence if funds are intended for one of three specific criminal offences (Terrorism, Article 365, International Terrorism, Article 447 and Hostage Taking, Article 448). A more flexible definition which would incriminate financing. Furthermore, there needs to be an offence introduced to cover cases when funds are not linked with a specific terrorist. • Article 449 of the Criminal Code should be brought into line with international standards.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The Criminal Code should be amended to give a more comprehensive definition of "organised crime". • A reversal of the burden of proof regarding property subject to confiscation should be introduced. • A legal authority should be established to take steps to prevent or void actions where the person involved knew or should have known that the authorities would be prejudiced in their ability to recover property subject to confiscation
2.4 Freezing of funds used for terrorist financing (SR.III)	• A central authority at national level to examine, integrate and update the received lists of persons and entities suspected to be linked to international terrorism before sending them to the financial sector and DNFBP should be introduced. • A domestic mechanism to enact S/RES/1373 (2001) should be implemented to be able to designate terrorists at national level as well as to give effect to designations and requests for freezing assets from other countries. • Procedures for evaluating de-listing requests, for releasing funds or other assets of persons or entities erroneously subject to the freezing and for authorising resources pursuant to S/RES/1452 (2002) should be adopted. • Practical guidance to the financial institutions and DNFBP concerning their responsibilities under the freezing regime as well as for the reporting of suspicious transactions that may be linked to terrorism financing should be issued by the authorities.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Specific criteria should be developed indicating the competent authority to receive the notification from APMLTF which normally starts an investigation. • APMLTF should take into consideration the necessity of expanding their direct access to other authorities' databases. • An updated List of Suspicious Transactions Indicators should be issued and regularly updated. • a register on reporting entities to be supervised by APMLTF should be maintained. • APMLTF should be staffed sufficiently to supervise the very large number of reporting entities. • The prohibition for the dissemination of information received by APMLTF's employees, after cessation of working, should be an explicit provision in the law without

	any time limit.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• The Prosecution Authority should implement a rigorous supervision mechanism in order to avoid unnecessarily returning cases to Police Administration, which may lead to a negative impact on the effectiveness of the system. • The special investigative techniques should be extended to all forms of money laundering to enable law enforcement authorities to ensure a proper investigation. • All law enforcement authorities should continue to strengthen inter-agency AML/CFT training programmes in order to have specialised financial investigators and experts at their disposal. • Further steps need to be taken to eradicate the perception of corruption in law enforcement bodies.
2.7 Cross Border Declaration & Disclosure	• The Customs Administration should be given clear powers to stop individuals and restrain currency in all circumstances. • The Customs Administration should have the legal authority to restrain currency in cases of an administrative offence. • The Customs Administration should take into consideration a system to use reports on currency declaration in order to identify money launderers and terrorists. • The administrative sanctions for false declarations or non-declared currency should be raised considerably. Taking into account the low chance of detection, the fines are not considered to be dissuasive or effective. • In order to increase its effectiveness, the Customs Administration should hire more specialised staff to deal with money laundering and terrorist financing cross-border transportation of currency.
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• It is the view of the evaluators that the wording of the second point under Article 9 is too precise and could be interpreted to read that only transactions of exactly €15,000 require CDD. The evaluators consider that **"or more"** should be added in Article 9, Paragraph 1 number 2 in the LPMLTF. • The LPMLTF should be amended to require CDD to be conducted on wire transactions of €1,000 or more. • The LPMLTF should be amended to require obligors to verify that persons purporting to act on behalf of a customer have the authority to act on behalf of the customer. Article 15 of the LPMLTF should be amended to require the obtaining of copies of the document regulating the power to bind the legal person or arrangement. • The problem of reliance on certificates from the commercial register for CDD purposes should be addressed

	by establishing procedures to address the limitations of the commercial register. • Article 29.4 of the LPMLTF appears to go further than intended by Criteria 5.9 in that it permits simplified customer verification in respect of customers to "whom an insignificant risk of money laundering or terrorist financing is related" which could include a broader range of customers than those envisaged in Criteria 5.9. Article 29.4 should be amended to bring it into line with the essential criteria. • The FATF definition ("*Beneficial owner* refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.") should be incorporated into the LPMLTF and a requirement to identify and verify the "ultimate" beneficial owner should be included. • Article 25 of the LPMLTF is very specific and does not cover a number of the specified categories as set out in Criteria 5.8, namely all non-resident customers, private banking, legal persons or arrangements such as trusts that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form. The evaluators consider that the LPMLTF should be amended to fully reflect all of the categories in Criteria 5.8. • Risk guidelines in accordance with Criteria 5.12 should be completed and published. • A specific clause should be inserted into the LPMLTF requiring obligors to consider making a suspicious transaction report in circumstances where they have been unable to conduct satisfactory CDD. Likewise there should also be a clause requiring obligors to terminate a business relationship in circumstances where they have been unable to conduct satisfactory CDD. This is particularly relevant in circumstances where CDD has not been possible for existing customers where there are one or more linked transactions amounting to €15,000, etc.. • There needs to be a specific requirement for obligors to assess and consider the risks of technological developments as part of their risk analysis. This should also be introduced in the guidelines to be produced by the supervisory bodies. • It is the view of the evaluators that the requirements of Criteria 5.17 are essentially met although the wording of the first point above is too precise and could be interpreted to read that only transactions of exactly €15,000 require CDD. Furthermore, the requirement is for CDD to be conducted when "a transaction of significance takes place." and in the context of Criteria 5.17 it is considered that this is more appropriate wording. Overall the evaluators consider that a separate clause should be inserted into the LPMLTF to specifically deal with the issue of CDD on existing customers.

	• The lack of awareness as regards PEPS and the consequent lack of proper procedures to address the risk should be addressed through proper training to be followed by the establishment of adequate procedures to address this risk. • Article 25 of the LPMLTF should be amended to extend the requirement to all cross-border correspondent banking and other similar relationships. • A requirement for financial institutions to have policies and procedures to address the risk of misuse of technological developments in ML/TF schemes should be introduced. • Regulations should clearly establish the obligation to obtain information on the purpose and intended nature of the business relationship for non-face to face business.
3.3 Third parties and introduced business (R.9)	• The Montenegrin authorities should consider amending legislation to specifically prohibit financial institutions from relying on intermediaries or other third parties to perform specified elements of the CDD process.
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• 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 in accordance with the requirements of essential criteria 10.1.1. The LPMLTF should be amended to take this requirement into account. • The requirements of Special Recommendation VII should be incorporated into the legislation of Montenegro.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• Financial institutions should be required to examine as far as possible the background and purpose of unusual transactions. Enforceable requirements to set forth the finding of such examinations in writing should equally be provided. In addition specific enforceable requirement should be put in place for financial institutions to keep such findings available for authorities and auditors for at least five years. • Financial institutions should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations. Effective measures should be put in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries and consideration should be given to the development of appropriate countermeasures as set out in the essential criteria to Recommendation 21.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The reporting obligation should be extended to include money laundering reporting obligations if the transaction has already been performed. • The Book of Rules, should be endorsed in law with sanctions for breaches in order to become “other enforceable means”. • A provision should be introduced to ensure that the names and personal details of staff of financial institutions that make a STR are kept confidential by APMLTF.

	• APMLTF should provide regular general feedback to all obligors which should contain: (a) statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures; (b) information on current techniques, methods and trends (typologies); and (c) sanitised examples of actual money laundering cases.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Requirements should be developed that require financial institutions to put in place screening procedures to ensure high standards when hiring employees. • The inspection procedures that have been introduced by the Central Bank should be adopted by other financial services supervisors.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• Although APMLTF provides general information on criteria for detection of suspicious activity as required in the LPMLTF guidelines referring to specific AML/CFT risk factors and measures to mitigate such risks should also be provided. • Typologies should be developed and presented to reporting entities. • There is a need to provide more guidance on AML/CFT issues, with particular focus on the non-banking sector.
3.11 Money value transfer services (SR.VI)	• The requirements of Special Recommendation VI need to be implemented. • The Montenegrin authorities should introduce legislation to enforce the licensing/registration of all MVT service providers together with appropriate sanctions.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Trust and Company Service Providers should be designated as obliged parties. • For casinos, CDD should be required above the €3,000 threshold. • There should be a clear requirement for casinos to link the incoming customers to individual transactions. • Effective systems for monitoring and ensuring compliance with CDD requirements across most of the DNFBP sectors need to be developed. • DNFBPs need to be made aware of their obligations regarding PEPs. Specific guidelines, aimed at DNFBPs should be developed. It is also recommended that a training programme be undertaken concerning the risks and controls necessary concerning dealings with politically exposed persons. • A requirement should be introduced for DNFBPs to have policies in place to prevent the misuse of technological developments in ML/TF. • More attention need to be given to raising awareness and enforcing compliance in casinos
4.2 Suspicious transaction reporting	• The obligation to report suspicious transactions that have

(R.16)	been performed should be explicitly provided for in either law or regulation. • A prohibition against tipping off should be made specifically applicable to lawyers. • More targeted training to sectors that pose the greatest risk should be considered.
4.3 Regulation, supervision and monitoring (R.24-25)	• A comprehensive register of all reporting entities should be developed by APMLTF. • Guidelines to assist DNFBPs in implementing and complying with respective AML/CFT requirements are, at should be developed. Adequate and appropriate feedback on suspicious transaction reporting for DNFBPs should be provided.
4.4 Other non-financial businesses and professions (R.20)	• Montenegro has extended its AML/CFT obligations to other non-financial businesses, however, a regulatory and supervisory framework needs to be developed to ensure that FATF Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 are being adhered to by these non-financial businesses. • A risk analysis to determine which other non-financial businesses and professions are at greatest risk of being misused for money laundering and/or terrorist financing should be undertaken. Based upon the results of such analysis, the authorities of Montenegro should direct priority outreach and educational efforts to those other non-financial businesses at the highest levels of risk.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• The acquisition of information on beneficial owners by the agencies and institutions which deal with clients form abroad seems to be less effective. Considering the very intensive involvement of foreign legal entities on the Montenegrin real-estate market and rather poor information on beneficial ownership in such entities, this might present a considerable risk of abuse of such legal entities for money laundering and terrorist financing and it is recommended that financial institutions and DNFBPs be reminded to apply the same standards to overseas customers as to domestic. • Consideration should be given to the risk of foreign bearer shares being sold in Montenegro.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	• Montenegro should conduct a review of the adequacy of its legal framework that relates to NPOs that can be abused for terrorism financing. • Montenegro should implement measures to ensure that terrorist organisations cannot pose as legitimate NPOs. • Montenegro should also reach out to the NPO sector with a view to protecting the sector from terrorist financing abuse. This outreach should include i) raising awareness in the

	NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; and ii) promoting transparency, accountability, integrity, and public confidence in the administration and management of all NPOs. • Montenegro should take more proactive steps to promote effective supervision or monitoring of NPOs. Authorities should ensure that detailed information on the administration and management of NPOs are available during the course of an investigation or on request internationally. Montenegro should also implement effective sanctions for violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Formal arrangements for cooperation between policy makers, FIU, law enforcement and supervisory bodies at a strategic level for AML/CFT should be developed. • At the operational level, the evaluators recommend that additional formal agreements be concluded in order to define the type of information to be exchanged, timeliness of the exchange, the names of contact person, etc.. The Montenegrin authorities should aim to continue interdepartmental coordination and to release periodically analysis which will enable them to develop and implement policies and activities to combat money laundering and terrorist financing at a national level. • The evaluators recommend that the Montenegrin authorities review periodically the performance of the system as a whole against some key strategic performance indicators and review, collectively, as much as possible, the available statistical information to better carry out each agency's task and enhance AML/CFT framework.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• As was already stated under 2.1 above, the incrimination of money laundering is limited to actions, defined as "business operations", which is narrower than the convention and this formulation should be further refined. • 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) should be put in place.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• With regard to financing of terrorism there are more problems present. Besides the narrower definitions of the financing of terrorism offence, the main shortcoming is inadequate implementation of UN Resolutions, primarily S/RES/1267 (1999). Regarding the incrimination of terrorist financing, the most important outstanding issues are: existing limitation of criminalisation on financing to concrete terrorist offences and, linked to that, inability of the present definition of criminal offence to also include the funds intentioned 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) should be put in place. • An asset forfeiture fund should be established.
6.4 Extradition (R.39, 37 & SR.V)	
6.5 Other Forms of Co-operation (R.40 & SR.V)	
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• APMLTF needs to enhance the training for its own staff and for reporting entities, in order to increase the awareness and understanding of money laundering and terrorism financing schemes which may be used • There is a need ensure that an international training programme on money laundering and terrorism financing issues is created and implemented. • The evaluators were concerned that there were not sufficient staff in APMLTF to supervise the very large number of reporting entities and recommend that the staff level be raised. • Clear comprehensive and well-structured statistics should be kept systematically. Such statistics should differentiate the amounts of assets, types of measures, duration of measures and primarily request/imposition ratio, etc.. These statistics should then be utilised to measure the effectiveness of the system of confiscation, freezing and seizing of proceeds of crime.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant Sections and Paragraphs	Country Comments

V. COMPLIANCE WITH THE 3RD EU DIRECTIVE

Montenegro is a not member country of the European Union. It has not implemented **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: "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**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations. Following an analysis of the findings of the evaluation and conclusions on compliance and effectiveness, recommendations and comments are made as appropriate.

1.	**Self Laundering**
Directive	Self laundering is not explicitly addressed by the Directive but is not excluded from its scope.
FATF R. 1	Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.
Key elements	Is self laundering provided for?
Description and Analysis	Self-laundering is specifically incriminated in Article 268, Paragraph 2, and all ancillary offences to money laundering are sufficiently covered in Articles 23-25 and 400-401 of the Criminal Code.
Conclusion	Self-laundering is provided for.
Recommendations and Comments	

2.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive.
Description and Analysis	The offence of money laundering is criminalised under the LPMLTF. The liability of legal persons is provided for in the Law on Criminal Liability of Legal Entities for Criminal Acts (See Annex VII). Article 5 provides liability for legal persons involved in money laundering in that *"A legal entity shall be liable for a criminal offence of a responsible person who acted within his/her authorities on behalf of the legal entity with the intention to obtain any gain for the legal entity"*. Parallel litigation or administrative proceedings is not excluded.
Conclusion	Criminal liability for money laundering extends to legal persons

Recommendations and Comments	

3.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures.
Description and Analysis	Article 31 of the LPMLTF states that *"An obligor may not, for a customer, open, or keep an anonymous account, a coded or bearer passbook or provide other service (banking product) that can indirectly or directly enable the concealment of a customer identity."*
Conclusion	Credit and financial institutions appear to be effectively prohibited from keeping anonymous accounts or anonymous passbooks
Recommendations and Comments	

4.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions <u>amounting</u> to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions <u>above</u> the applicable designated threshold.
Key elements	Are transactions of EUR 15 000 covered?
Description and Analysis	The LPMLTF states in article 9 that *"An obligor shall undertake customer due diligence measures particularly in the following cases:* *1. …;* *2.* ***of one or more linked transactions amounting to €15000****;* *If the transactions from paragraph 1 item 2 of this Article are based on an already established business relationship, an obligor shall verify the identity of the customer that carries out the transaction and gather additional data."* The wording of the second point under Article 9 is too precise and could be interpreted to read that only transactions of exactly €15,000 require CDD.
Conclusion	This is not in compliance with the requirements of the Directive.
Recommendations and Comments	The LPMLTF should be amended in that **<u>"or more"</u>** should be added in Article 9, Paragraph 1 number 2.

5.	**Beneficial Owner**
Art. 3(6) of the Directive	The definition of 'Beneficial Owner' establishes minimum criteria where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.

Key elements	The country follows which approach in its definition of "beneficial owner"?
Description and Analysis	Article 19 of the LPMLTF defines a beneficial owner as "a natural person who indirectly or directly owns more than 25% of the shares, voting rights and other rights, on the basis of which he/she participates in the management, or owns more than a 25% share of the capital or has a dominating influence in the assets management of the business organization, and a natural person that indirectly ensures or is ensuring funds to a business organization and on that basis has the right to influence significantly the decision making process of the managing body of the business organization when decisions concerning financing and business are made.
Conclusion	The definition of beneficial owner appears to be broadly in line with the FATF definition
Recommendations and Comments	

6.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Article 3(1) or (2) of the Directive. Article 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially. (Methodology para 20; Glossary to the FATF 40 plus 9 Rec.)
Key elements	Does the country implement Article 4 of Commission Directive 2006/70/EC?
Description and Analysis	This derogation has not been introduced in Montenegrin law or regulation.
Conclusion	The derogation as set out in the Directive has not been applied.
Recommendations and Comments	This issue is not considered to be relevant for the Montenegrin system at present.

7.	**Simplified CDD**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers be subject to the full range of CDD measures yet, there are instances where reduced or simplified measures can be applied.
Key elements	Establish the implementation and application of Article 3 of Commission Directive 2006/70/EC which goes beyond criterion 5.9.
Description and Analysis	Articles 29 and 30 of the LPMLTF provide for simplified customer verification. It is however noted that Article 29.4 appears to go further than intended by FATF Criteria 5.9 in that it permits simplified customer

	verification in respect of customers to "whom an insignificant risk of money laundering or terrorist financing is related" which could include a broader range of customers than those envisaged in FATF Criteria 5.9.
Conclusion	The provisions of the LPMLTF appear to be more in line with the Directive than with the FATF criteria.
Recommendations and Comments	

8.	**PEPs**
Art. 3 (8), 13 (4) of the Directive	The Directive defines PEPs broadly in line with FATF 40 (Article 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Article 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Article 2) and removal of PEPs after one year of ceasing to be entrusted with prominent public function (Article 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public function in a foreign country.
Key elements	Did the country implement Article 2 of Commission Directive 2006/70/EC, in particular Article 2(4), and does it apply Article 13(4) of the Directive?
Description and Analysis	Article 27 of the LPMLTF contains the definition of politically exposed persons. The definition incorporates both domestic and foreign politically exposed persons since it does not make a distinction and also includes close family members and close business contacts. The definition specifically includes "presidents of states, prime ministers, ministers and their deputies or assistants, heads of administration authority and authorities of local governance units, as well as their deputies or assistants and other officials" and also "members of managing and supervisory bodies of enterprises with majority state ownership". There is no provision in the LPMLTF for the removal of the requirement to conduct enhanced CDD on PEPs after one year of ceasing to be entrusted with a prominent public function.
Conclusion	The definition of PEPs is in line with the requirements of the Directive.
Recommendations and Comments	

9.	**Correspondent banking**
Art. 13 (3) of the Directive	Concerning correspondent banking, Article 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does the country apply Art. 13(3) of the Directive?
Description and Analysis	Concerning correspondent banking relationships, Article 25 of the LPMLTF has limited its scope to "a bank or other similar credit institution that has a registered office outside the EU or outside the states from the list".
Conclusion	Montenegro is in compliance with the Directive.
Recommendations and Comments	

10.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the	The Directive requires ECDD in case of ML or TF threats that may

Directive	arise from products or transactions that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Article 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology.
Description and Analysis	The evaluators were not aware of any 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. It was, however, noted that Article 28 of the LPMLTF contains provisions to address the risk of non-face to face relationships and transactions and requires ECDD in such cases.
Conclusion	Although law and regulations in Montenegro do not specifically address threats that may arise from products or transactions that might favour anonymity it is considered that the requirement of the Directive is largely covered by the broad terms of the requirement to conduct ECDD in all non-face to face relationships and transactions.
Recommendations and Comments	

11.	**Third Party Reliance**
Art. 15 of the Directive	The Directive allows to rely for CDD performance on third parties from EU Member States or third countries under certain conditions and categorised by profession and qualified.
FATF R. 9	Allows reliance for CDD performance by third parties but does not categorise obliged entities and professions.
Key elements	What are the rules for procedures for reliance on third parties? Are their special conditions, categories etc.?
Description and Analysis	It is the intention of the Montenegrin authorities that financial institutions should not rely on third parties to conduct CDD. To this end, the LPMLTF does not contain any provisions allowing financial institutions to rely on intermediaries or other third parties to perform specified elements of the CDD process.
Conclusion	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.
Recommendations and Comments	This issue is not considered to be relevant for the Montenegrin system at present.

12.	**auditors, accountants and tax advisors**
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply concerning auditors and tax advisors; 2. apply for accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies;

	• creation, operation or management of legal persons or arrangements, and buying and selling of business entities (criterion 12.1 d).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1d).
Description and Analysis	Article 4 of the LPMLTF identifies those individuals and legal persons who have obligations under the law. Article 4 includes "audit companies, independent auditor and legal or natural persons providing accounting and tax advice services" within the definition of "Obligors". Their obligations, therefore, are the same as those applying to financial institutions and as set out in the LPMLTF. As such they are subject to the provisions of the LPMLTF which include CDD and record keeping obligations.
Conclusion	Montenegro is in compliance with the requirements of the Directive.
Recommendations and Comments	

13.	**High Value Deals**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of €15,000 or more.
FATF R. 12	The application is limited to dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader.
Description and Analysis	Article 4 of the LPMLTF identifies those individuals and legal persons who have obligations under the law. Article 4 includes pawnshops (sub clause 11) and "other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of: • sale and purchase of claims; • factoring; • third persons' property management; • issuing and performing operations with payment and credit cards; • financial leasing; • travel organization; • real estate trade; • motor vehicles trade; • vessels and aircrafts trade; • safekeeping; • issuing warranties and other guarantees; • crediting and credit agencies; • granting loans and brokerage in loan negotiation affairs; • brokerage or representation in life insurance affairs, and • organizing and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of €15,000 or more, in one or more interconnected transactions." (sub clause 15) within the definition of "Obligors". Their obligations, therefore, are the same as those applying to financial institutions and as set out in the LPMLTF. As such they are subject to the provisions of the LPMLTF which include CDD and record keeping obligations.
Conclusion	Montenegro is in compliance with the requirements of the Directive.
Recommendations and	

Comments	

14.	Casinos
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of €2,000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of customer has to be established and verified when they engage in financial transactions equal to or above €3,000.
Key elements	In which situations do customers of casinos have to be identified? The Directive transaction threshold is lower.
Description and Analysis	Currently casinos, as a class of obligors under the LPMLTF, are subject to the same customer due diligence requirements as financial institutions. Although the FATF Methodology for Assessing Compliance states that casinos should be made to comply with the requirements set out in Recommendation 5 (and its criteria 5.1 to 5.18) when their customers engage in financial transactions equal to or above €3,000, no such threshold exists in Montenegro.
Conclusion	For casinos, CDD is not even required above a €3,000 threshold.
Recommendations and Comments	A requirement that that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of €2,000 or more should be introduced.

15.	Reporting of accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU
Art. 23 (1) of the Directive	Option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body that shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	Accountants, auditors and tax advisors, as well as notaries and other independent legal professionals are all required to directly forward STRs to the FIU promptly and unfiltered.
Conclusion	No provision has been made for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body that shall forward STRs to the FIU promptly and unfiltered.
Recommendations and Comments	This issue is not considered to be relevant for the Montenegrin system at present.

16.	Reporting obligations
Art. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Article 22). Obliged persons to refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report to FIU who can stop transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to FIU (Article 24).
FATF R. 13	Imposes reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Is there a legal framework addressing Art 24 of the Directive?

Description and Analysis	In accordance with Article 33, Para 2 in the LPMLTF, financial institutions (and other reporting entities) shall report to APMLTF without delay when there are reasonable grounds for suspicion of money laundering or terrorist financing related to a transaction (regardless of the amount and type) or customer before the execution of the transaction. The reporting financial institution shall provide data in accordance with Article 71 of the LPMLTF (which enumerates the contents of the reporting entities records) and state the deadline within which the transaction is to be executed. The statement could also be provided via telephone, but it has to be sent to APMLTF in a written form not later than the following working day from the day of providing the statement. The terminology for applying the reporting obligation in Article 33, Para 2 of the AML/CFT referring to suspicious transactions "...before the execution of the transaction…." does not appear to fully cover money laundering or financing of terrorism if the suspicious transaction has been performed. During the on-site visit, the evaluation team was advised that in practice, STRs are filed to APMLTF no matter whether the suspicion arises before or after the transaction has been performed. However, as this is an asterisked criterion the obligation to report suspicious transactions that have been performed should be explicitly provided for in either law or regulation. Under Article 51 of the LPMLTF APMLTF may temporarily suspend transaction by written order, within 72 hours, if it evaluates that there are reasonable grounds for suspicion of money laundering or terrorism financing, and is obliged, without delay, to notify competent bodies of it. If due to the nature of transaction or manner of executing the transaction or other circumstances, under which the transaction has been carried out, refraining from the transaction execution is impossible, an order shall be done verbally, with exemption of this requirement.
Conclusion	The requirements of the Directive appear to be complied with.
Recommendations and Comments	

17.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off" which is the pendant to Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented?
Description and Analysis	Article 80 of the LPMLTF makes provision to ensure that all details of concerning the submission of an STR are kept confidential by APMLTF
Conclusion	There is sufficient protection of employees of reporting institutions from being exposed to threats or hostile actions.
Recommendations and Comments	

18.	**Tipping off (2)**
Art. 28 of the Directive	Prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.

Key elements	Under which circumstances apply tipping off obligations? Are there exceptions?
Description and Analysis	874. Obliged entities employees are prohibited by law from disclosing the fact that a STR or related information is being reported or provided to the competent administration body or that an investigation has been initiated. Article 80 of the LPMLTF) states: *"Obligors and obligor's employees, members of authorised, supervising or managing bodies, or other persons, to which were available data from Article 71 of this Law, shall not reveal to a customer or third person:* *5. that data, information or documentation on the customer or the transaction, from Article 33 paragraph 2, 3 and 4, Article 43 paragraph 1, Article 48 paragraph 1, 2 and 3, Article 49 paragraph 1 and 2 of this Law, are forwarded to the competent administration body ;* *6. that the competent administration body on the basis of Article 51 of this Law, temporarily suspended transaction or in accordance with that gave instructions to the obligor;* *7. that the competent administration body on the basis of Article 53 of this Law demanded regular supervision of customer's financial business;* *8. that against customer or third party is initiated or should be initiated investigation for the suspicion of money laundering or terrorist financing "*
Conclusion	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out.
Recommendations and Comments	

19.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Article 34(2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	Article 34 of the LPMLTF requires that a reporting entity shall ensure that measures of detection and prevention of money laundering and terrorist financing, as defined by the LPMLTF, "are applied to the same extent both in business units or companies in majority ownership of the obligor, whose registered offices are in other state, if that is in compliance with the legal system of the concerned state."
Conclusion	The evaluators are of the opinion that there are sufficient provisions in place to require financial institutions to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.
Recommendations and Comments	

20.	Branches and subsidiaries (2)
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What are financial institutions obliged to do in such circumstances?
Description and Analysis	Article 34 of the LPMLTF requires that "If the regulations of a state do not prescribe the implementation of measures of detection and prevention of money laundering or terrorist financing to the same extent defined by this Law, an obligor shall immediately inform the competent administration body on that and undertake measures for removing money laundering or terrorist financing risk."
Conclusion	It would appear that the requirements as set out in the LPMLTF meets the requirements of the Directive.
Recommendations and Comments	

21.	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes obligation on supervisory bodies to inform FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Dir. implemented?
Description and Analysis	Article 87 of the LPMLTF states that "If an authorized official of the competent administration body for prevention of money laundering and terrorist financing, in procedure of inspection control of the obligor, discover reasonable grounds for suspicion of committing criminal offence of money laundering or terrorist financing, or another criminal offence from Article 56 of this Law, can take documentation from obligor and deliver it to the competent administration body." Article 88 of the LPMLTF states that "If the competent administration body for prevention of money laundering and terrorist financing, in the procedure of processing the case, discover reasonable grounds for suspicion of committing criminal offence from Article 56 of this Law, shall provide data, information and other documentation, which implies criminal offence, to other competent bodies." Article 89 of the LPMLTF states that the supervisory bodies "shall inform the competent administration body on measures taken in process of supervising in accordance with this Law, and within 8 days from the date on which the measures were taken."
Conclusion	Supervisory authorities are not reporting entities under Article 4 in the LPMLTF. However, Article 89 of the LPMLTF provides that supervisory authorities shall inform APMLTF on measures taken in the process of supervising in accordance with the LPMLTF within 8 days from the date on which the measures were taken. The evaluators do not consider this provision to be a reporting obligation on suspicion of money laundering or terrorist financing.
Recommendations and Comments	

22.	Systems to respond to competent authorities

Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such circumstances can be broadly inferred from Recommendations 23 and 26 – 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Article 4 of the "Book of Rules on the manner of work of the Compliance Officer, the manner of conducting internal control, keeping and protecting data, the manner of recordkeeping and training of employees", which was issued pursuant to Pursuant to Article 45 of the LPMLTF, states that "The compliance officer in the course of conducting his work… shall respond to all requests and inquiries of the Administration" (APMLTF). Furthermore, under Article 48 of the LPMLTF reporting entities are required to provide APMLTF with requested data no later than 8 days after the day of receiving the request. There is, however no requirement for financial institutions to have electronic or other systems in place to be able to 'respond fully and promptly'
Conclusion	Although there are requirements to respond promptly to requests, there is no specific requirement to have electronic or other systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship.
Recommendations and Comments	This issue is not considered to be relevant for the Montenegrin system at present.

23.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to ensure extension of its provisions to other professionals and undertakings whose activities are likely to be used for money laundering or terrorist financing.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has the country effectively implemented Art. 4 of the Directive? Is this based on a risk assessment?
Description and Analysis	Article 4 of the LPMLTF identifies those individuals and legal persons who have obligations under the law. Article 4 includes pawnshops (sub clause 11) and "other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of: • sale and purchase of claims; • factoring; • third persons' property management; • issuing and performing operations with payment and credit cards; • financial leasing; • travel organization; • real estate trade; • motor vehicles trade;

	• vessels and aircrafts trade; • safekeeping; • issuing warranties and other guarantees; • crediting and credit agencies; • granting loans and brokerage in loan negotiation affairs; • brokerage or representation in life insurance affairs, and • organizing and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of €15,000 or more, in one or more interconnected transactions." (sub clause 15) within the definition of "Obligors". Their obligations, therefore, are the same as those applying to financial institutions and as set out in the LPMLTF. As such they are subject to the provisions of the LPMLTF which include CDD and record keeping obligations.
Conclusion	It would appear that additional businesses which present a risk of or vulnerability to money laundering have been identified and have been brought within the requirements of the LPMLTF.
Recommendations and Comments	

24.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How does the country address the issue of equivalent third countries?
Description and Analysis	There does not appear to be a provision under Montenegrin law which sets out specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive
Conclusion	
Recommendations and Comments	This issue is not considered to be relevant for the Montenegrin system at present.

LIST OF ANNEXES

ANNEX I Details of all bodies met on the onsite mission

(Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others)

- Vice Prime Minister, Mrs. Djurovic
- Financial Intelligence Agency (the Administration for the Prevention of Money Laundering and Terrorism Financing - APMLTF)
- Agency for National Security
- Ministry of Internal Affairs
- Ministry of Foreign Affairs
- Ministry of Finance
- Ministry of Justice
- Ministry of Justice and Ministry of Internal Affairs (Departments responsible for registration of NGOs, incl. NPOs)
- State Prosecutors Office
- Police Administration
- Customs Administration and Border Police
- The Supreme Court
- Central Bank of Montenegro
- Insurance Supervision Agency
- The Securities Commission
- Administration for Lottery and Gaming
- The Bank Association
- The Account Association
- The Lawyers Association
- Representatives of commercial banks
- Representatives of casinos
- Representatives of insurance companies
- Representatives of broker companies
- The Commercial Trade Register
- Representatives of real estate agencies
- Representative of the lawyers

ANNEX II Designated categories of offences

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation
Participation in an organised criminal group and racketeering	Participation in a group committing a crime (Art. 404), Extortion (Art. 250) Furthermore, for most serious crimes the fact that it was committed by more than one person, would mean that it is an aggravated form of such offence.
Terrorism, including terrorist financing	Terrorism (Art. 365), International terrorism (Art. 447), Financing of terrorism (Art. 449)
Trafficking in human beings and migrant smuggling	Trafficking in human beings (Art. 444)
Sexual exploitation, including sexual exploitation of children	Rape (Art. 204), Sexual intercourse with a child (Art. 206), Pimping and enabling having a sexual intercourse (Art. 209)
Illicit trafficking in narcotic drugs and psychotropic substances;	Unauthorized production, keeping and releasing for circulation of narcotics (Art. 300)
Illicit arms trafficking	Unlawful keeping of weapons and explosives (Art. 403), Manufacture of forbidden weapons (Art. 433)
Illicit trafficking in stolen and other goods	Concealment (Art. 256)
Corruption and bribery	Passive bribery (Art. 423), Active bribery (Art. 424)
Fraud	Fraud (Art.244)
Counterfeiting currency	Counterfeiting money (Art. 258)
Counterfeiting and piracy of products	Criminal acts against intellectual property (Arts.233-238)
Environmental crime	Criminal acts against the environment and spatial planning (Arts.303-326)
Murder, grievous bodily injury	Murder (Art.143), Serious bodily injury (Article 151)
Kidnapping, illegal restraint and hostage-taking	Abduction by force (Art.164), Unlawful deprivation of freedom (Art. 162), Taking hostages (Art. 448)
Robbery or theft	Theft (Art. 239), Theft in the nature of robbery (Art. 241), Robbery (Art. 242)
Smuggling	Smuggling (Art.265)
Extortion	Extortion (Art.250)
Forgery (In the Montenegrin language, “forgery and counterfeiting” relate to same English word)	Counterfeiting money (Art. 258), Counterfeiting securities (Art. 259), Counterfeiting and abuse of credit cards and cards for non-cash payment (Art. 260), Counterfeiting value bearing marks (Art. 261), Counterfeiting of signs for marking goods, measures and weights (Art. 286), Falsifying a document (Art. 412), Special cases of falsifying documents (Art. 413), Falsifying an official document (Article 414)
Piracy	Piracy (Art.345)
Insider trading and market manipulation	Forbidden banking, stock-exchange and insurance transactions (Art. 266) Violation of equality in the conduct of business activities (Art. 269), Abuse of monopolistic position (Art. 270)

ANNEX III Law on the Prevention of Money Laundering and Terrorist Financing

LAW ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

I Basic provisions
Subject Matter of the Law - Article 1

This Law shall regulate measures and actions undertaken for the purpose of detecting and preventing money laundering and terrorist financing.

Money Laundering - Article 2

In the context of this Law, the following shall, in particular, be considered as money laundering:

1. conversion or other transfer of money or other property originating from criminal activity,
2. acquisition, possession or use of money or other property proceeding from criminal activity,
3. concealment of the true nature, origin, depositing location, movement, disposition, ownership or rights concerning money or other property originating from criminal activity.

Terrorist Financing - Article 3

In the context of this Law, the following shall, in particular, be considered as terrorist financing:

1. providing or collecting or an attempt of providing or collecting money or other property, directly or indirectly, with the aim or in the knowledge that they are to be used, in full or in part, in order to carry out a terrorist activity or used by a terrorist or terrorist organization, and
2. encouraging or assisting in providing or collecting the funds or property from the item 1 of this Article.

Obligors - Article 4

Measures for detecting and preventing money laundering and terrorist financing shall be taken before and during the conduct of any business of receiving, investing, exchanging, keeping or other form of disposing of money or other property, or carrying out the transactions for which there are reasonable grounds for suspicion of money laundering or terrorist financing.

Measures from Paragraph 1 of this Article shall be undertaken by business organizations, other legal persons, entrepreneurs and natural persons (hereinafter referred to as: obligors), as follows:

1) banks and foreign banks' branches and other financial institutions;
2) savings-banks, and savings and loan institutions;
3) organizations performing payment transactions,
4) post offices,
5) companies for managing investment funds and branches of foreign companies for managing investment funds;
6) companies for managing pension funds and branches of foreign companies for managing pension funds;
7) stock brokers and branches of foreign stock brokers;
8) insurance companies and branches of foreign insurance companies dealing with life assurance;
9) organizers of lottery and special games of chance;
10) exchange offices;
11) pawnshops;
12) audit companies, independent auditor and legal or natural persons providing accounting and tax advice services;
13) institutions for issuing electronic money;
14) humanitarian, nongovernmental and other non-profit organizations, and

15) other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of:
   - sale and purchase of claims;
   - factoring;
   - third persons' property management;
   - issuing and performing operations with payment and credit cards;
   - financial leasing;
   - travel organization;
   - real estate trade;
   - motor vehicles trade;
   - vessels and aircrafts trade;
   - safekeeping;
   - issuing warranties and other guarantees;
   - crediting and credit agencies;
   - granting loans and brokerage in loan negotiation affairs;
   - brokerage or representation in life insurance affairs, and
   - organizing and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of € 15.000 or more, in one or more interconnected transactions.

By way of exception to item 2 of this Article a regulation of the Government of the Republic of Montenegro (hereinafter: the Government) can define the other obligors that shall take the measures from item 1 of this Article if, considering the nature and manner of carrying out activities or business, there is a more significant risk of money laundering or terrorist financing, or define the obligors that do not need to undertake the measures from item 1 of this Article, when the risk of money laundering or terrorist financing does not exist any more.

Definition of Terms - Article 5

Some terms in this Law shall have the following meanings:

1.**"terrorist act"** shall mean an act defined by the United Nations Convention for the Suppression of the Financing of Terrorism;
2**."terrorist"** shall mean a person who alone or with other persons:
- intentionally, directly or indirectly, commits or attempts to commit a terrorist act;
- encourages or assists in the commission of terrorist act;
- intentionally or in the knowledge of the intention of a group of persons to commit a terrorist act, has contributed, or is contributing to the commission of a terrorist act;
3.**"terrorist organization"** shall mean an organized group of persons that:
- intentionally, directly or indirectly, commits or attempts to commit a terrorist act;
- encourages or assists in the commission of terrorist act;
- intentionally or in the knowledge of the intention of a group of persons to commit a terrorist act, has contributed, or is contributing to the commission of a terrorist act;
4.**"transaction"** shall mean receiving, investing, exchanging, keeping or other form of disposing of money or other property;
5.**"risk of money laundering and terrorist financing"** shall mean the risk that a customer will use the financial system for money laundering or terrorist financing, or that a business relationship, a transaction or a product will indirectly or directly be used for money laundering or terrorist financing;
6.**"open account relationship"** shall mean a correspondent relationship between domestic and foreign credit institution established by opening an account of a foreign credit or other institution with a domestic credit institution (opening a loro account);
7.**"correspondent relationship"** shall mean a contract that a domestic credit institution enters into with a foreign credit or other institution, with a view to operating business with foreign countries;

8.**”shell bank”** shall mean a credit institution, or other similar institution, registered in a country in which it does not carry out activity and which is not related to a financial group subject to supervision for the purpose of detecting and preventing money laundering or terrorist financing.

II DUTIES AND LIABILITIES OF OBLIGORS

1. Basic Duties - Article 6

An obligor shall:

1. carry out customer identification;
2. exercise thorough customer due diligence (hereinafter: customer due diligence);
3. report and provide data, information and documentation to the administration body competent for the affairs of preventing money laundering and terrorist financing (hereinafter: the competent administration body), in compliance with the provisions of this Law.
4. apply measures for preventing and detecting money laundering and terrorist financing in its registered office and organizational units outside the registered office;
5. determine a person authorized for undertaking the measures provided for by this Law and his/her deputy;
6. ensure a regular professional training and education of employees and internal control of meeting the obligations provided for by this Law;
7. compile and regularly keep up-to-date a list of indicators for identifying suspicious transactions, for which there are reasonable grounds for suspicion of money laundering or terrorist financing;
8. ensure keeping and protecting data and keeping of required records, and
9. perform other affairs and obligations provided for by this Law and regulations passed on the basis of law.

Customer Identification - Article 7

Customer identification shall be a procedure including:

1. establishment of the identity of a customer, or if the identity has been previously established, verification of the identity on the basis of reliable, independent and objective sources, and
2. gathering data on a customer, or if data have been gathered, verifying the gathered data on the basis of reliable, independent and objective sources.

Risk Analysis - Article 8

An obligor shall make risk analysis which determines the risk assessment of groups of customers or of an individual customer, business relationship, transaction or product related to the possibility of misusage for the purpose of money laundering or terrorist financing.
The analysis from paragraph 1 of this Article shall be prepared pursuant to the guidelines on risk analysis.
The guidelines from the paragraph 2 of this Article shall be determined by the competent supervisory bodies from the Article 86 of this Law, pursuant to the regulation adopted by the ministry that has jurisdiction over financial affairs (hereinafter: the Ministry).
The regulation from paragraph 3 of this Article shall determine more specific criteria for guidelines development (obligor’s size and composition, scope and type of affairs, customers, or products and the like), as well as the type of transactions for which, due to the absence of the risk of money laundering and terrorist financing, it is not necessary to carry out customer identification in the context of this Law.

Cases in which customer due diligence measures are undertaken - Article 9

An obligor shall undertake customer due diligence measures particularly in the following cases:

1. when establishing a business relationship with a customer;
2. of one or more linked transactions amounting to €15000;
3. when there is a suspicion about the accuracy or veracity of the obtained customer identification data, and

4. when there are reasonable grounds for suspicion of money laundering or terrorist financing.

If the transactions from paragraph 1 item 2 of this Article are based on an already established business relationship, an obligor shall verify the identity of the customer that carries out the transaction and gather additional data.

An organizer of special games of chances shall in carrying out the transaction from paragraph 1 item 2 of this Article verify the identity of a customer at a cash-desk and obtain the data from the Article 72 item 6 of this Law.

Also, in the context of this Law, the following shall be considered as establishing a business relationship:

1. customer registration for participating in the system of organizing games of chances at the organizers that organize games of chances on the Internet or by other telecommunication means, and
2. customer's access to the rules of managing a mutual fund at managing companies.

Activities undertaken by an obligor - Article 10

When establishing a business relationship an obligor shall apply the following measures:

1. to identify a customer and beneficial owner if the customer is a legal person:
2. to obtain and verify data on a customer, or beneficial owner, if the customer is a legal person, on the purpose and nature of a business relationship or transaction and other data pursuant to this Law, and
3. to monitor regularly the business activities that a customer undertakes with the obligor and verify their compliance with the nature of a business relationship and the usual scope and type of customer's affairs.

Customer control when establishing a business relationship - Article 11

Before the establishment of a business relationship an obligor shall apply the measures from Article 10 items 1 and 2 of this Law.

Exceptionally an obligor can apply the measures from paragraph 1 of this Article during the establishment of a business relationship with a customer if this is necessary for the establishment of a business relationship and where there is insignificant risk of money laundering or terrorist financing.

When concluding a life insurance contract obligor from Article 4 paragraph 2 item 8 of this Law can exert control over the insurance policy beneficiary after concluding the insurance contract, but not later than the time when the beneficiary according to the policy can exercise his/her rights.

Control of the customer before carrying out a transaction - Article 12

When carrying out transactions from Article 9 paragraph 1 item 2 of this Law an obligor shall apply the measures from Articles 7 and 10 items 1 and 2 of this Law before carrying out the transaction.

Transactions that do not require the application of customer due diligence measures - Article 13

Insurance companies conducting life insurance business and business units of foreign insurance companies licensed to conduct life insurance business Montenegro, founders, managers of pension funds, and legal and natural persons conducting representation and brokerage business in insurance, when entering into life insurance contracts do not need to conduct the verification of a customer when:

1. entering into life insurance contracts where an individual instalment of premium or multiple instalments of premium, payable in one calendar year, do not exceed the amount of €1,000, or where the payment of a single premium does not exceed the amount of €2,500;
2. concluding pension insurance business providing that it is:
    - insurance within which it is not possible to assign the insurance policy to a third person or to use it as security for a credit or borrowing, or
    - a conclusion of a collective insurance contract ensuring the right to a pension.

Domestic and foreign companies and business units of foreign companies that issue electronic money do not need to conduct the verification of a customer when:

1. issuing electronic money, if the single maximum value issued on the electronic data carrier, upon which it is not possible to re-deposit value, does not exceed the amount of €150, and
2. issuing and dealing with electronic money, if the total amount of value kept on the electronic data carrier, upon which it is possible to re-deposit value, and which in the current calendar year does not exceed the amount of €2,500, unless the holder of electronic money in the same calendar year cashes the amount of €1,000 or more.

An obligor does not need to conduct control over a customer to whom it provides other services or related transactions representing an insignificant risk of money laundering or terrorist financing, unless there are reasonable grounds for suspicion of money laundering or terrorist financing.

Cases representing an insignificant risk of money laundering or terrorist financing shall be more specifically regulated by a regulation of the Ministry.

2. Applying customer control measures

Establishing and verifying a natural person identity - Article 14

An obligor shall establish and verify the identity of a customer that is a natural person or of his/her legal representative, entrepreneurship, or a natural person performing activities, by checking the personal identification document of a customer in his/her presence and obtain data from Article 71 item 4 of this Law. In case the required data cannot be established on the basis of the submitted identification document, the missing data shall be obtained from other valid official document submitted by a customer.

Identity of a customer from paragraph 1 of this Article can be established on the basis of a qualified electronic certificate of a customer, issued by a certification service provider in accordance with the regulations on electronic signature and electronic business.

Within establishing and verifying the identity of a customer in the manner determined in paragraph 2 of this Article an obligor shall enter the data on a customer from the qualified electronic certificate into data records from Article 70 of this Law. The data that cannot be obtained from a qualified electronic certificate shall be obtained from the copy of the personal identification document submitted to an obligor by a customer in written or electronic form, and if it is not possible to obtain all required data in that manner, the missing data shall be obtained directly from the customer.

Certification service provider from paragraph 2 of this Article that has issued a qualified electronic certificate to a customer shall, upon an obligor's request, without delay submit the data on the manner of establishing and verifying the identity of a customer who is a holder of the qualified electronic certificate.

Establishing and verifying the identity of a customer using a qualified electronic certificate is not permitted when:

1. opening accounts at obligors from Article 4 paragraph 2 items 1 and 2 of this Law, except in the case of opening a temporary deposit account for paying in founding capital, and
2. there is suspicion of qualified electronic certificate misuse or when an obligor determines that the circumstances that have significant effect on the certification validity have changed.

If an obligor, when establishing and verifying the identity of a customer, doubts the accuracy of obtained data or veracity of documents and other business files from which the data have been obtained, he/she/it shall request a written statement from a customer.

Establishing and verifying the identity of a legal person - Article 15

An obligor shall establish and verify the identity of a customer that is a legal person and obtain the data from Article 71 item 1 of this Law by checking the original or certified copy of the document

from the Central Register of the Commercial Court (hereinafter: CRCC) or other appropriate public register, submitted by an agent on behalf of a legal person.
The document from paragraph 1 of this Article may not be older than three months of its issue date.
An obligor can establish and verify the identity of a legal person and obtain data from Article 71 item 1 of this Law by checking CRCC or other appropriate public register. On the register excerpt that has been checked an obligor shall state date and time and the name of the person that has made the check. An organization shall keep the excerpt from the register in accordance with law.
An obligor shall obtain data from Article 71 items 2, 7, 9, 10, 11, 12, 13 and 14 of this Law by checking the originals or certified copies of documents and other business files. If data cannot be determined by checking identifications and documentation, the missing data shall be obtained directly from an agent or authorized person.
If, during establishing and verifying the identity of a legal person, an obligor doubts the accuracy of the obtained data or veracity of identification and other business files from which the data have been obtained, he/she/it shall obtain a written statement from an agent or authorized person before establishing a business relationship or executing a transaction.
If a customer is a foreign legal person performing activities in Montenegro through its business unit, an obligor shall establish and verify the identity of a foreign legal person and its business unit.

Establishing and verifying the identity of the agent of a legal person - Article 16

An obligor shall establish and verify the identity of an agent and obtain data from Article 71 item 2 of this Law by checking the personal identification document of the agent in his/her presence.
If the required data cannot be determined from the personal identification document, the missing data shall be obtained from other official document submitted by the agent or authorised person.
If an obligor doubts the accuracy of the obtained data when establishing and verifying the identity of an agent, he/she/it shall require agent's written statement.

Establishing and verifying the identity of an authorised person - Article 17

If an authorised person establishes a business relationship on behalf of a customer that is a legal person, an obligor shall establish and verify the identity of an authorised person and obtain data from Article 71 item 2 of this Law by checking the personal identification document of an authorised person and in his/her presence. If the required data cannot be determined from the personal identification document, the missing data shall be obtained from other official document submitted by the authorised person.
An obligor shall obtain data from paragraph 1 of this Article on the agent on whose behalf the authorised person acts, from a certified written power of authorization, issued by the agent.
If the transaction from Article 9 paragraph 1 item 2 of this Law is executed by an authorised person on customer's behalf, an obligor shall verify the identity of the authorised person and obtain data from Article 71 item 3 of this Law on a customer that is a natural person, entrepreneurship or natural person, performing an activity.
If an obligor doubts the accuracy of the obtained data when establishing and verifying the identity of an agent, he/she/it shall obtain agent's written statement.

Special cases of establishing and verifying customer identity - Article 18

The customer's identity, pursuant to Article 7 of this Law, shall be established, or verified particularly in the following cases:

1. when a customer enters the premises where special games of chance are organized;
2. on any approach of a lessee or his/her agent, or a person he/she has authorized, to the safe deposit box.

When establishing and verifying the customer's identity pursuant to paragraph 1 of this Article an organizer of games of chance or an obligor performing the activity of safekeeping shall obtain the data from Article 71 items 6 and 8 of this Law.

3. Establishing the beneficial owner

Beneficial Owner - Article 19

In the context of this Law the following shall be considered as a beneficial owner of a business organization or legal person:

1. a natural person who indirectly or directly owns more than 25% of the shares, voting rights and other rights, on the basis of which he/she participates in the management, or owns more than a 25% share of the capital or has a dominating influence in the assets management of the business organization, and
2. a natural person that indirectly ensures or is ensuring funds to a business organization and on that basis has the right to influence significantly the decision making process of the managing body of the business organization when decisions concerning financing and business are made.

Also, a business organization, legal person, as well as an institution or other foreign legal person that is directly or indirectly a holder of at least €500,000 of shares, or capital share, shall be considered a foreign owner.

As a beneficial owner of an institution or other foreign legal person (trust, fund and the like) that receives, manages or allocates assets for certain purposes, in the context of this Law, shall be considered:

1. a natural person, that indirectly or directly controls more than 25% of a legal person's asset or of a similar foreign legal entity, and
2. a natural person, determined or determinable as a beneficiary of more than 25% of the income from property that he/she manages.

Establishment of a beneficial owner of a legal person or foreign legal entity - Article 20

An obligor shall establish the beneficial owner of a legal person or foreign legal person by obtaining data from Article 71 item 15 of this Law.

An obligor shall obtain the data from paragraph 1 of this Article by checking the original or certified copy of the documentation from the CRCC or other appropriate public register that may not be older than three months of its issue date or obtain them on the basis of the CRCC or other public register in accordance with Article 14 paragraphs 3 and 5 of this Law.

If the required data cannot be obtained in the manner determined in paragraphs 1 and 2 of this Article, an obligor shall obtain the missing data from a written statement of an agent or authorised person.

Data on beneficial owners of a legal person or similar foreign legal entity shall be verified to the extent that ensures complete and clear insight into the beneficial ownership and managing authority of a customer respecting risk-degree assessment.

4. Obtaining data on the purpose and intended nature of a business relationship or transaction - Article 21

Within the control of a customer from Article 9 paragraph 1 item 1 of this Law, an obligor shall obtain data from Article 71 items 1, 2, 4, 5, 7, 8 and 15 of this Law.

Within the control of a customer from Article 9 paragraph 1 item 2 of this Law, an obligor shall obtain data from Article 71 items 1, 2, 3, 4, 5, 9, 10, 11, 12 and 15 of this Law.

Within the control of a customer from Article 9 paragraph 1 items 3 and 4 of this Law, an obligor shall obtain data from Article 71 of this Law.

5. Monitoring business activities - Article 22

An obligor shall monitor customer's business activities, including the sources of funds the customer uses for business, in order to identify the customer more easily.

Monitoring business activities from paragraph 1 of this Article at an obligor shall particularly include the following:

1. verifying the compliance of customer's business with nature and purpose of contractual relationship;
2. monitoring and verifying the compliance of customer's business with usual scope of her/his affairs, and
3. monitoring and regular updating of documents and data on a customer, which includes conducting repeated annual control of a customer in the cases from Article 24 of this Law.

An obligor shall ensure and adjust the dynamics of undertaking measures from paragraph 1 of this Article to the risk of money laundering and terrorist financing, to which an obligor is exposed when performing certain work or when dealing with a customer.

Repeated annual control of a foreign legal person - Article 23

If a foreign legal person executes transactions from Article 9 paragraph 1 of this Law at an obligor, the obligor shall, in addition to monitoring business activities from Article 22 of this Law, conduct repeated annual control of a foreign legal person at least once a year, and not later than after the expiry of one year period since the last control of a customer.

By the way of exception to paragraph 1 of this Article an obligor shall, at least once a year, and not later than after the expiry of one year period since the last control of a customer, also conduct repeated control when the customer executing transactions from Article 9 paragraph 1 of this Law is a legal person with a registered office in Montenegro, if the foreign capital share in that legal person is at least 25%.

Repeated annual control of a customer from paragraphs 1 and 2 of this Article shall include:

875. obtaining or verifying data on the company, address and registered office;
876. obtaining data on personal name and permanent and temporary residence of an agent;
877. obtaining data on a beneficial owner, and
878. obtaining a new power of authorization from Article 17 paragraph 2 of this Law.

If the business unit of a foreign legal person executes transactions from Article 9 paragraph 1 of this Law on behalf and for the account of a foreign legal person, an obligor, when conducting repeated control of a foreign legal person, in addition to data from paragraph 3 of this Article, shall also obtain:

1. data on the address and registered office of the business unit of a foreign legal person, and
2. data on personal name and permanent residence of the agent of the foreign legal person business unit .

An obligor shall obtain the data from paragraph 3 items 1, 2 and 3 of this Article by checking the original or certified copy of the documentation from the CRCC or other appropriate public register that may not be older than three months of its issue date, or by checking the CRCC or other appropriate public register. If the required data cannot be obtained by checking the documentation, the missing data shall be obtained from the original or certified copy of documents and other business files, forwarded by a legal person upon an obligor's request, or directly from a written statement of the agent of a legal person from paragraphs 1 and 2 of this Article.

By the way of exception to paragraphs 1, 2, 3, 4 and 5 of this Article an obligor shall conduct repeated control of a foreign person from Article 29 item 1 of this Law.

6. Special types of customer verification - Article 24

Special types of customer verification in the context of this Law shall be:

1. enhanced customer verification, and
2. simplified customer verification.

Enhanced customer verification - Article 25

Enhanced customer verification, in addition to the identification from Article 7 of this Law, shall include additional measures in the following cases:

1. on entering into open account relationship with a bank or other similar credit institution, with registered office outside the EU or outside the states from the list;
2. on entering into business relationship or executing transaction from Article 9 paragraph 1 item 2 of this Law with a customer that is a politically exposed person from Article 27 of this Law, and
3. when a customer is not present during the verification process of establishing and verifying the identity.

An obligor shall apply a measure or measures of enhanced customer verification from Articles 26, 27 or 28 of this Law in the cases when he/she/it estimates, that due to the nature of a business relationship, type and manner of transaction execution, business profile of a customer or other

circumstances related to the customer, there is or there could be a risk of money laundering or terrorist financing.

Open accounts relationship of banks and credit institutions from third countries - Article 26

When establishing an open account relationship with a bank or other similar credit institution that has a registered office outside the EU or outside the states from the list, an obligor shall carry out customer identification pursuant to Article 7 of this Law and obtain the following data:

1. issue date and validity of the license for providing banking services and the name and registered office of the competent state body that issued the license;
2. description of conducting internal procedures, related to detection and prevention of money laundering and terrorist financing, and in particular, customer verification procedures, determining beneficial owners, reporting data on suspicious transactions and customers to competent bodies, records keeping, internal control and other procedures, that a bank or other similar credit institution has established in relation to preventing and detecting money laundering and terrorist financing;
3. description of systemic organization in the area of detecting and preventing money laundering and terrorist financing, applied in a third country, where a bank or other similar credit institution has a registered office or where it has been registered;
4. a written statement, that a bank or other similar credit institution in the state where it has a registered office or where it has been registered, under legal supervision and that, in compliance with legislation of that state, it shall apply appropriate regulations in the area of detecting and preventing money laundering and terrorist financing;
5. a written statement that a bank or other similar credit institution does not operate as a shell bank, and
6. a written statement that a bank or other similar credit institution has not established or it does not establish business relationships or executes transactions with shell banks.

Employed with an obligor that concludes contracts from paragraph 1 of this Article shall conduct an enhanced customer verification procedure and obtain written consent of an obligor's person in charge, before concluding the contract.

An obligor shall obtain the data from paragraph 1 of this Article from public or other available data records, or by checking documents and business files provided by a bank or other similar credit institution with a registered office outside the EU and outside the states from the list.

Politically exposed persons - Article 27

A natural person that is acting or has been acting in the last year on a distinguished public position in a state, including his/her immediate family members and close associates, shall, in the context of this Law, be considered politically exposed person, as follows:

1. presidents of states, prime ministers, ministers and their deputies or assistants, heads of administration authority and authorities of local governance units, as well as their deputies or assistants and other officials;
2. elected representatives of legislative authorities;
3. holders of the highest juridical and constitutionally judicial office;
4. members of State Auditors Institution or supreme audit institutions and central banks councils;
5. consuls, ambassadors and high officers of armed forces, and
6. members of managing and supervisory bodies of enterprises with majority state ownership.

Marital or extra-marital partner and children born in a marital or extra-marital relationship and their marital or extra-marital partners, parents, brothers and sisters shall be deemed immediate family members of the person from paragraph 1 of this Article.

A natural person that has a common profit from the asset or established business relationship or other type of close business contacts shall be deemed a close assistant of the person from paragraph 1 of this Article.

Within enhanced customer verification from paragraph 1 of this Article, in addition to identification from Article 7 of this Law, an obligor shall:

1. obtain data on funds and asset sources, that are the subject of a business relationship or transaction, from personal or other documents submitted by a customer, and if the prescribed data cannot be obtained from the submitted documents, the data shall be obtained directly from a customer's written statement;
2. obtain a written consent of the person in charge before establishing business relationship with a customer, and
3. after establishing a business relationship, monitor with special attention transactions and other business activities carried out with an institution by a politically exposed person.

An obligor shall by an internal enactment, in accordance with the guidelines of a competent supervisory authority, determine the procedure of identifying a politically exposed person.

Establishing the identity of a customer in absence - Article 28

If a customer is not present during establishing and verifying the identity, an obligor shall, within enhanced customer verification, in addition to the identification from Article 7 of this Law, undertake one or more additional measures, such as:

1. to obtain additional documents, data or information, on the basis of which he/she verifies customer identity, and
2. to verify submitted documents or obtain a certificate from a financial institution performing payment operations, that the first customer's payment has been made on the account opened with that institution.

Simplified customer verification - Article 29

Unless there are reasonable grounds for suspicion of money laundering or terrorist financing in relation to a customer or transaction from Article 9 paragraph 1 items 1 and 2 of this Law, an obligor can conduct simplified verification of a customer that is:

1. the obligor from Article 4 paragraph 2 items 1, 2, 4, 5, 6, 8 and 9 of this Law or other appropriate institution that has a registered office in the EU or in a state from the list;
2. state body or local governance body and other legal persons exercising public powers;
3. an organization whose securities are included in the trade on the organized market in the EU member states or other states where the EU standards are applied on the stock markets, and
4. the customer from Article 8 paragraph 4 of this Law to whom an insignificant risk of money laundering or terrorist financing is related.

The list of the states from paragraph 1 of this Article shall be determined by the Ministry.

Obtaining and verifying customer data - Article 30

Simplified customer verification from Article 29 of this Law shall include obtaining data when:

1. establishing a business relationship, the data on:
    - a company and the registered office of a legal person that establishes, or on whose behalf and for whose account a business relationship is being established;
    - the personal name of an agent or authorized person that establishes a business relationship for a legal person, and
    - the purpose, nature and date of establishing a business relationship;
2. executing transactions from Article 9 paragraph 1 item 2 of this Law:
    - company and the registered office of a legal person, on whose behalf and for whose account a transaction is being conducted;
    - the personal name of an agent or authorized person conducting a transaction for a legal person;
    - date and time of executing a transaction;
    - the amount of a transaction, currency and the manner of executing a transaction, and
    - the purpose of a transaction, personal name and permanent residence, or a company and registered office of a legal person whom the transaction is intended to.

An obligor shall obtain data from paragraph 1 of this Article by checking the originals or certified copies of the documentation from CRCC or other appropriate public register submitted by a customer or by direct check.
If the required data cannot be obtained in the manner from paragraph 2 of this Article, the missing data shall be obtained from the originals or certified copies of identification documents and other business files submitted by a customer, or from the written statement of an agent or authorised person.
Documentation from paragraphs 1, 2 and 3 of this Article may not be older than three months of its issue date.

Limitations for carrying on business with a customer - Article 31

An obligor may not, for a customer, open, or keep an anonymous account, a coded or bearer passbook or provide other service (banking product) that can indirectly or directly enable the concealment of a customer identity.

Prohibition of carrying on business with shell banks - Article 32

An obligor may not establish correspondent or open account relationship with a bank that operates or could operate as a shell bank or with other similar credit institution known for allowing shell banks to use its accounts.

7. Reporting obligation - Article 33

An obligor shall provide to the competent administration body data from Article 71 items 1, 2, 3, 4, 5, 9, 10, 11 and 12 on any transaction carried out in cash in the amount of €15,000 or more, immediately after, and not later than three working days since the day of execution of the transaction.
An obligor shall provide data from Article 71 of this Law to the competent administration body without delay when there are reasonable grounds for suspicion of money laundering or terrorist financing related to the transaction (regardless of the amount and type) or customer, before the execution of the transaction, and state the deadline within which the transaction is to be executed. The statement could also be provided via telephone, but it has to be sent to the competent administration body in a written form as well, not later than the following working day from the day of providing the statement.
The obligation from paragraph 2 of this Article shall refer to the reported transaction as well, regardless of whether it is executed later or not.
The manner and requirements of providing of data from paragraphs 1, 2 and 3 of this Article, and the terms under which an obligor can be absolved of the reporting obligation from paragraph 1 of this Article shall be more specifically defined by the Ministry.

8. Applying measures of detection and prevention of money laundering and terrorist financing in business units and companies with majority ownership in foreign states
Article 34

An obligor shall ensure that measures of detection and prevention of money laundering and terrorist financing, defined by this Law, are applied to the same extent both in business units or companies in majority ownership of the obligor, whose registered offices are in other state, if that is in compliance with the legal system of the concerned state.
If the regulations of a state do not prescribe the implementation of measures of detection and prevention of money laundering or terrorist financing to the same extent defined by this Law, an obligor shall immediately inform the competent administration body on that and undertake measures for removing money laundering or terrorist financing risk.

9. Designating an authorised person and his/her deputy
Performing the affairs of detecting and preventing money laundering and terrorist financing
Article 35

Obligors that have more than three employees shall designate an authorised person and his/her deputy for the affairs of detecting and preventing money laundering and terrorist financing.

At obligors that have less than four employees the affairs of detecting and preventing money laundering and terrorist financing shall be performed by a director or other authorised person.

Requirements for an authorised person - Article 36

The affairs of an authorized person from Article 35 of this Law can be performed by a person meeting the requirements determined by the general enactment on systematization of job positions, particularly including the following:

1. that he/she is permanently employed for carrying on affairs and tasks that are in accordance with the enactment on systematization organized in the manner ensuring fast, qualitative and timely performance of tasks defined by this Law and regulations passed on the basis of this Law;
2. that he/she has professional skills for performing affairs of preventing and detecting money laundering and terrorist financing and has professional competencies for obligor's operation in the areas where the risk of money laundering or terrorist financing exists, and
3. he/she has not been finally convicted of a crime act for which punishment of imprisonment longer than six months is provided for, and which makes him/her inadequate for performing affairs of prevention of money laundering and terrorist financing.

An authorised person's obligations - Article 37

An authorized person from Article 35 of this Law shall perform the following affairs of:

1. taking care for establishing, functioning and developing the system of detecting and preventing money laundering and terrorist financing;
2. taking care for proper and timely data provision to the competent administration body;
3. initiating and participating in preparing and modifying operational procedures and preparing obligors' internal enactments related to the prevention and detection of money laundering and terrorist financing;
4. cooperating in preparation of guidelines for carrying out verifications related to the prevention of money laundering and terrorist financing;
5. monitoring and coordinating obligor's activity in the area of detecting and preventing money laundering and terrorist financing;
6. cooperating in establishing and developing information technology for carrying out activities of detecting and preventing money laundering and terrorist financing;
7. make initiatives and proposals to the competent administration body or managing or other body of an obligor for the improvement of the system for detecting and preventing money laundering and terrorist financing, and
8. preparing programs of professional training and improvement of the employed at obligors in the area of detecting and preventing money laundering and terrorist financing.

An authorised person shall be directly accountable to the administration or other managing or other obligor's body, and functionally and organizationally shall be separated from other organizational parts of an obligor.

In the case of his/her absence or inability to attend to his/her duties, the authorised person shall be substituted by the person determined by a general enactment of an obligor (deputy of the authorised person).

Working conditions for an authorised person - Article 38

An obligor shall provide the authorised person particularly with the following:

1. functional connection of organizational parts with the authorised person and to regulate the manner of cooperation between organizational units and obligations and responsibilities of the employed;
2. appropriate competencies for efficient performance of tasks from Article 38 paragraph 1 of this Law;
3. appropriate material and other conditions for work;
4. appropriate spatial and technical options ensuring an appropriate degree of protecting confidential data and information he/she manages on the basis of this Law;

5. appropriate information-technical support enabling ongoing and reliable monitoring of the activities in the area of preventing money laundering and terrorist financing;
6. regular professional improvement in relation to detecting and preventing money laundering and terrorist financing, and
7. deputy during the absence from work.

Managing body in an organization shall provide the authorised person with assistance and support in performing the tasks defined by this Law and inform him/her on facts significant for detecting and preventing money laundering and terrorist financing.

An obligor shall provide the competent administration body with data on the personal name and name of the job position of the authorised person and the person that substitutes the authorised person in the case of his/her absence or inability to attend to his/her duties, as well as inform the competent administration body on any change in these data, without delay, and not later than within 15 days since the day of their change.

Professional training and improvement - Article 39

An obligor shall ensure regular professional training and improvement of employees performing affairs of detecting and preventing money laundering and terrorist financing.

An obligor shall prepare the program of professional training and improvement of persons from paragraph 1 of this Article not later than the end of the first quarter of a business year.

10. Internal control - Article 40

An obligor shall ensure regular internal control of performing affairs of detecting and preventing money laundering and terrorist financing.

The method of work of an authorised person, exercising internal control, keeping and protecting data, keeping records and the training of the employees at an obligor, lawyers, law offices and law firms (hereinafter: a lawyer), notaries, revision agencies, independent auditors or natural persons providing accounting or other similar services shall be specifically defined by the regulation of the Ministry.

III TASKS AND OBLIGATIONS OF LAWYERS AND NOTARIES

Tasks and obligations of lawyers and notaries - Article 41

A lawyer or a notary shall, in compliance with this Law, implement the measures of detecting and preventing money laundering and terrorist financing, when:

1. he/she assists in planning and executing transactions for a customer related to:
   - purchase or sale of real estates or a business organization,
   - managing money, securities or other property of a customer;
   - opening and managing a banking account, savings deposit or the account for dealing with securities;
   - collection of funds for founding, dealing with or managing a business organization, and
   - founding, dealing with or managing an institution, fund, business organization or other similar organization form.
2. he/she executes a financial transaction or transaction concerning real estate on behalf and for a customer.

Customer verification - Article 42

Within customer verification in the process of establishing the identity from Article 9 paragraph 1 items 1 and 2 of this Law, a lawyer or notary shall obtain data from Article 73 items 1, 2, 3, 4, 5, 6 and 11 of this Law.

Within customer verification in the process of establishing the identity from Article 9 paragraph 2 of this Law, a lawyer or notary shall obtain data from Article 73 items 1, 2, 3, 4, 7, 8, 9, 10 and 11 of this Law.

In the process of applying enhanced customer due diligence measures from Article 9 paragraph 1 items 3 and 4 of this Law a lawyer or notary shall obtain data from Article 73 items 12, 13 and 14 of this Law.

A lawyer or notary shall establish and verify the identity of a customer or his/her agent, or authorised person and obtain data from Article 73 items 1, 2 and 3 of this Law by checking the personal identification document of a customer in his/her presence, or the originals or certified copy of the

documentation from the CRCC or other appropriate public register, that may not be older than three months of its issue date.
A lawyer or notary shall establish the beneficial owner of a customer that is a legal person or other similar forms of organizing foreign legal persons, obtaining data from Article 72 item 4 of this Law, by checking the originals or certified copy of the documentation from the CRCC or other public register, that may not be older than a month of its issue date. If the required data cannot be obtained from register, the missing data shall be obtained by checking the originals or certified copies of documents and other business documentation submitted by the agent of a legal person or other organizational form or its authorised person.
A lawyer or notary shall obtain the missing data from Article 73 of this Law by checking the originals or certified copies of documents and other business files.
If the required data cannot be obtained in the manner from paragraphs 1, 2, 3, 4, 5 and 6 of this Article, the missing data, otherwise than data from Article 73 items 12, 13 and 14 of this Law shall be obtained directly from the customer's written statement.

Reporting on customers and transactions for which there are reasons for suspicion of money laundering and terrorist financing - Article 43

If a lawyer or a notary, when performing affairs from Article 41 item 2 of this Law, establishes that there are reasonable grounds for suspicion of money laundering or terrorist financing related to a transaction or a customer, he/she shall inform the competent administration body before the execution of a transaction and in the report he/she shall state the deadline within which the transaction is to be executed. The information can be provided via telephone, but it must be sent in written form to the competent administration body not later than the following working day after the day of informing.
The obligation from paragraph 1 of this Article shall refer to planned transactions as well, regardless of whether the transaction has been executed later, or not.
If a lawyer, law office or notary in cases from items 1 and 2 of this Article cannot provide information due to the nature of transaction, due to the fact that it has not been executed or due to other justified reasons, he/she/it shall provide data to the competent administration body as soon as possible, or as soon as he/she/it finds out that there are reasonable grounds for suspicion of money laundering or terrorist financing and substantiate the reasons for not acting in the prescribed manner from paragraphs 1 and 2 of this Article.
When a customer asks for advice on money laundering or terrorist financing, a lawyer or notary shall inform the competent administration body without delay.
A lawyer, legal firm or notary shall provide data from Article 74 of this Law to the competent administration body in the manner defined by the regulation of the Ministry.

Exceptions - Article 44

By the way of exception to Article 43 paragraphs 1 and 2 of this Law, a lawyer does not need to provide the competent administration body with data he/she obtained from a customer or data on a customer when establishing his/her legal position or representing in the proceedings conducted before court, which includes providing advice on its proposing or avoiding.
Upon the competent administration body's request for providing data from Article 49 paragraphs 1 and 2 of this Law, a lawyer shall, without delay, not later than 15 days after the day of receiving the request, in written form state the reasons for which he/she did not act in accordance with the request.
A lawyer does not need to report on cash transactions from Article 33 paragraph 1 of this Law, unless there are reasonable grounds for suspicion of money laundering or terrorist financing related to a transaction or a customer.

IV LIST OF INDICATORS FOR IDENTIFYING SUSPICIOUS CUSTOMERS AND TRANSACTIONS

Applying the list of indicators - Article 45

When establishing reasonable grounds for suspicion of money laundering or terrorist financing and other circumstances related to the suspicion, an obligor, lawyer or notary shall use list of indicators for identifying suspicious customers and transactions.

List of indicators from paragraph 1 of this Article shall be placed in the premises of obligors, lawyers or notaries.

Defining the list of indicators - Article 46

The list of indicators for identifying suspicious customers and transactions shall be defined by the Ministry on the professional basis prepared by the competent administration body in cooperation with other competent bodies.

V ADMINISTRATION BODY COMPETENCIES

Affairs and tasks of the competent body - Article 47

Administration affairs related to detecting and preventing money laundering and terrorist financing defined by this Law and other regulations shall be performed by the competent administration body.
Provision of data, information and documentation to the competent administration body from paragraph 1 of this Article shall be carried out without compensation in accordance with this Law.

Data provision upon request - Article 48

The competent administration body, after estimating that there are reasonable grounds for suspicion of money laundering or terrorist financing, can request from an obligor to provide, in particular, the following data:

1. from the records on clients and transactions, kept on the basis of Article 70 of this Law;
2. on the state of funds and other property of a certain customer at an obligor;
3. on funds and asset turnover of a certain customer at an obligor;
4. on business relationships established with an obligor, and
5. information that an obligor has obtained or kept on the basis of law.

In the request from paragraph 1 of this Article the competent administration body shall state the data that are to be provided, legal basis, the purpose of data gathering and the deadline for their provision.
The competent administration body can also require the provision of data from paragraph 1 of this Article on the persons for whom it is possible to conclude that they have cooperated or participated in transactions or on the business of persons for whom there are reasonable grounds for suspicion of money laundering or terrorist financing.
Upon the request of the competent administration body in cases from paragraphs 1 and 2 of this Article, an obligor shall provide the documentation he/she/it keeps.
The competent administration body can require from an obligor to provide data, information and documentation related to performing affairs in accordance with this Law, as well as other necessary data for monitoring the fulfilment of obligations defined by this Law.
An obligor shall provide data, information and documentation from paragraphs 1, 2, 3, 4 and 5 of this Article to the competent administration body without delay, and not later than eight days since the day of receiving the request.
The competent administration body can, due to extensive documentation or other justified reasons, upon the reasoned request of an obligor, prolong the deadline from paragraph 2 of this Article or carry out data verification at an obligor.

Request to a lawyer or notary for submitting data on suspicious transactions or persons – Article 49

If the competent administration body estimates that there are reasonable grounds for suspicion of money laundering or terrorist financing, it can request from a lawyer or notary to provide data from Article 48 of this Law necessary for detecting money laundering or terrorist financing.
The competent administration body shall state in the request the data that are to be provided, legal basis, the purpose of data gathering and the deadline for their provision.
The competent administration body can require the provision of data from paragraph 1 of this Article on the persons for whom it is possible to conclude that they have cooperated or participated in transactions or on business of persons for whom there are reasonable grounds for suspicion of money laundering or terrorist financing.
The competent administration body can require a lawyer or notary to provide data, information and documentation related to performing affairs in accordance with this Law, as well as other necessary data for monitoring the fulfilment of obligations defined by this Law.

Considering terms and manners of providing data from paragraphs 1, 2, 3 and 4 of this Law provisions from Article 48 paragraphs 6 and 7 of this Law shall be applied.

Request to a state authority or public powers holder for submitting data on suspicious transactions or persons - Article 50

If the competent administration body estimates that there are reasonable grounds for suspicion of money laundering or terrorist financing, it can require state authorities or public powers holders to provide data, information and documentation necessary for detecting money laundering or terrorist financing.

The competent administration body shall state in the request the data that are to be provided, legal basis, the purpose of data gathering and the deadline for their provision.

The competent administration body can also require the provision of data from paragraph 1 of this Article on the persons for whom it is possible to conclude that they have cooperated or participated in transactions or on business of persons for whom there are reasonable grounds for suspicion of money laundering or terrorist financing.

State authorities and public powers holders shall provide the requested data, information and documentation to the competent administration body without delay, and not later than eight days after the day of receiving the request, or enable, without compensation, direct electronic access to data and information stated in the request.

A temporary suspension of transaction order - Article 51

The competent administration body may temporarily suspend transaction by written order, within 72 hours, if it evaluates that there are reasonable grounds for suspicion of money laundering or terrorism financing, and is obliged, without delay, to notify competent bodies of it.

If due to the nature of transaction or manner of executing the transaction or other circumstances, under which the transaction has been carried out, refraining from the transaction execution is impossible, an order shall be done verbally, with exemption of paragraph 1 of this Article.

Person in charge of an obligor should make a note on receiving verbal order from the Paragraph 1 of this Article.

The competent administration body shall, without delay, provide in written form previously given verbal order.

Upon received notification of suspension of transaction, competent authorities from paragraph 1 of this Article have to act urgently in accordance with their powers and within 72 hours from the beginning of suspension of transaction

Termination of the measures for temporary suspension of transaction - Article 52

If the competent authority of the competent administration body, within 72 hours from the order on temporary suspension of transaction, evaluates that there is no reasonable suspicion on money laundering and terrorism financing, shall without delay inform the competent authorities and the obligor.

If the competent authority within 72 hours does not take measures from the Article 51 paragraph 5 of this Law, obligor shall immediately execute the transaction

Request for ongoing monitoring of customer’s financial businesses - Article 53

The competent administration body shall request, in written form, from the obligor ongoing monitoring of customer’s financial business, in relation to which there are reasonable grounds for suspicion of money laundering or terrorism financing, or other persons, for which may be concluded that he/she cooperated or participate in transactions or businesses activity to which are grounds for reasonable suspicion of money laundering or terrorism financing are related , and shall determine deadline within which is obliged to inform and to provide required data.

Obligor shall provide or inform the competent administration body on data from the paragraph 1 of this Article, before carrying out the transaction or concluding the business and in report shall state deadline estimation, within which the transaction or business should be done.

If due to the nature of transaction or business or due to other justified reasons obligor is not able to act as it is prescribed in paragraph 2 of this Article, he/she shall forward the data to the competent administration body as soon as he/she is able to do so, but not later than next working day from the

day of carrying out the transaction or concluding the business activity. The organization shall explain in the report the reasons for not acting in accordance with the provisions of paragraph 2 of this Article. Ongoing monitoring of transactions from paragraph 1 of this Article shall not be longer than 3 months and for reasonable grounds for suspicion of money laundering and terrorism financing it shall be prolonged not later than 3 months starting from the day of submitting the request from paragraph 1 of this Article.

Collecting data on the basis of the initiative - Article 54

If in relation to transaction or a person there are grounds for suspicion of money laundering, the competent administration body may on the initiative that does not come from the obligor or supervision body, and comes from the Court, State Prosecutor, Police Directorate, Competent Tax Authority, Custom Directorate, Directorate for Anti Corruption Initiative and other competent authorities, shall initiate obtaining and analyzing data , information and documentation for the reasons of detecting and preventing money laundering and terrorism financing.

Notifying on suspicious transactions - Article 55

If the competent administration body evaluates on the basis of data, information and documentation obtained in accordance with this Law, which in relation to certain transaction or certain person there are reasonable grounds for suspicion of money laundering or terrorist financing, and shall inform the competent authority in written form with necessary documentation about the reasons for suspicion.
In notification from paragraph 1 of this Article the competent administration body shall not state data on obligor and on person employed in the organization, that announced data unless there are reasonable grounds for suspicion that obligor or obligor’s employee committed criminal act of money laundering or terrorist financing, or if those data are necessary for establishing facts in criminal proceedings and if transferring those data are required, in written form, by Court.

Information on other criminal acts - Article 56

If the Administration, on the basis of data, information and documentation, obtained in accordance with this Law, evaluates that in relation to transaction or a person there are grounds for suspicion of committing other criminal acts that are prosecuted on official duty, shall provide, in written form, information to the competent authority.

Information Feedback - Article 57

After obtaining and analyzing data, information and documentation that are in relation to transactions or persons, for which there are reasonable grounds for suspicion of money laundering or terrorist financing or established facts, that may be connected with money laundering or terrorist financing, the competent administration body shall, in written form, give a notice to obligor or person that submitted the initiative, unless the competent administration body evaluates that notification may cause detrimental effects on the course and outcome of the proceeding.

International cooperation - Article 58

Before submitting personal data to the foreign competent authority for prevention of money laundering and terrorist financing, the competent administration body shall carry out a verification if the foreign competent authority to which it shall forward required data, possess arranged system for personal data protection and that used data shall be used only for required purpose, unless it is otherwise provided by the international agreement.
The competent administration body may conclude agreements on financial and intelligence data, information and documentation exchange with foreign countries competent authorities and international organizations in accordance with concluded international agreement.

Request to the competent authority of a foreign state for submitting data - Article 59

The competent administration body may request, within its jurisdiction, from the competent authority of a foreign state data, information, and documentation necessary for detection and prevention of money laundering or terrorist financing.

The competent administration body may use data, information and documentation obtained in accordance with paragraph 1 of this Article, only for purposes provided for by this Law, without previous approval of the competent authority of the foreign state from which data are obtained, may not provide or discover it to another authority, legal or natural person, or use it in purposes that are not in accordance to the conditions and limits established by commissioned competent authorities.

Providing data and information on the request of the competent authority of a foreign state - Article 60

The competent administration body can provide data, information and documentation about persons or transactions if there are reasonable grounds for suspicion of money laundering or terrorist financing on a request of competent authority of foreign state for detection and prevention of money laundering and terrorist financing, under reciprocity conditions.
The competent administration body needs not to act in accordance to the request from the paragraph 1 of this Article if:

3. on the basis of the facts and circumstances, stated in the request , evaluates that there are not enough reasons for suspicion of money laundering or terrorist financing, and,
4. providing data should jeopardize or may jeopardize the course of criminal proceeding in Montenegro or otherwise could affect interests of the proceeding.

The competent administration body shall give information in written form to the competent authority which provided request, about reasons for rejecting and shall state the reasons for rejecting.
The competent administration body may determine conditions and data usage limits from the paragraph 1 of this Article.

Self initiative data provision to the competent authority of a foreign state - Article 61

The competent administration body may self-initiatively provide data, information and documentation on a customer or transaction, for which there are reasonable grounds for suspicion of money laundering or terrorist financing, that are obtained or processed in accordance to the provisions of this Law, and may provide data to a foreign country competent authority, under reciprocity conditions.
The competent administration body, in process of self initiative data providing may prescribe conditions and limits under which a foreign competent authority for detection and prevention of money laundering or terrorism financing, may use data from paragraph 1 of this Article.

Temporary suspension of transaction on the initiative of the competent authority of foreign state Article 62

The competent administration body may, in accordance to this Law, under reciprocity conditions, and by reasoned written initiative of a foreign competent authority, by written order temporary suspend transaction within 72 hours.
The competent administration body is obliged to inform competent authorities about the order from the paragraph 1 of this Article.
The competent administration body may reject initiative of the competent authority of foreign state from the paragraph 1 of this Article, if based on the facts and circumstances, that are mentioned in the initiative, evaluate that given reasons are not sufficient grounds for reasonable suspicion of money laundering and terrorism financing, and shall inform in written form the authority that submitted the initiative and give the reasons for its rejection.

The initiative to a foreign competent authority for temporary suspension of transaction Article 63

The competent administration body may, within its jurisdiction in detection and prevention money laundering and terrorist financing, submit written initiative to a foreign competent authority for temporary suspension of transaction, if evaluate that there are sufficient grounds for reasonable suspicion of money laundering or terrorist financing.

Prevention of money laundering and terrorism financing - Article 64

The competent administration body shall have the following authorities:

1. to initiate changes and amendments to regulation related to prevention of money laundering and terrorist financing
2. to participate in consolidation of and to compile the list of indicators for identifying costumers and transactions for which there are grounds for suspicion of money laundering and terrorist financing and to submit it to persons that have duties determined by this Law;
3. To participate in training and professional improvement of authorized obligor's employees and competent state authorities.
4. to initiate publishing the list of countries that do not apply standards in the area of detection and prevention of money laundering;
5. to prepare and publish recommendation or guidelines for unique implementation of this Law and regulations enacted in accordance with this Law, at the obligors
6. To publish statistical data from the area of money laundering and terrorist financing, at least once a year and to notify the public, in an appropriate manner, on phenomenon of money laundering.

Competent administration body is obliged upon the request of the court or state prosecutor to provide available data, information and documentation from the register of transaction and persons that are necessary for the needs of case prosecution, except the information obtained on the basis of international cooperation and for which don't have approval of the competent authority of the foreign state.

Reporting to the Government - Article 65

The competent administration body shall submit a report to the Government on its work and status, at least once a year,

VI DUTIES OF THE STATE AUTHORITIES

The administration body competent for custom affairs - Article 66

The administration body competent for custom affairs shall provide data or enable electronic access, to the competent administration body, on each money, check, bearer securities, precious metals and precious stones transport across the state border, exceeding value or amount of 10.000 € or more, within 3 days from the date of transporting.

The administration body competent for custom affairs shall provide data, from paragraph 1 of this Law, to the competent administration body on transportation or attempt of money, check, bearer securities, precious metals and precious stones transportation, in value or amount lower than 10.000€ ,if in accordance with person there are reasons for suspicion of money laundering or terrorist financing.

Exchange and clearing-deposit society - Article 67

Exchange and clearing – deposit societies shall, without delay, inform in written form the competent administration body, if during carrying out activities within the scope of its business, detect facts indicating possible connection with a money laundering or terrorist financing.

A legal persons from paragraph 1 of this Article shall upon a request of the competent administration body, and in accordance with the Law, provide data, information or documentation that indicate possible connection with a money laundering or terrorist financing.

Courts, State Prosecutor and other state authorities - Article 68

For the purpose of single record keeping on money laundering and terrorist financing the Competent court, State prosecutor and other state authorities shall provide data to the competent administration body about misdemeanour and criminal offences related to money laundering and terrorist financing.

The competent state authority, from paragraph 1 of this Article, shall provide, to the competent administration body, regularly and on the request, the following information:

1. date of filing criminal charge
2. personal name, date of birth and address or company name, registered office of the company and residence of reported person
3. nature of criminal offence and place, time and manner of carrying out the activity, which has elements of a criminal offence, and

4. previous criminal offence and place, time and manner carrying out the activity, which has elements of previous criminal offence.

State prosecutor and the Competent Courts shall, at leas semi-annually, provide data, to the competent administration body, referring to:

1. personal name, date of birth and address or registered office of the company, address and residence of the reported person or the person that submitted the request for court protection within misdemeanour proceeding of the Law;
2. phase of the misdemeanour proceeding and final decree;
3. legal elements of the nature of criminal offence or misdemeanour
4. personal name, date of birth and address or company name, address and residence of the person for whom is ordered temporary request for the seizure of unlawfully acquired assets or temporary confiscation.
5. date of ordering and duration of the order on temporary request for the seizure of unlawfully acquired assets or temporary confiscation;
6. the amount of the assets or property value, referring to temporary request for the seizure of unlawfully acquired assets or temporary confiscation;
7. date of issuing the order on assets and money confiscation, and
8. the amount of confiscated assets or value of the seized property

Reporting on observations and measures taken - Article 69

The Competent state authorities shall once a year, but not later than end of January of the current year for previous year, inform the competent administration body on its observation and measures taken referring to suspicious transactions on money laundering or terrorism financing, in accordance with this Law.

VII RECORDS, SAVING AND PROTECTING DATA

70. Keeping records and contents - Obligor’s record keeping

Obligors shall:

1. keep records on customers, business relationships and transactions from Article 9 of this law;
2. keep records from Article 33 of this Law.

Contents of obligor’s records - Article 71

In records form Article 71 of this Law shall be kept and processed the following data:

1. name of the company, address, registered office of the company and personal identification number of the legal person, that establishes business relationship or executes transaction, or legal person for whom is established business relationship or executed transaction.
2. name, address of permanent residence or temporary residence, date and place of birth and tax ID number of a representative or an authorized person, that for a legal person or other juristic person conclude the business relationship or execute transaction, number, kind and name of the authority that issued the personal documents.
3. name, address of permanent residence or temporary residence, date and place of birth and tax ID number of an authorized person, which requires or executes transaction for a costumer, and number, kind and name of the competent body that issued the personal documents;
4. name, address of permanent residence or temporary residence, date and place of birth and tax ID number of natural person or tax ID number of its representative, entrepreneur or natural person carrying out activities, and that establish business relation ship or execute the transaction, or natural person, for which is established business relationship or executed transaction, and number, kind and name of the competent body that issued the personal documents;
5. name, address and personal identification number , if it is assigned, of an entrepreneur or natural person carrying out business activities;
6. name, address of permanent residence or temporary residence, date and place of birth of natural person entering the casino or accessing to the safe deposit box;
7. purpose and presumed nature of business relationship, including information on customer’s businesses

8. date of establishing business connections or date and time of entering the casino or accessing to safe deposit box;
9. date and time of executing transaction ;
10. the amount of transaction and foreign currency of transaction that is executed;
11. the purpose of transaction and name and address of permanent residence or temporary residence, registered office of the company and residence of the person to which transaction is intended;
12. method of executing the transaction;
13. data on assets and income sources, that are or will be the subject of transaction or business relationship;
14. reasons for suspicion of money laundering;
15. name, address of permanent residence or temporary residence, date and place of birth of the beneficiary owner- legal person or in case from the Article 19 paragraph 2 item 2 of this Law, data on the category of the person, on whose behalf is establishing and operating of the legal person or similar foreign legal person and
16. name of other juristic person and personal name, address of permanent residence or temporary residence, date and place of birth and tax ID number.

Contents of lawyer's or notary's records - Article 72

Lawyer or notary shall keep the following:

1. records on customers, business relationships and transactions from Article 7 of this Law, and
2. records on data from Article 43 paragraph 1 of this Law.

Contents of layer's or notary's records - Article 73

In records form Article 73 of this Law shall be kept and processed the following data:

1. name, address of permanent residence, date and place of birth of the entrepreneur and natural person, carrying out the business, or company name and registered office of the company and address and personal identification number of legal person or entrepreneur to whom lawyer or notary provides legal services;
2. name, address of permanent residence, date and place of birth of the agent, that establishes business relationship or executes transaction for the person from item 1 of this Article;
3. name, address of permanent residence, date and place of birth of the agent, that executes transaction for person from item 1 of this Article,
4. data from Article 72, item 15 of this Law in relation to legal person to whom lawyer or notary provides legal services;
5. purpose and presumed nature of business relationship, including information on customer's business
6. date of concluding business relationship
7. date of executing transaction
8. the amount of transaction and foreign currency of transaction that is executed
9. purpose of transaction and personal name and permanent residence or company name and residence of the person, to whom the transaction is intended
10. method of executing the transaction
11. data on assets and income sources, that are the subject of transaction or business relationship.
12. name, address of permanent residence or company name and residence of the person for which exists reasonable suspicion of money laundering and terrorist financing (amount, foreign currency or time period of executing transaction) and
13. data on transaction, for which there is reasonable ground for suspicion of money laundering or terrorist financing (amount, foreign currency or time period of executing transaction)
14. when there are reasonable grounds for suspicion of money laundering or terrorism financing.

Records kept by administrative body competent for custom services - Article 74

Administrative body competent for custom service shall keep the following records:

1. on reported and non reported transport of money, checks, securities, precious metals and precious stones across the state border, in amount and in value of 10.000€ or more, and
2. on transport or attempt of transport of money, checks, securities, precious metals and precious stones across the state border, in amount less than 10.000€, if there are reasons for suspicion of money laundering or terrorism financing.

Contents of the records of the administration body competent for customs services - Article 75

In records form Article 74 of this Law shall be kept and processed the following data:

1. name, address of permanent residence, date and place of birth and the nationality of the natural person, that transports or attempts to transport assets from Article 74 of this Law, across the state border.
2. company, address and the registered office of a legal person or personal name , address of permanent residence, nationality of the natural person, for whom the transport of assets from Article 74 of this Law across the state border is performed;
3. name, address of permanent residence and the nationality of the natural person, or company name, address and the registered office of the legal person to whom cash is provided;
4. the amount, currency and the type of cash transported across the state border;
5. source and purpose of using the cash transported across state border;
6. place, date and time of crossing or attempt of crossing the state border, and
7. reasons for suspicion of money laundering or terrorist financing

Additionally to data from paragraph 1 of this Article in the records from Article 74 item 2 of this Law, the data on whether the cash transfer has been reported to the administrative body competent for customs affairs shall also be kept.

Records kept by the competent administration body - Article 76

The competent administration body shall keep:

1. records on persons and transactions from Article 33 of this Law;
2. records on persons and transactions from Article 43 paragraph1 of this Law;
3. records on received initiatives from Article 54 of this Law;
4. records on notifications and information from Article 55 and 56 of this Law;
5. records on international requests from Articles 59 and 60 of this Law, and
6. records on criminal acts and misdemeanours from Article 68 of this Law.

Content of the records kept by the competent administration body - Article 77

In data records on persons and transactions from Article 33 of this Law data from Article 71 of this Law are kept and processed for the reasons of temporary suspension of transaction from Article 51 of this Law.

In data records on persons and transactions from Article 43 paragraph 1of this Law data from Article 71 of this Law are kept and processed for temporary suspension of transaction.

In data records from Article 76 item 3 of this Law, the following data are kept and processed:

1. name, date and place of birth, address of permanent residence, or company name, address and registered office of the person for which there are reasons for suspicion of money laundering and terrorist financing;
2. data on transaction, for which there are reasons for suspicion of money laundering or terrorist financing (amount, currency, date or period of the transaction execution);
3. reasons for suspicion of money laundering or terrorist financing

In records from Article 76 item 4 of this Law, following data are kept and processed

1. name, date and place of birth, address of permanent residence or company name and registered office of the person for which the competent administrative body forwarded notification or information.
2. data on transaction, for which there are reasons for suspicion of money laundering or terrorist financing (amount, currency, date or period of the transaction execution)
3. data on previous punishing;
4. data on the authority that received the notification or information.

In records from Article 76 item 5 of this Law, following data are kept and processed:

1. name, date and place of birth, address of permanent residence, or company, address and registered office of the person the request refers to.
2. the name of the state and requested authority, or of the authority that issued the request.

In records from Article 76 item 6 of this Law the following data are kept and processed:

1. name, date and place of birth, address of permanent residence, or company, address and registered office of the person for which data are provided out of the country;
2. the name of the state and name of the authority data are delivered to.

Content of the records on non-residents - Article 78

In data records from the Article 78 of this Law shall not be recorded data on personal identity number, tax ID number, for non residents, unless otherwise provided by this Law

Records on supervision bodies' access to data, information and documentation - Article 79

Obligor, lawyer or notary shall keep separate records on access of supervision bodies from Article 86 of this Law, to data, information and documentation from Article 80 of this Law.

In data records from paragraph 1 of this Article the following data are recorded:

1. name of the supervision body;
2. name of the authorized official, that checked data,
3. date and time of checking data

Obligor, lawyer or notary shall inform the competent authority, not later than 3 days from completed check, on any accession of supervision bodies, from Article 86of this Law , to data from paragraph 1 of this Article.

2. Data protection

Prohibition of giving information - Article 80

Obligors and obligor's employees, members of authorized, supervising or managing bodies, or other persons, to which were available data from Article 71 of this Law, shall not reveal to a customer or third person:

9. that data, information or documentation on the customer or the transaction, from Article 33 paragraph 2, 3 and 4, Article 43 paragraph 1, Article 48 paragraph 1, 2 and 3, Article 49 paragraph 1 and 2 of this Law, are forwarded to the competent administration body ;
10. that the competent administration body on the basis of Article 51 of this Law, temporarily suspended transaction or in accordance with that gave instructions to the obligor;
11. that the competent administration body on the basis of Article 53 of this Law demanded regular supervision of customer's financial business;
12. that against customer or third party is initiated or should be initiated investigation for the suspicion of money laundering or terrorist financing .

The information about the facts from paragraph 1 of this Article and notification on suspicious transactions or information about other offences from Articles 55 and 56 of this Law, are the official secret and designated as such, in accordance with Law.

On removing the official secret designation, from paragraph 2 of this Article shall decide the authorized person of the administration.

Prohibition of giving information from paragraph 1 of this Article shall not be applied on:

1. data, information and documentation, that are , in accordance with this Law obtained and kept by obligor, and necessary for establishing facts in criminal proceedings, and if submitting those data in written form is required or ordered by the Competent court, and
2. data from item 1 of this Article, if it is demanded by supervision body from Article 86 of this Law for the reasons of carrying out the provisions of this Law and regulations passed on the basis of this Law.

Exception to the principle of keeping confidentiality - Article 81

During the process of providing data, information and documentation to the administration, in accordance with this Law, the obligation to protect business secrecy, bank secrecy, professional and official secrecy shall not apply to obligors, an organization with public authorization, state bodies, courts, lawyers or notaries and their employees.

Obligor, lawyer or notary and their employees shall not be liable for damage caused to their customers or third persons, if they are in accordance to this Law :

5. providing data, information and documentation on their customers, to the competent administration body
6. obtaining and processing data , information and documentation on their customers
7. carrying out the administration's order on temporary suspension of transaction, and
8. carrying out the administration's request on regular monitoring of customer's financial businesses

Obligor's employees, lawyers or notaries shall not be disciplinary or criminally liable for breach of obligation of keeping data secrecy, if:

1. they are providing data, information and documentation to the competent administration body, and in accordance to provisions of this Law
2. they are processing data, information and documentation, obtained in accordance to this Law, for the evaluation of customer and transaction, for which there are reasons for suspicion of money laundering and terrorism financing.

Usage of received data - Article 82

The competent administration body, state bodies and barriers of public authorities, obligors or notaries and their employees are obliged to use data, information and documentation which they have received; only for the purposes they are provided for.

Keeping records - Article 83

Obligor shall keep records provided on the basis of Articles 9,14,15,16,17,18,19,20,21,22,23,26,27 and 30 of this Law and related documentation ten years after the termination of business relationship, executed transaction, entrance of the customer into room where special games on chance are organized or access to the safe deposit box.

Obligor shall keep data and supporting documents on authorized person and its deputy, professional trainings of employees and applying measures of internal control from Articles 35, 39 and 40 of this Law, for four years from dismissal of the authorized person and its deputy, or from completing professional training and internal control.

Lawyer or notary shall keep data provided on the basis of Article 42 paragraph 1 of this Law and related documentation ten years after the verification of client identity has been carried out

Lawyer or notary shall keep data and supporting documents on professional training of employees for four years after the training has been carried out.

Record keeping at the competent administration for custom services - Article 84

The competent administration for custom services shall keep data, from records from Article 75 of this Law, for 11 years from date of obtaining data and after the expiration date will be destroyed.

Record keeping in competent administration body - Article 85

The competent administration body shall keep data and information from records, kept in accordance to the provisions of this Law, for 11 years from date of obtaining and after expiration date will be destroyed.

The competent administration body shall not inform a person on information and data that it posses and which refers to that person, before the expiration of 10 years from the date of obtaining data.

The person referred to in paragraph 2 of this Article shall have the right to check its personal data after the expiration of 10 years from the date of obtaining data.

VIII Supervision - Article 86

Supervision of implementation of this Law and regulations passed on the basis of this Law, within established jurisdiction, is carried out by:

1. The Central bank of Montenegro in relation to obligors from Article 4 paragraph 1 items 1, 2, 3,10 and 13;
2. The Agency for Telecommunication and Postal Services in relation to obligors from Article 4 paragraph 1 item 4;
3. The Securities Commission in relation to obligors from Article 4 paragraph 1 items 5,6 and 7;
4. The Insurance Supervision Agency in relation to obligors from Article 4 paragraph 1 item 8;

5. The administration body competent for game of chance, through authorized official in accordance with the Law that defines inspection control in relation to obligors from Article 4 paragraph 1 item 9;
6. The Tax authority in relation to obligors from Article 4 paragraph 1 item 11;
7. The Ministry competent for financial affairs in relation to obligors, from Article 4 paragraph 1 item 12, and
8. The administration body competent for prevention of money laundering and terrorist financing through authorized official, in accordance with the Law that defines inspection control in relation to obligors from Article 4 paragraph 1 items 14 and 15.

Article 87

If an authorized official of the competent administration body for prevention of money laundering and terrorist financing, in procedure of inspection control of the obligor, discover reasonable grounds for suspicion of committing criminal offence of money laundering or terrorist financing, or another criminal offence from Article 56 of this Law, can take documentation from obligor and deliver it to the competent administration body

Article 88

If the competent administration body for prevention of money laundering and terrorist financing, in the procedure of processing the case, discover reasonable grounds for suspicion of committing criminal offence from Article 56 of this Law, shall provide data, information and other documentation, which implies criminal offence, to other competent bodies.

Article 89

Bodies from Article 86 of this law shall inform the competent administration body on measures taken in process of supervising in accordance with this Law, and within 8 days from the date on which the measures were taken.

The competent administration body keeps records on measures and bodies from paragraph 1 of this Article.

Article 90

On submitted request on commencing procedure for the reasons of acting contrary to the propositions of this Law, the competent administrative body shall inform competent supervising body or The Bar Association in case when the request has been submitted against the lawyer.

IX Misdemeanour procedure - Article 91

Actions of first instance misdemeanour procedure, within jurisdiction of competent administration body, performs authorized official for proceeding misdemeanour procedure, in accordance with Law.

X Penalty provisions - Article 92

A legal person will be punished for misdemeanour with cash penalty in amount ranging from fifty-fold to tree hundred –fold from the minimum monthly wages in Montenegro if:

1. doesn't draft risk analysis or does not determine risk evaluation of a group or kind of a client, business relationship, transaction or product (Article 8);
2. does not conduct client verification (Article 9 paragraph 1, 2 and 3 and Article 14 paragraph 3);
3. make business relationship with a customer, and previously does not carry out defined measures (Article 11 paragraph 1)
4. does not execute the transaction without carrying out defined measures (Article 12);
5. does not establish and verify legal person's identity or its legal representative, entrepreneur or natural person that is carrying out activities, legal person, agent of legal person , authorized person and beneficiary owner of the legal person or other foreign legal person , or does not obtain prescribed data or does not provide them in prescribed manner or does not provide it as it is prescribed or does not provide verified written copy of approval for representing (Articles 14,15,16,17 and 20);
6. does not establish and verify costumer identity by usage of the qualified certificate in improper way (Article 14 paragraph 5);

7. does not establish and verify customer's identity during its entrance in rooms for special games of chance or during each customer's approach to the safe deposit box or does not provide prescribed data or does not obtain it as it is prescribed (Article 19);
8. does not obtained data on purpose or planed nature of the business relationship or transaction, or does not obtain all required data(Article 21);
9. does not carry out prescribed measures of identification or does not additionally obtain data, information and documentation in process of establishing open account relationship with the bank or other similar credit organization with address out of the EU or out of the states from the list, in accordance with Article 26 paragraph 1 or does not obtain them in a prescribed manner(Article 26 paragraphs 1 and 3);
10. during establishing business relationship or executing the transaction for costumer, that is politically exposed person , does not obtain data on funds sources, that are or will be the subject of business relationship or transaction, or does not obtain them in prescribed manner(Article27 paragraph 4 item 1);
11. within enhanced costumer verification, where costumer has not been present for establishing and verifying his/her identity, including measures from Article 7, does not apply one or more additional measures from Article 28 of this Law;
12. make a simplified costumer verification despite the fact that in relation to the costumer or transaction there are open account relationships with bank or other similar credit institution with address out of the EU or out of the states from the list and obligor does not act in accordance with Article 26 paragraph 2 of this Law (Article 29);
13. within simplified costumer verification does not obtain prescribed data, on costumer, in the prescribed manner (Article30);
14. opens, issues or keeps for them anonymous accounts, coded passbooks or passbooks on bearer, or carries out other services (banking products) that directly or indirectly enables hiding customer identity (Article 31);
15. establish business extends correspondent or open account relationships with bank , that have or could have business as shell bank or with other similar credit organization that is known as bank that allows to the shell banks to use its accounts (Article 32);
16. does not provide prescribed data to the competent administration body, within deadline determined by the Law, when there is reasonable suspicion of money laundering or terrorist financing in relation to the transaction or announced transaction or costumer (Article 33 paragraphs 2 and 3);
17. does not provide, within deadline and in the prescribed manner established by the Law, to the competent administration body required data, information and documentation, when in relation to the transaction or a person there is reasonable suspicion of money laundering or terrorist financing(Article 48);
18. acts contrary to the provisions of Article 51 and 62 paragraph 1 of this Law;
19. does not act in relation to the request of the competent administration on current monitoring of financial business activities of certain customer (Article 53 paragraph 1, 2 and 3).

The person in charge of a legal entity and natural person shall be punished by fine in the amount from five-fold to twenty -fold minimum wages in Montenegro for committing misdemeanour from paragraph 1 of this Article.

An entrepreneur shall be punished by fine in the amount from ten-fold to fifty-fold minimum monthly wages in Montenegro for committing misdemeanour from paragraph 1 of this Article.

Article 93

A legal person shall be punished by fine in amount from fifty-fold to two hundred fold minimum monthly wages for misdemeanour, if :

1. does not carry out costumer identification (Article7);
2. in its internal acts does not define procedures of carrying out measures from Article7 of this Law;
3. does not require a written statement from customer, agent, authorized person or other foreign person's agent (Article 14 paragraph 6, Article 15 paragraph 5, Article16 paragraph 2 and Article 17 paragraph 4);

4. does not monitor customer's business activities (Article 22 paragraph 1);
5. does not carry out revised annual control of the foreign legal person or does not obtain prescribed data or does not obtain data in prescribed manner (Article 23);
6. in the process of establishment the open account relationship with bank or other similar credit institution with address out of the EU or out of the states from the list does not obtain all necessary data, information and documentation in accordance with Article 26 paragraph 1 (Article 26);
7. After establishing business relationship with customer, politically exposed person, does not monitor transactions with a special attention and other business activities that costumer carries out with those organizations (Article 27 paragraph 4 item3);
8. in internal acts does not define procedures of politically exposed persons identification (Article 27 paragraph 5);
9. establish business relationship in client's absence contrary to the provisions of Article 28 of this Law;
10. does not provide to the competent administration body, within deadline established by the Law, prescribed data on transaction , that is executed in cash and exceed €15.000 (Article 33 paragraph 1);
11. does not secure carrying out measures of detecting and prevention of money laundering and terrorist financing, defined by this Law, in its business units or majority holding company , which have residence in a foreign country (Article 34 paragraph 1);
12. does not determine authorized person and its deputy, for carrying out business and tasks of detecting and preventing money laundering and terrorist financing (Article 35 paragraph 1);
13. does not secure relevant conditions to the authorized person, from Article 38 of this Law;
14. does not keep records and documentation in accordance with Article 83 of this Law;

The person in charge of a legal entity and a natural person shall be punished by fine in the amount from five-fold to ten-fold minimum monthly wages in Montenegro for committing misdemeanour from paragraph 1 of this Article.

An entrepreneur shall be punished by fine in the amount from ten-fold to twenty-fold minimum monthly wage in Montenegro for committing misdemeanour from paragraph 1 of this Article.

Article 94

A legal person shall be punished by fine in amount from twenty-fold to one hundred fold minimum monthly wages in Montenegro for committing misdemeanour, if

1. he/she does not monitor costumer business activities in accordance with Article 22 paragraph 2;
2. he/she does not inform the competent authorized body and does not take proper measures for eliminating risks of money laundering or terrorist financing (Article 34 item2);
3. he/she does not provide that activities of an authorized person carries out person that fulfils prescribed conditions (Article 36);
4. he/she does not deliver, to the competent authority within prescribed deadline , data on personal name and working position of the authorized person and its deputy and information on any change of those data (Article 38 paragraph 3);
5. he/she does not provide regular professional training and advanced training for employees, that carry out activities of detecting and preventing money laundering and terrorist financing in accordance with this Law (Article 39 paragraph 1);
6. he/she does not prepare program for regular professional training and advanced training for detecting and preventing money laundering and terrorist financing, within prescribed deadline (Article 39 paragraph 2);
7. he/she does not provide regular internal control of carrying out activities for detecting and preventing money laundering and terrorist financing in accordance with this Law (Article 40);
8. he/she does not use the indicator list from Article 45 paragraph 1, when there are reasonable grounds for suspicion of money laundering and terrorist financing and other related circumstances;

9. he/she does not keep records and documentation on agent and its deputy, advanced training of employees and carrying out measures of internal control from Articles 35, 39 and 40 of this Law, four years from discharging authorized representative and its deputy, carrying out advanced training and internal control (Article 83 paragraph2).

The person in charge of a legal entity and a natural person shall be punished by fine in the amount from four-fold to ten – fold minimum monthly wages in Montenegro for committing misdemeanour from paragraph 1 of this Article.

An entrepreneur shall be punished by fine in the amount from ten-fold to fifteen -fold minimum monthly wages in Montenegro for committing misdemeanour from paragraph 1 of this Article

Article 95

The person registered for qualified electronic certificate shall be punished by fine in the amount from sixty-fold to tree hundred – fold minimum monthly wages in Montenegro for committing misdemeanour from paragraph 1 of this Article, if on obligor's request does not provide a copy of personal documents and other documents , on which basis is identified and verified costumer's identity (Article 14 paragraph 4)

The person in charge of the person registered for the qualified electronic certificate shall be punished by fine in the amount from five-fold to ten – fold minimum monthly wages in Montenegro for committing misdemeanour from paragraph 1 of this Article.

Article 96

A legal person shall be punished by fine in amount from sixty-fold to tree hundred fold minimum monthly wages in Montenegro for misdemeanour, if

1. he/she does not obtain data on purpose or planed nature of the business relationship or transaction, or does not provide all required data (Article 21);
2. he/she within costumer verification, does not provide all prescribed data in accordance with this Law (Article 42 paragraph 1, 2 and 3of this Law);
3. he/she does not identify and verify costumer or its agent, authorized person or if does not obtain prescribed data in prescribed manner (Article 42 paragraph 4, 6 and 7);
4. he/she does not provide, within prescribed deadline and in a prescribed manner, to the competent administration body prescribed data related to transaction or intended transaction or certain person for which there are reasonable grounds for suspicion of money laundering and terrorist financing (Article 43 paragraph 1, 2 and 3);
5. he/she does not inform the competent administration body that costumer asked for advice for money laundering and terrorist financing (Article 43 paragraph 4);
6. he/she does not inform the competent administration body on cash transaction from Article 33 paragraph 1 of this Law, when in relation to the transaction or costumer there are reasonable grounds for suspicion of money laundering or terrorist financing (Article 44 paragraph 3);
7. he/she does not appoint authorized person or its agent for of certain tasks of detecting and preventing money laundering or terrorist financing, provided by this Law and regulations passed on the basis of this Law (Article 35 in relation to Article 41 paragraph 1);
8. he/she does provide to authorized person appropriate authorization, conditions and help for carrying out its activities and tasks (Article 38 paragraph 1 and 2 in relation to Article 41 paragraph 1);
9. he/she does not identify a beneficiary owner of a costumer that is legal person or other similar forms of organizing legal persons, or does not obtain prescribed data or does not obtain it in the prescribed manner (Article 42 paragraph 5 and 7);
10. he/she does not provide, within prescribed deadline and in a proper manner, to the competent administration body dada, information and documentation from Article 49 paragraph 4 of this Law;
11. he/she does not provide that activities of authorized person and its deputy carries out authorized person that fulfils prescribed conditions (Article 36 in relation to Article 41 paragraph 1);

12. he/she does not provide, to the competent authority, data on personal name and working position of the authorized person and its deputy and information on any change of those data (Article 38 paragraph 3 in relation to Article 41 paragraph 1);
13. he/she does not provide regular professional training and advanced training for employees, that carry out activities of detecting and preventing money laundering and terrorist financing in accordance with this Law (Article 39 paragraph 1 in relation to Article 41 paragraph 1);
14. he/she does not prepare program for regular professional training and advanced training for detecting and preventing money laundering and terrorist financing within prescribed deadline (Article 39 paragraph 2 in relation to Article 41paragraph 1);
15. he/she does not provide regular internal control on carrying out activities for detecting and preventing money laundering and terrorist financing in accordance with this Law (Article 40 in relation to Article 41 paragraph 1);
16. he/she does not provide to the competent administrative body reasons for not acting in accordance with its request or does not provide it within prescribed deadline (Article 44 paragraph 2);
17. he/she does not use the indicator list, from Article 45 paragraph 1, in establishing reasonable suspicion of money laundering and terrorist financing and other related circumstances;
18. he/she does not keep records, provided on the basis of Article 42 paragraph 1 of this Law, and related documentation within 10 years after identifying and verifying costumer's identity (Article 83 paragraph 3);
19. he/she does not keep records on employees advanced training, within 4 years after finishing the training (Article 83 paragraph 4).

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 97

The regulations for implementation of this Law shall be passed within six months as of the affective date of this Law.

Until enacting regulations from paragraph 1 of this Article shall be implemented regulations enacted on the basis of the Law on the Prevention of Money Laundering ("Official Gazette of the Republic of Montenegro", No. 55/03, 58/03 and 17/05) if it is not in defiance of this Law.

Article 98

Obligors shall harmonize its business activities with the provisions of this Law within six months as of the effective date of the regulations from Article 97 of this Law

Article 99

Procedures started in accordance with the Law on the Prevention of Money Laundering ("Official Gazette of the Republic of Montenegro", No. 55/03, 58/03 and 17/05) shall be continued in accordance with the provisions of this Law , if it is more favourable for party in misdemeanour procedure.

Article 100

On the effective date of this Law shall case to exist the Law on the Prevention of Money Laundering and terrorist financing ("Official Gazette of the Republic of Montenegro", No. 55/03, 58/03 and 17/05).

Article 101

This Law shall come into effect eight days upon publishing in the "Official Gazette of Montenegro".

ANNEX IV Book of Rules, reporting cash transactions

Pursuant to Article 13 Paragraph 4 of the Law on the Prevention of Money Laundering and Terrorist Financing ("Official Gazette of the Republic of Montenegro", no. 55/03, 58/03 and 17/05), the Ministry of Finance hereby issues

BOOK OF RULES

ON THE MANNER OF REPORTING CASH TRANSACTIONS WITH THE VALUE EXCEEDING 15,000 EUROS AND SUSPICIOUS TRANSACTIONS TO THE ADMINISTRATION FOR THE PREVENTION OF MONEY LAUNDERING

("Official Gazette of the Republic of Montenegro", no. 55/05 from 5th October 2005)

I. Basic provision

1.1.1 Article 1

The organizations, referred to in Article 3 of the Law on the Prevention of Money Laundering and Terrorist Financing (hereinafter referred to as Law), which are:

1. banks and financial institutions;
2. organizations performing payment transactions;
3. post offices;
4. investment funds, pension funds and other participants on the capital market;
5. stock exchanges and stock exchange intermediaries;
6. insurance companies;
7. humanitarian, NGOs and other non-profit organizations;
8. gambling houses and other organizers of games of chance;
9. exchange offices;
10. pawnbroker offices;
11. business organizations, entrepreneurs and individuals engaged in a trade or business of:
    - sale and purchase of claims;
    - factoring;
    - managing the property of third persons;
    - issuing and performing operations with debit and credit cards;
    - leasing;
    - travel organizations;
    - trade in real estate;
    - safekeeping;
    - trade in precious metals and precious stones and products made from these materials;
    - issuing guarantees and other warrants;
    - crediting and credit agencies;
    - offering loans and brokering in the negotiation of loan deals;
    - brokering in the sale of insurance policies;
    - organization and execution of auctions;
    - trading with works of art;
    - sale of automobiles;
    - sale of boats; and
    - other activities in connection with similar transactions of using money or other property

shall forward to the Administration for the Prevention of Money Laundering (hereinafter referred to as Administration) information on each cash transaction exceeding EUR 15,000, and several connected transactions exceeding EUR 15,000.

Data from Paragraph 1 of this Article shall be forwarded using the Reporting Forms printed together with the present Book of Rules and shall become attachment thereto. The Forms are as follows:
Reporting Form 01 for BANKS
Reporting Form 02 for STOCK EXCHANGES
Reporting Form 03 for BROKERS & FUNDS
Reporting Form 04 for CENTRAL DEPOSITARY AGENCY (CDA)
Reporting Form 05 for MERCHANTS AND INTERMEDIARIES
Reporting Form 06 for OTHER REPORTING ENTITIES.
Reporting Form for Customs

Reporting Rules

1.1.2 Article 2

Information referred in Article 1, Paragraph 1 of this Book of Rules shall be forwarded in the following manner;

1) fax
2) registered mail
3) personal delivery or courier
4) floppy disks or CD ROMS, secure email in a format prescribed and approved in advance by the Administration.

III TRANSITIONAL AND CLOSING PROVISIONS

Article 3

The Book of Rules on the manner of reporting transactions with the value exceeding 15,000 Euros and suspicious transactions to the Administration for the Prevention of Money Laundering (''Official Gazette of the Republic of Montenegro'', no.41/04) ceased to be applicable on the day of entering into force of this Book of Rules.

Article 4

This Book of Rules enters into force on the eighth day after the day of its publishing in the ''Official Gazette of the Republic of Montenegro''.

ANNEX V Book of Rules, Compliance Officer

Pursuant to Article 45 of the Law on the Prevention of Money Laundering ("Official Gazette of the Republic of Montenegro", no. 55/03), the Administration for the Prevention of Money Laundering hereby issues the following:

BOOK OF RULES

ON THE MANNER OF WORK OF THE COMPLIANCE OFFICER, THE MANNER OF CONDUCTING INTERNAL CONTROL, KEEPING AND PROTECTING DATA, THE MANNER OF RECORDKEEPING AND TRAINING OF EMPLOYEES

Basic Provisions

Article 1

This Book of Rules prescribes into more details the manner of work of the compliance officer, the manner of conducting internal control, keeping and protecting data, the manner of record keeping and training of employees in the organizations, lawyers, law firms, audit companies, independent auditors and legal entities or individuals performing accountancy or other similar services. (hereinafter referred to as: obligors)

I. The manner of work of the compliance officer

Article 2

Authorized body of the obligor should appoint the compliance officer, and when needed his deputies, that shall have duty and responsibility for conducting the activities of the detection and the prevention of money laundering at the obligors.

The authorized body referred to in Paragraph 1 above should appoint the compliance officer and his deputies among the persons who are authorized to issue orders for implementation of the procedures and have appropriate qualifications, knowledge and experience.

Article 3

For the purpose of creating work conditions for the compliance officer, the authorized body of the obligor should enable the following through the internal acts:

- the compliance officer should have access to all data, information and documentation he needs to conduct his work;
- technical and other conditions for conducting orders of the compliance officer;
- professional training of the compliance officer and his deputies regarding the detection and the prevention of money laundering;
- assistance and support to the compliance officer by the departments and employees in the organization regarding the detection and the prevention of money laundering;
- that in case the compliance officer is absent, he is replaced by one or several of his deputies.

Obligors with the large number of employees or large scope of business transactions should enable that the only working responsibility of the compliance officer is to conduct activities of the detection and the prevention of money laundering.

Article 4

The compliance officer in the course of conducting his work:

- shall prepare a written compliance plan that shall contain procedures intended to the employees for the purpose of detecting and preventing money laundering;
- shall prepare written procedures to ensure accurate and timely reporting to the Administration for the Prevention of Money Laundering (hereinafter referred to as: Administration) on transactions exceeding 15,000 Euros and in all cases where the grounds for suspicion of money laundering exist;
- shall respond to all requests and inquiries of the Administration;

- shall take care on the implementation of the compliance plan and the approved procedures;
- shall ensure that requests from the Administration to suspend transactions are fulfilled;
- shall organize annual, and when needed more frequent, training of employees for the purpose of detecting and preventing money laundering;
- shall prepare annual report in accordance with Article 7 of this Book of Rules.

Article 5

Employees shall provide to the compliance officer data and information related to the detection and the prevention of money laundering in written form, and exceptionally due to the urgency matter, they could be provided orally.

The compliance officer should review and evaluate all data filed and decide on further actions.

Upon reviewing the data from Paragraph 1 above, the compliance officer should provide data and the attached documentation to the Administration in the prescribed manner.

In case the compliance officer estimates that data from Paragraph 1 above are not important for the detection of money laundering, he shall take official note explaining the reason for such an estimate.

Article 6

The compliance officer should check and test the implementation of the compliance plan and the approved procedures periodically, but at least quarterly, using the method of chance sample or in another appropriate way.

The compliance officer shall make the report on the results of checking and testing from Paragraph 1 above proposing the measures to be taken and shall submit it to the authorized body of the obligor.

The compliance officer should also submit the report from Paragraph 2 above to the Administration.

Article 7

The compliance officer should submit the report on the anti-money laundering activities to the authorized body of the obligor at least once a year, and more frequently when needed.

The report referred to in Paragraph 1 above should contain particularly the data on the:

- total number of reports filed with the Administration on cash transactions exceeding 15.000 Euros;
- total number of suspicious transaction reports filed;
- total number of suspicious transactions identified by employees of the organization and based on the compliance officer review not reported to Administration;
- total number of transactions suspended;
- newly identified money laundering manners and techniques with the measures proposed for identifying and detecting them;
- actions taken to address deficiencies identified while implementing procedures and practices for the suspicious transaction identification;
- results of training provided to employees listing dates of training, topics presented, along with the names of those attending the training;
- measures proposed to improve the policies and the procedures for suspicious transactions detection and prevention.

The report referred to in Paragraph 2 above shall be provided to the Administration upon being approved by the authorized body of the obligor.

II. The manner of conducting internal control

Article 8

Authorized body of the obligor should clearly define the following in the compliance plan:

- procedures and practices for suspicious transactions identification;
- duties and responsibilities of the compliance officer and other persons;
- establishment of the internal control system;

- manner and procedure of testing implementation of the procedures for detecting and preventing money laundering;
- permanent training regime for the employees.

Obligors should establish and develop special compliance plans through written anti-money laundering rules and procedures.

Article 9

Through the internal control system, the obligor should on the regular basis monitor and assess adequacy of policies and procedures and whether they are harmonized with the legal provisions and regulations.

While monitoring implementation of the internal procedures, it should be particularly determined whether the employees with the obligor comply with the reporting requirements of transactions exceeding 15.000 Euros and suspicious transactions, and whether the approved policies and procedures are harmonized with the Law on the Prevention of Money Laundering (hereinafter referred to as: Law) and the regulations issued on the basis of it.

Article 10

Through the process of testing implementation of the procedures for detecting and preventing money laundering, the obligor should evaluate:

- to what extent the employees know the Law and regulations and are able to identify suspicious transactions;
- whether work activities are harmonized with the procedures approved;
- whether the Administration was reported to timely on all transactions in accordance with the Law and the regulations issued on the basis of it;
- whether data, information and documentation collected in accordance with the Law are treated in the prescribed manner;
- need for additional training;
- other relevant actions.

III. Keeping and protecting data

Article 11

Authorized body of the obligor should issue special rules on keeping data and information on transactions compiled while implementing the Law and prescribe that documentation related to suspicious transactions, including all attached documents, should be marked as "business secret", "confidential" or "strictly confidential".

Rules referred to in Paragraph 1 above should also prescribe the manner of keeping data on the professional training of employees with the aim to detect and prevent money laundering.

Rules should determine such a manner of keeping data, which enables access to data until the time prescribed for keeping them expires.

Article 12

Obligors should keep data, information and documentation on transactions or persons in relation to which there is a reason for the grounds of suspicion of money laundering, in a locked iron safe deposit box-vault, separated from other documentation.

Rules referred to in Article 11 should determine persons who, besides the compliance officer and the person who in accordance with the Law have insight into data, information and documentation, have access to the documentation, the manner of approving requests and time frame for insight into the documentation.

Article 13

Obligors shall inform the Administration about each insight into the documentation in written form immediately, and within three days at the latest from the day of insight into data occurred.

IV. The manner of recordkeeping

Article 14

Obligor keeps data on persons and transactions prescribed by the Law in the book of records or in electronic form (hereinafter referred to as: records).

Data are input into the records by the person assigned for that, in a chronological order, neatly and accurately.

Article 15

All necessary and available data are input into the records.

In case the records are kept in the book of records, data should be written in such a way that wrong words or part of the text are crossed out so that the previous text remains readable, while the new text is written above the crossed out text so that it is readable.

In case the records are kept in electronic form, data should be input in the manner which provides permanent keeping of all data changed and the possibility for them to be used later.

Article 16

Obligors should keep separate records on persons who in accordance with the Law and this Book of Rules conduct insight into data, information and documentation, including the judiciary and the state bodies.

Data on the name of body that requested the data, reasons for which insight into the documentation was conducted, the person who has had insight into the data and the date and time of the access to the data should be recorded in the records referred to in Paragraph 1 above.

Article 17

Records on professional training of obligor's employees, besides the data on persons who attended the training, should also include evidence of their participation in the seminars or other types of training organized by the employer, professional association, the Administration or other specialized bodies or organizations in the country or abroad.

V. Professional training

Article 18

Obligors should take care on permanent training of employees who are included in the compliance plan.

The training should include at least the following topics:

- legal obligations of the obligor, as well as obligations from other regulations;
- program, policies and procedures of the obligor;
- danger from money laundering and risks for the obligors and personal responsibility of the employees;
- possibilities and weaknesses of the obligor in the prevention of money laundering;
- presentation of the new forms of money laundering;
- identification of suspicious transactions through the list of indicators;
- internal controls system;
- internal audit system.

Obligors should adjust the time frame and the training topics to the real needs of their industries for the purpose of timely harmonization with the new requests, introduction of the new forms and preservation of the knowledge and experience already gained by their employees.

While deciding on the needs, type and scope of training, the authorized body shall take into consideration whether it is for the new employees, or employees who have direct contact with the clients, or those who work with the new clients, etc.

Article 19

For the purpose of easier identification of transactions and persons with the reason for the grounds of suspicion of money laundering, each obligor should prepare a list of indicators for the scope of his industry and provide it to the employees involved in the compliance plan.

Article 20

In the process of developing the list of indicators, the compliance officer of the obligor should initiate that the employees pay particular attention to economically and legally illogic aspects of the transactions, unusual manner of doing business or behavior of the client in the environment related to the status or the characteristics of the client.

Obligor who in the course of conducting his activities establishes long term business cooperation with the client should prepare the procedures "know your customer and his business operations".

Obligor referred to in Paragraph 2 above should ensure through the training program that all employees understand thoroughly the necessity and the need to implement “know your customer” policy as successfully as possible.

Article 21

After publishing the initial list of indicators and in accordance with the experience and the submitted proposals, the Administration shall also keep publishing the updated lists of indicators adjusted to the new forms of money laundering.

Obligors may propose new indicators from their areas of activity and initiate that the Administration publishes them.

The Administration shall compile and publish a list of suspicious transaction indicators. The Administration shall mandate the obligors to include indicators with the following characteristics in any lists developed:

- -unusual structure or amount;
- -without clear financial purpose;
- -inconsistent with client’s financial condition or operations;
- -involves a transaction originating or passing through any jurisdictions that do not apply acceptable standards of money laundering prevention and detection.

The list of indicators shall be published on the Administration web site and be available to all obligors.

Article 22

In order to increase professional capabilities and efficiency of the employees, obligors should create the manual which would include all regulations which prescribe money laundering detection and prevention.

VI. Closing provision

Article 23

This Book of Rules shall become effective on the 8th day after it is published in the “Official Gazette of Republic of Montenegro”.

No. 01-234/2/04
Podgorica, October 6, 2004
ADMINISTRATION
FOR THE PREVENTION OF MONEY LAUNDERING

Director
mr Predrag Mitrovic

ANNEX VI Law on Non Governmental Organisations

Law on Non Governmental Organizations

The Law is published in the «Official Gazette of the Republic of Montenegro» No.27/99, 30/2002 and 11/2007

General Provisions
The Scope of the Law
Article 1

This Law shall regulate the procedure of founding, registering, operating, joining and cessation of non-governmental organizations.

The term non-governmental organizations in this Law encompasses non-governmental associations and non-governmental foundations.

Non-Governmental Association
Article 2

A non-governmental association (hereinafter: association) is a not-for-profit membership organization which can be established by the domestic and foreign natural or legal persons for the purpose of accomplishing individual or common interests, or for the purpose of accomplishing and promoting public interests.

Non-Governmental Foundation
Article 3

A non-governmental foundation (hereinafter: foundation) is a not-for-profit organization without members which can be established by a domestic or foreign natural and legal persons (hereinafter: persons), intended to manage certain property for the accomplishment of public benefit goals.

A foundation may also be established by a will.

Foreign Non-Governmental Organization
Article 4

A foreign non-governmental organization may operate in the Republic of Montenegro under the conditions set forth in this Law.

The Application of the Law
Article 5

The provisions of this Law shall 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 organizations which are established by separate laws.

Disclosure Requirement
Article 6

The work of non-governmental organizations shall be public.

The Duration
Article 7

A non-governmental organization shall be established for a limited or unlimited period of time.

Membership in Umbrella Non-Governmental Organizations
Article 8

A non-governmental organization may collaborate or become a member of a foreign or domestic umbrella organization.

Rules of registration set forth in this Law shall also apply to registration of umbrella organizations.

PART II
The Establishment
The Founders
Article 9

An association may be established by at least five persons who have their domicile, residence or place of business in the Republic of Montenegro.

A foundation may be established by at least single person regardless of his/her/its domicile, residence or place of business.

If a foundation is established by more than one person, they shall exercise their rights jointly, unless otherwise provided in the Memorandum of Incorporation.

The Memorandum of Incorporation

Article 10

A non-governmental organization shall be founded by a Memorandum of Incorporation. The Memorandum shall contain: the name(s) and address(es) of the founders, the goal(s) of the organization, the duration of the organization, and the name(s) and address(es) of the person(s) authorized to represent the organization.

In addition to the information set forth in Paragraph 1, the Memorandum of Incorporation of the foundation shall contain the name(s) of the president and the members of the managing board and information on the initial asset.

If a foundation is established by a will, it shall contain the information pertinent to the founding and entry into the register, or information on the person authorized to undertake the measures regarding the founding and registration of the foundation.

The By-laws

Article 11

A non-governmental organization shall have By-laws.

The By-laws shall have provisions with respect to the name and the seat of the organization, the internal structure of the organization, the organs of management and supervision of the organization, the goals and activities of the organization, the methods of financing, liquidation and the distribution of assets, and other provisions pertinent to the activities of the organization.

Protection of the name and the logo

Article 12

The name and the logo of a non-governmental organization must be distinguished from the name and the logo of another registered non-governmental organization.

An organization may also have its name registered in one or more foreign languages in such a way that name in official language must be registered first.

PART III

The Register of Non Governmental Organizations

The Competence

Article 13

Ministry competent for administrative affairs shall keep the registry of associations and the registry of foundations.(hereinafter: Competent Organ)

Ministry competent for administrative affairs shall issue regulations with respect to the content and manner of keeping the registry.

Entry into the Register

Article 14

Entry into the register shall be done based upon registering application.

Along with the application for entry into the register, the Memorandum of Incorporation and the By-laws need to be included.

Public Acknowledgment of the Registration

Article 15

A decision on registration and on the liquidation of a non-governmental organization shall be published in the "Official Gazette of the Republic of Montenegro."

The Deadline for Entering into the Register

Article 16

The Competent Organ shall decide upon registration within ten days after submission of the request for registration.

If the Ministry disregards the deadline from Paragraph 1 of this Article, it shall be assumed that the organization is registered on the first day following the expiration of the deadline.

The Data Amendments

Article 17

A non-governmental organization shall advise the Competent Organ of any change with respect to information which must be submitted for registration within 30 days after the change occurred.

Any changes with respect to the foregoing information shall not be deemed valid until entered into the registry.

Grounds for Denying Registration
Article 18

The Competent Organ shall deny registration if a non-governmental organization does not meet the requirements set out in Art.14 of this Law.
An administrative challenge against decision from paragraph 1 of this Article shal be permited.

The Activities of Foreign Non-Governmental Organization
Article 19

A foreign non-governmental organization may operate in the Republic of Montenegro after it is entered into the registry book kept by the Competent Organ.
Along with the application for registration, a foreign non-governmental organization shall submit:

- proof of registration in the domiciled country;
- the name and the address of the person authorized to represent the organization;
- the seat of the organization in Montenegro and the organizational form with which it will operate (branch, office, affiliation, agency).

Rules on registration set forth in this Law shall also apply to registration of foreign non-governmental organizations.

PART IV
Organs of Non-Governmental Organizations

Organs of an Association
Article 20

An association shall have a General Assembly and a Managing Board.
Other organs of an association may also be envisaged in its By-laws.

Article 21

If an association has fewer than 10 members, all the members shall assume the functions of the General Assembly.
In the case referred to in Paragraph 1, an association does not have to form a Managing Board.

Organs of a Foundation
Article 22

A foundation shall have the Managing Board and the Supervisory Board.
President and members of the Managing Board shall be designed by the foundation's Memorandum of Incorporation.
The same persons cannot serve as members of the Managing and Supervisory Boards.
Other organs of the foundation may also be envisaged in its By-laws

PART V
Legal and Economic Status

Legal Status
Article 23

A non-governmental organization shall have the status of a legal person. The status of a legal person shall be acquired from the date of entry into the registry.

The Property
Article 24

The property of a non-governmental organization consists of membership fees, donations, gifts, financial subventions, inheritances, interests on bank deposits, dividends, and lease and other income generated from any lawful activities.

Economic Status
Article 25

A non-governmental organization may engage in economic activities provided that all the profit generated from those activities is invested in the organization's main statutory activities carried out in the Republic of Montenegro.
If income from economic activities in the past calendar year ,exceedes 4,000 € or if such income exceeds 20% of total bannual income in the past calendar year, the non-governmental organization may not engage in economic activities.

In order to engage in economic activities a non-governmental organization is obliged to register in the central register of the Commercial Court in Podgorica.
A non-governmental organization shall engage in economic activities pursuant to specialregulations on conditions for engaging into such kind of activities.

The State Support

Article 26

The State shall provide financial aid to non-governmental organizations.

Article 26 a

Means for providing of financial aid to non-governmental organizations shall be provided from the budget of Montenegro.

Article 26 b

The distribution of means of financial aid to non-governmental organizations (hereinafter : distribution of means) shall be under the competence of the Commission for distribution of means to non-governmental organizations (hereinafter : Commission) appointed by the Parliament of Montenegro, on proposal of the competent work body.
The Commission consists of the president and six members.
The Commission shall be appointed onto four years term.
The manner of work and making of decisions in the Commission shall be regulated by the Operating Procedures of the Commission.

Article 26 c

The distribution of means of financial aid shall be done based upon open competition which Commission announces for every year, not later than until expiration of the first quarter of the actual year.
Competition shall be published in daily paper established by the Parliament of Montenegro.

Article 26 d

Competition for distribution of means of financial aid shall expire 30 days from the day of publishing.
The commission shall make decision on distribution of means of financial aid within 30 days from the date of expiration of the competition.

Article 26 e

The commission shall make the distribution of means of financial aid based upon Project, which along with the application onto competition is submitted by the non governmental organizations, bearing in mind following criteria:

- contribution of the project to achieving of public interest within certain field;
- transparency and possibility of control of the Project realization;
- compatibility and project cooperation with International players;
- experts recommendations from relevant fields on the project subject to offer.

Contents of application and project and more detailed criteria for distribution of means of financial aid shall be decided by the Commission.

Article 26 f

The commission shall publish the decision on distribution of means of financial aid in daily paper established by the Parliament of Montenegro.

Tax and Other Exemptions and Privileges

Article 27

The State shall provide tax and other exemptions and privileges for acting and development of non-governmental organizations in the Republic.

Article 27 a

Inspection supervision of the work of non governmental organizations shall be performed by the inspection organs.

PART VI

Dissolution and Liquidation

Article 28

A non-governmental organization shall be deemed dissolved after it has been abolished from the registry.

An organization shall be abolished from the registry:

- if the organization is established for a limited period of time, the first day after the expiration of that time;
- if a competent organ of the organization decides to dissolve it, the day the decision is submitted to the registration authority
- if the organization is banned, the first day after the decision of a competent body becomes final.
- from the day of ending of bankruptcy proceedings or proceedings of voluntary dissolvation if performs economic activity pursuant to the laws regulating the bankruptcy proceedings or proceedings of voluntary dissolvation.

Disposal of the Property
Article 29

The remainder of the property of a non-governmental organization which ceases to work shall be distributed to other humanitarian or non-governmental organizations, in accordance with the decision of the organization's competent organ.

PART VII
Punitive Provisions
Article 30

A fine ranging from ten to fifty times the amount of the minimum wage in the Republic shall be imposed on a non-governmental organization which:

- started its activities before entry into the registry;
- failed to report any change to information necessary for entry into the registry within 30 days of the day these changes occurred;
- carried out activities not envisaged in the By-laws;
- used a name other than that stated in the registry.

A fine ranging from two to ten times the amount of the minimum wage in the Republic shall also be imposed on the representative of an organization which committed a violation of the Law stated in paragraph 1, subparagraph 1 through 4.

Article 31

A fine ranging from ten to three hundred times the amount of the minimum wage in the Republic shall be imposed on a non-governmental organization which continues to perform economic activity upon exceeding limit of 4,000 € or 20% of total annual income (Article 25, paragraph 2)

A fine ranging from five to twenty times the amount of the minimum wage in the Republic shall also be imposed on the representative of an organization which violates the provisions from Paragraph 1 of this Article.

PART VIII
Transitory and Closing Provisions
Regulations
Article 32

Within 60 days from the enactment of this Law, the Ministry of Justice shall issue regulations necessary for the implementation of the Law.

Adjustment to the Law
Article 33

Social organizations and citizens' associations which are entered into the register of social organizations and the register of citizens' associations shall within six months from the enactment of this Law adjust the internal acts to the provisions of this Law and re-register with the Ministry of Justice.

Within the same period, foundations, funds and legacies which are entered into the registry of foundations, funds and legacies shall re-register as non-governmental foundations, in accordance with the provisions of this Law.

Social organizations, citizens' associations, foundations, funds and legacies which fail to meet the foregoing deadline for adjustment and re-registration will cease to exist by the force of law (*ipso iure).*

Article 34

After the enactment of this Law, the provisions of the Law on Citizens' Associations (Official Gazette of the Republic of Montenegro, no. 23/90, 13/31, 30/92) and the Law on Legacies, Foundations and Funds (Official Gazette of the Republic of Montenegro, no. 24/85) shall no longer apply.

Coming Into Force

Article 35

This Law shall come into force on the eight day following its publication in the Official Gazette of Montenegro.

ANNEX VII Law on Criminal Liability of Legal Entities

LAW ON CRIMINAL LIABILITY OF LEGAL ENTITIES

(Published in the "Official Gazette of the Republic of Montenegro", Nos. 2/2007 and 13/2007)

I. BASIC PROVISIONS

Subject Matter of the Law

Article 1

This Law shall govern the conditions of criminal liability of legal entities, criminal sanctions applied against legal entities, and criminal procedure in which such sanctions are imposed.

Exclusion and Limitation of Liability

Article 2

(1) The Republic of Montenegro (hereinafter referred to as "Montenegro") state authorities and local government authorities may not be liable for a criminal offence.

(2) Legal entity vested with public powers shall not be liable for a criminal offence committed in the performance of such powers.

Criminal Offences for Which Legal Entities are Liable

Article 3

Legal entities may be held liable for criminal offences referred to in the special section of the Criminal Code and for other criminal offences provided for under a separate law, if the conditions of liability of a legal entity prescribed by this Law have been fulfilled.

Definitions

The terms used in this Law shall have the following meanings:

1) **legal entity** means a company, foreign company and foreign company branch, public enterprise, public institution, domestic and foreign non-governmental organizations, investment fund, other fund (except for the fund exercising solely public powers), sports organization, political party, as well as other association or organization which continuously or occasionally gains or acquires assets and disposes with them within the framework of their operations;

2) **responsible person** means a natural person entrusted with certain duties in a legal entity, a person authorized to act on behalf of the legal entity and a person who can be reasonably assumed to be authorized to act on behalf of the legal entity. A natural person acting on behalf of the legal entity as a shareholder shall also be considered to be a responsible person;

3) **effective, necessary and reasonable measures** mean those measures which the legal entity has undertaken with the aim to reveal and prevent criminal offences and encourage the employees to act in accordance with the law, other regulations and good business customs by which that aim is realized, and in particular:

- adoption of standards and procedures with the aim to reveal and prevent criminal offences;
- adoption of the programme for implementation of the standards and procedures referred to in indent 1 above, including the provision of necessary financial and other resources, as well as the obligation of certain persons in the legal entity to monitor constantly the implementation of those standards and procedures and to report periodically thereof to the superior officer in the legal entity and to the management bodies;
- carrying out supervision with respect to the application of the standards and procedures referred to in indent 1 above by the management bodies;
- prohibition to perform the management function to each person who is reasonably suspected of carrying out illegal actions;
- implementation of an effective programme of training of responsible persons on the standards and procedures referred to in indent 1 above;
- undertaking appropriate actions for the implementation of the standards and procedures referred to in indent 1 above by all employees, such as periodical assessments of effectiveness, providing guidelines with the aim of avoiding perpetration of criminal offences, establishing

mechanisms for anonymous and confidential reporting of criminal offences, monitoring the application of the standards and procedures, control of business books and other documents;

- conducting disciplinary proceedings for violations of the standards and procedures referred to in indent 1 above, as well as giving rewards for consistent application of those standards and procedures;

- undertaking adequate measures after the criminal offence is revealed, including conducting full internal investigation and, if necessary, changing the programme referred to in indent 2 above so as to prevent future criminal offences.

II. GENERAL PROVISIONS

1. Conditions for Liability of a Legal Entity for a Criminal Offence

Grounds for Liability of a Legal Entity

Article 5

A legal entity shall be liable for a criminal offence of a responsible person who acted within his/her authorities on behalf of the legal entity with the intention to obtain any gain for the legal entity.

Limits of Liability of Legal Entity for Criminal Offences

Article 6

(1) Under the conditions referred to in Article 5 above, the legal entity shall be held liable for a criminal offence even if the responsible person who committed such criminal offence has not been convicted of such criminal offence.

(2) Liability of a legal entity shall not exclude criminal liability of a responsible person for the criminal offence committed.

(3) Subjective elements of a criminal offence that exist only with the responsible person shall be taken into account with respect to the legal entity if the grounds for liability referred to in Article 5 above exist.

Liability in Case of Bankruptcy

Article 7

A legal entity under bankruptcy may be liable for a criminal offence regardless of whether such offence has been committed before or during the bankruptcy proceeding, given that in such a case no punishment shall be pronounced but the seizure of material gain or a security measure of seizure of items shall be imposed.

Liability of Legal Successor

Article 8

(1) If a legal person has been dissolved before the criminal proceedings are finalized, a fine, security measures and seizure of material gain may be imposed on the legal entity which is its legal successor.

(2) If a legal person has been dissolved before the criminal proceedings are finalized in a final and legally binding manner, a fine, security measures and seizure of material gain shall be enforced against its legal successor.

Attempt

Article 9

(1) A legal entity shall also be held liable for an attempted criminal offence under the conditions referred to in Article 5 above, if the law prescribes that such attempt shall be punishable.

(2) A legal entity shall be penalized for an attempt by a sentence prescribed by this Law for the relevant criminal offence, or it may be imposed a less severe penalty.

(3) Legal entity which voluntarily prevents completing of a criminal offence may be exempted from punishment.

Multiple Crimes

Article 10

(1) If a legal entity is liable for several identical criminal offences or criminal offences of the same type and connected in time, committed by several responsible persons, which represent a whole due to existence of at least two of the following circumstances: sameness of the damaged party, sameness of subject of offence, use of same situation or same on-going relationship, unity of place or

area in which the offence has been committed, the legal entity shall be liable as if a single criminal offence had been committed.

(2) For a multiple crime, penalty imposed on the legal entity may be increased up to the two-fold amount of the penalty prescribed in Article 14 of this law.

Co-offending Legal Entities

Article 11

(1) Two or more legal entities shall be held liable as co-offenders in the same criminal offence if the ground for liability referred to in Article 5 above exists.

(2) The legal entities referred to in paragraph 1 above shall be sanctioned by the penalty prescribed for the criminal offence committed.

2. Sanctions

Types of Sanctions

Article 12

Legal entity may be imposed the following sanctions for the criminal offence:

1) punishment;
2) suspended sentences;
3) security measures.

1) Punishments

Types of Punishments

Article 13

(1) Legal entity may be imposed the following punishments:

1) a fine;
2) dissolution of legal entity.

(2) Fine and dissolution of legal entity may be imposed only as principal punishments.

Fine

Article 14

(1) A fine shall be determined depending on the amount of the damage caused or illicit material gain obtained, and if these amounts are different the higher amount shall serve as a basis for the determination of fine.

(2) Fine may not be less than two-fold amount of the damage caused or illicit material gain obtained or higher than 100-fold amount of the material damage caused or illicit material gain obtained.

(3) If by a criminal offence no material damage was caused or no illicit material gain was obtained, or if it is difficult to determine the amount of such damage or material gain within a reasonable period of time due to the nature of the criminal offence committed and other circumstances, the court shall mete out the fine in a fixed amount which may not be less than one thousand Euros or higher than five million Euros.

Amounts of Fines

Article 15

Legal entity shall be punished by a fine in the amount of:

1) two-fold to five-fold amount of the damage caused or illicit material gain obtained or from one thousand to ten thousand Euros for the criminal offences punishable by imprisonment for a term of up to one year or a fine;
2) five-fold to ten-fold amount of the damage caused or illicit material gain obtained or from ten thousand to twenty thousand Euros for the criminal offences punishable by imprisonment for a term of up to three years;
3) ten-fold to fifteen-fold amount of the damage caused or illicit material gain obtained or from twenty thousand to fifty thousand Euros for the criminal offences punishable by imprisonment for a term of up to five years;
4) fifteen-fold to twenty-fold amount of the damage caused or illicit material gain obtained or from fifty thousand to one hundred thousand Euros for the criminal offences punishable by imprisonment for a term of up to eight years;

5) twenty-fold to fifty-fold amount of the damage caused or illicit material gain obtained or from one hundred thousand to two hundred thousand Euros for the criminal offences punishable by imprisonment for a term of up to ten years;
6) minimum fifty-fold amount of the damage caused or illicit material gain obtained or minimum two hundred thousand Euros for the criminal offences punishable by imprisonment for a term of more than ten years.

Meting out Fines

Article 16

(1) The court shall mete out the fine to a legal entity within the limits prescribed by law for the criminal offence in question, bearing in mind the purpose of punishment and taking into account all the circumstances that may have influence on reducing or increasing the fine (extenuating or aggravating circumstances), and in particular:

1) the seriousness of a criminal offence, including endangering of general interests;

2) extent of liability of the legal entity for the criminal offence committed;

3) positions in the legal entity and the number of the responsible persons that committed the criminal offence;

4) the fact whether the responsible person has prior conviction or whether s/he violated law or another regulation;

5) circumstances under which the criminal offence was committed;

6) economic power and business results of the legal entity;

7) earlier business operations of the legal entity, including violations of laws and other regulations;

8) conduct of the legal entity after the commission of the criminal offence, including the dismissal of the persons who failed to perform due supervision, disciplinary punishment and termination of employment of the responsible person who committed the criminal offence;

9) relationship towards the victim of the criminal offence, including the compensation for the damages and rectifying of other harmful consequences caused by the commission of criminal offence, as well as the fact whether it was done before or after finding out that the criminal proceedings were instituted;

10) taking advantage of a poor financial situation, difficult circumstances, necessity, insufficient experience, recklessness or the victim's insufficient judgement ability;

11) if the material gain obtained through the criminal offence has been returned;

12) whether the legal entity has undertaken all effective, necessary and reasonable measures aimed at preventing and revealing the commission of the criminal offence;

13) whether the legal entity reported the criminal offence before finding out that the criminal proceedings were initiated, whether it cooperated with the authorities competent for revealing and prosecution or it interfered with the conduct of the proceedings;

14) attitude of the legal entity towards the criminal offence committed, including the confession of culpability for the criminal offence committed.

(2) The circumstance which is an element of a criminal offence cannot be taken into consideration either as aggravating or as extenuating circumstance; except if it exceeds the extent required for establishing the existence of the criminal offence or certain form of criminal offence or if there are two or more such circumstances, only one being sufficient for the existence of aggravated or summary form of criminal offence.

Recidivism

Article 17

When weighing up the punishment the court shall give particular consideration to whether the legal entity was previously convicted of a criminal offence, whether the former offence is of the same kind as the latest one and how much time has passed from the earlier conviction.

Multi-recidivism

Article 18

(1) Court can impose a more severe fine on the legal entity - up to the two-fold amount prescribed in Article 15 above, if there is multi-recidivism of the legal entity to the criminal offence.

(2) Multi-recidivism exists if the legal entity was at least twice convicted of criminal offences and fined more than fifty thousand Euros and if the period longer than five years has not passed from the last fine imposed in a final and legally binding manner.

Reduction of fine - **Article 19**

The court can impose on the legal entity a fine below the limit prescribed in Article 15 above, whenever:

1) the law prescribes that the legal entity's punishment may be reduced;
2) the law prescribes that the legal entity may be exempted from punishment, and the court has not exempted it from punishment;
3) the court establishes that there are particularly extenuating circumstances and assesses that the purpose of punishment may be achieved even with reduced punishment.

Limits of reduction of fine - **Article 20**

(1) If the conditions for reduction of fine referred to in Article 19 of this Law are met, the court shall reduce the fine within the following limits:

1) if the lowest prescribed fine for the criminal offence is a five-fold amount of the damage caused or illicit material gain obtained or ten thousand Euros (Article 15 subparagraph 2), the fine may be reduced to a two-fold amount of the damage caused or illicit material gain obtained or to one thousand Euros;
2) if the lowest prescribed fine for the criminal offence is a ten-fold amount of the damage caused or illicit material gain obtained or twenty thousand Euros (Article 15 subparagraph 3), the fine may be reduced to a five-fold amount of the damage caused or illicit material gain obtained or to ten thousand Euros;
3) if the lowest prescribed fine for the criminal offence is a fifteen-fold amount of the damage caused or illicit material gain obtained or fifty thousand Euros (Article 15 subparagraph 4), the fine may be reduced to an eight-fold amount of the damage caused or illicit material gain obtained or to twenty-five thousand Euros;
4) if the lowest prescribed fine for the criminal offence is a twenty-fold amount of the damage caused or illicit material gain obtained or one hundred thousand Euros (Article 15 subparagraph 5), the fine may be reduced to a ten-fold amount of the damage caused or illicit material gain obtained or to fifty thousand Euros;
5) if the lowest prescribed fine for the criminal offence is a fifty-fold amount of the damage caused or illicit material gain obtained or two hundred thousand Euros (Article 15 subparagraph 6), the fine may be reduced to a 25-fold amount of the damage caused or illicit material gain obtained or to one hundred thousand Euros.

(2) When the court is authorized to exempt the legal entity from punishment, it may reduce its punishment without limitations prescribed for reduction of punishment referred to in paragraph 1 above.

Weighing up fines for criminal offences in concurrence

Article 21

(1) If a legal entity commits several criminal offences in concurrence, the court shall pronounce a single fine which shall be a sum of individually determined sentences. Such a single sentence may not exceed 150-fold amount of the damage caused or illegal material gain derived from criminal offence, if the individual fines have been determined in such a manner, or seven million five hundred thousand Euros.

(2) If all criminal offences in concurrence are punishable by imprisonment for a term of up to three years, a single sentence may not exceed the twenty-fold amount of the damage caused or illegal material gain derived from criminal offence, if the individual fines have been determined in such a manner, or one hundred thousand Euros.

Dissolution of Legal Entity

Article 22

(1) The penalty of dissolution of a legal entity may be ordered if the business conducted by the legal entity was wholly or considerably in the function of committing the criminal offence.

(2) The liquidation proceeding shall be conducted in companies along with the imposing of the penalty of dissolution of a legal entity.

(3) A legal entity shall be dissolved upon deletion from the Central Registry of the Commercial Court in Podgorica or another registry kept by the competent state authority.

(4) If the penalty referred to in paragraph 1 above was imposed, dissolved assets of the company and assets of another legal entity shall be confiscated for the benefit of Montenegro.

General conditions for exemption from punishment

Article 23

(1) If the legal entity reveals and reports a criminal offence before finding out that the criminal proceedings were initiated, it may be exempted from punishment.

(2) If upon the committing of the criminal offence the legal entity voluntarily and immediately returns the illegally obtained material gain or rectifies the harmful consequences caused, or delivers data significant for liability of another legal entity with which it is not connected organizationally, it may be exempted from punishment.

(3) If the legal entity has undertaken all the effective, necessary and reasonable measures aimed at preventing and revealing the commission of the criminal offence, it may be exempted from punishment

2) Suspended Sentence

Conditions for Imposing Suspended Sentence

Article 24

(1) The court may impose a suspended sentence on a legal entity for a criminal offence.

(2) By a suspended sentence, the court may impose a fine up to a hundred thousand Euros against a legal entity, provided that the sentence will not be enforced if the convicted legal entity is not liable for a new criminal offence within the meaning of Article 5 above, within the period specified by the court, but in any case not shorter than one year and not longer than three years (probation period).

(3) By a suspended sentence, the court can order that the sentence shall be carried out even if the convicted legal entity fails within a specified term to return the material gain acquired by committing the criminal offence, fails to compensate for the damage it caused by criminal offence, or fails to fulfil other obligations provided for by criminal law provisions. The time limit for meeting these obligations shall be defined by the court within the specified probation period.

(4) Security measures imposed alongside a suspended sentence shall be enforced.

Revocation of a suspended sentence due to a new criminal offence

Article 25

(1) The court shall revoke a suspended sentence if a convicted legal entity during the probation period is found liable for one or more criminal offences for which the fine in the amount of a hundred thousand Euros or higher amount is pronounced.

(2) If the convicted legal entity during the probation period is found liable for one or more criminal offences for which the fine lower than a hundred Euros is pronounced, the court shall, after assessing all the circumstances referring to the committed offences and the legal entity, and particularly relatedness of committed offences and their importance, decide whether to revoke the suspended sentence. While doing so, the court shall be limited by the ban on pronouncing suspended sentence if the legal entity should be pronounced a fine exceeding one hundred thousand Euros (Article 24 paragraph 2) for the criminal offences specified in the suspended sentence and for new criminal offences.

(3) If the court revokes a suspended sentence it shall, by applying the provisions of Article 21 of this Law, pronounce a single sentence for both the previously committed and for new criminal offence, taking the sentence from revoked suspended sentence as a sentence already determined.

(4) If the court does not revoke a suspended sentence, it can pronounce a suspended sentence or a penalty for a new criminal offence.

(5) If the court decides that a suspended sentence should be pronounced for a new criminal offence as well, it shall by applying the provisions of Article 21 of the present Law, determine a single sentence for both the previously committed criminal offence and for new criminal offence and it shall specify a new probation period which cannot be shorter than one or longer than three years, from the day when the new judgment becomes final and legally binding. If the convicted legal entity in the

course of the new probation period is found liable for the criminal offence again, the court shall revoke the suspended sentence and pronounce the penalty, by applying the paragraph 3 of this Article.

Suspended sentence under protective supervision

Article 26

(1) The court can order that the legal entity pronounced a suspended sentence be placed under protective supervision for a particular period of time during the probation period.

(2) If the court establishes that in the course of protective supervision the purpose of this measure has been achieved, it can terminate the protective supervision before expiration of the specified time period.

(3) If a convicted legal entity which has been placed under protective supervision fails to comply with the obligations which the court ordered it, the court can warn the legal entity or replace the earlier obligations with other obligations or extend the protective supervision within the specified probation period or revoke the suspended sentence.

Contents of protective supervision

Article 27

Protective supervision can comprise one or more of the following obligations:

1) to develop and implement the programme of effective, necessary and reasonable measures with the aim to prevent perpetration of the criminal offence;
2) to establish internal control with the aim to prevent further committing of criminal offences;
3) to make periodical reports on its business operations and deliver them to the authority competent for enforcement of protective supervision;
4) to eliminate or reduce the risk of further causing of damage by the criminal offence committed;
5) to refrain from business activities which might provide opportunity or incentive for re-offending ;
6) to eliminate or mitigate the damage caused by the criminal offence;
7) to do community service for a six-month period, provided that this obligation may not endanger normal operations of the legal entity.

3) Security Measures

Types of Security Measures

Article 28

(1) For criminal offences for which legal entities are held liable, the following security measures may be imposed:

1) developing and implementing the programme of effective, necessary and reasonable measures;
2) seizure of items;
3) publication of the sentence;
4) ban on conducting certain business or other activities.

(2) The court may pronounce one or more security measures against a legal entity when the conditions for pronouncing them prescribed by law are fulfilled.

(3) The ban on conducting certain business or other activities may not be pronounced along with a suspended sentence.

Developing and Implementing the Programme of Effective, Necessary and Reasonable Measures

Article 29

(1) The court may pronounce the security measure of developing and implementing the programme of effective, necessary and reasonable measures if it considers that further perpetration of criminal offences shall be prevented thereby.

(2) The security measure referred to in paragraph 1 above shall not last less than three or more than five years from the day the judgment becomes final and legally binding.

Seizure of Items

Article 30

(1) The items which were used or intended for use in the commission of a criminal offence or which resulted from the commission of a criminal offence can be seized if they are property of the legal entity.

(2) The items referred to in paragraph 1 above can be seized even if they are not property of the legal entity if required by the interests of general safety or if necessitated by the reasons of morality, provided however that the rights of third persons to the compensation for damages shall not be encroached.

(3) The law can stipulate a mandatory seizure of items. The law can also stipulate the conditions for seizure of certain items in specific cases.

Publication of Sentence

Article 31

(1) The court shall pronounce the security measure of publishing the sentence if it considers it useful to make the public aware of the sentence, particularly if the sentence publication would contribute to remove a threat to human life or health or to protect the safety of trade or other general interest.

(2) Depending on the relevance of the criminal offence and the need to inform the public, the court shall choose the media that will publish the sentence and whether the statement of reasons for the sentence would be published wholly or in the form of an extract, taking care that the manner of publication must provide information to all in the interest of whom the sentence should be published.

Ban on Conducting Certain Business or Other Activity

Article 32

(1) The court may ban a legal entity from manufacturing certain products or conducting certain activities in the trade of goods and services or engaging in other activities.

(2) The security measure referred to in paragraph 1 above may be imposed on a legal entity if further conduct of certain business or other business by such entity would pose a threat for human life or health or would be detrimental to economic or financial operations of other legal entities or to economy, or if the legal entity has been punished, during the last two years, for the same or similar criminal offence.

(3) The court shall determine duration of the measure referred to in paragraph 1 above which may not be shorter than six months or longer than five years from the day the judgment becomes final and legally binding.

3. Legal Consequences of Conviction

Commencement of Legal Consequences of Conviction

Article 33

(1) Legal consequences of conviction for the legal entity shall commence on the day the judgement imposing a fine becomes final and legally binding, as follows:

1) ban on conducting an activity on the basis of a permit, license, authorization or concession issued by state authorities;
2) ban on getting a permit, license, authorization or concession issued by state authorities.

(2) Legal consequences of conviction referred to in paragraph 1 subparagraph 2 above may be prescribed for a maximum period of ten years.

4. Statute of Limitations

Time Limits for Barring by Lapse of Time

Article 34

(1) Time limit for barring by lapse of time of criminal prosecution against a legal entity shall be calculated according to the punishment prescribed for the responsible person who committed the criminal offence. Criminal prosecution may not be undertaken upon the lapse of time prescribed in Article 124 of the Criminal Code.

(2) The sentence imposed may not be enforced upon the expiry of:

1) three years after imposing a fine;
2) eight years after imposing the punishment of dissolution.

(3) The enforcement of security measure shall be barred upon the expiry of:

1) five years from the day the judgement imposing the measure of seizure of items becomes final and legally binding;
2) three months from the day the judicial decision imposing the measure of sentence publication becomes final and legally binding;

3) the period for which a legal entity has been imposed the measure of developing and implementing the programme of effective, necessary and reasonable measures, from the day the judicial decision becomes final and legally binding;
4) the period for which a legal entity has been imposed the measure of the ban on conducting certain business or other activity, from the day the judicial decision becomes final and legally binding.

5. Seizure of Material Gain

Ground for Seizure of Material Gain

Article 35

(1) Legal entity shall not be allowed to retain any material gain obtained by a criminal offence.

(2) The gain referred to in paragraph 1 of this Article shall be seized on conditions envisaged by this Law and judicial decision by which the perpetration of a criminal offence is ascertained.

Conditions and Manner of Seizure of Material Gain

Article 36

(1) Money, things of value and any other material gain obtained by a criminal offence shall be seized from the legal entity; whereas should such a seizure be not possible, the legal entity shall be obliged to pay for the monetary value of the obtained material gain.

(2) Material gain obtained by a criminal offence shall also be seized from the persons it has been transferred to without compensation or against compensation that is obviously not corresponding to its actual value;

(3) Seized shall also be any material gain obtained by a criminal offence in favour of other persons.

4. Rehabilitation, Discontinuance of Legal Consequences of Conviction and Disclosure of Data from Penal Records.

General Notion of Rehabilitation

Article 37

(1) It is by rehabilitation that conviction shall be obliterated and all its legal consequences cease, whereas the convicted legal entity shall be deemed to have no prior convictions.

(2) Rehabilitation shall come into effect either by law (legal rehabilitation) or upon a motion by a convicted legal entity based on the judicial decision (judicial rehabilitation).

(3) No rights of third persons grounded on conviction shall be encroached by rehabilitation.

Legal Rehabilitation

Article 38

(1) Legal rehabilitation shall be granted solely to legal entities which, prior to the conviction the rehabilitation relates to, had no prior convictions or which were deemed by law to have had no prior convictions.

(2) Legal rehabilitation shall be granted in the following instances:

1) If a legal entity convicted but exempted from punishment does not commit any new criminal offence within the period of one year from the day the judgement becomes final and legally binding;
2) If a legal entity on which a suspended sentence is imposed does not commit any new criminal offence during the probation period and within the period of one year from expiration of the probation period;
3) If a legal entity sentenced to a fine in the amount of up to five thousand Euros does not commit any new criminal offence within the period of three years from the day when the penalty was enforced, became barred by lapse of time or pardoned.

(3) Legal rehabilitation may not be granted if security measures are still in force.

Judicial rehabilitation

Article 39

(1) Judicial rehabilitation can be granted to a legal entity sentenced to a fine exceeding five thousand Euros, should within the period of five years from the day when the penalty was enforced,

became barred by lapse of time or pardoned, no new criminal offence be committed by that legal entity.

(2) In the case referred to in paragraph 1 above the court shall grant rehabilitation if it finds that the convicted legal entity deserved to be rehabilitated and if it compensated for the damage caused by its criminal offence according to its financial circumstances, whereas the court shall be obliged to take into consideration all other circumstances of relevance for approving rehabilitation, and particularly the nature and significance of the offence.

(3) Judicial rehabilitation may not be granted to a legal entity sentenced to a fine exceeding one hundred thousand Euros.

(4) Judicial rehabilitation may not be granted if security measures are still in force.

Judicial rehabilitation of a legal entity with several prior convictions

Article 40

Legal entity who has been convicted several times can be granted rehabilitation by the court solely if the conditions referred to in Article 38 of this Law are met in respect to each criminal offence the legal entity has been convicted of. When assessing whether to grant rehabilitation in such a case, the court shall take into consideration all circumstances referred to in Article 39 paragraph 2 of this Law.

Cessation of legal consequences of conviction

Article 41

(1) After the lapse of three years from the day when the penalty was enforced, became barred by lapse of time or pardoned, a court may decide to discontinue legal consequence of conviction related to the prohibition of acquisition of a specific right, if it has not already ceased due to rehabilitation.

(2) When deciding on discontinuation of legal consequences of conviction, the court shall take into consideration the conduct of the convicted legal entity after having been convicted, whether it has compensated for the damage caused by the criminal offence and returned the material gain obtained by committing the criminal offence, as well as other circumstances that may indicate the justifiability of discontinuation of legal consequence of conviction.

Disclosure of data from penal records

Article 42

(1) Penal records shall contain the following: the name and registered office of a legal entity; business activities of the legal entity; registration number and identification number of the legal entity; data on the criminal offence committed; data on punishments, a suspended sentence, security measures; data about the responsible person who committed the criminal offence for which the legal entity was convicted; pardoned penalties related to the convicted legal entity the penal record is maintained for, as well as data on legal consequences of conviction; subsequent changes to data contained in penal records; data on enforced penalty and cancellation of record on a wrongfully pronounced sentence.

(2) Data from penal records may be disclosed solely to a court, the state prosecutor and the administration authorities competent for police affairs, related to the criminal proceedings instituted against a legal entity who has prior conviction, as well as to the authority in charge of enforcement of criminal sanctions and the authority that participates in the procedure of granting amnesty, abolition, rehabilitation or deciding on cessation of legal consequences of a sentence, when so needed for the conduct of duties falling within their competence.

(3) Data from penal records may also be disclosed upon a reasoned request to a state authority and a legal entity if there is a justified interest based on law.

(4) On the request of a legal entity, data on the existence or non-existence of prior convictions may be presented to them solely if such data are needed for the purpose of exercising their rights abroad.

(5) Penal records shall be kept by the Central Registry of the Commercial Court in Podgorica.

7. Territorial Applicability of the Law

Conditions for Application of the Law

Article 43

(1) This Law shall apply to a domestic and foreign legal entity which is liable for a criminal offence committed in the territory of Montenegro.

(2) A foreign legal entity which is liable for a criminal offence committed abroad to the detriment of Montenegro, its national or a domestic legal entity shall be subject to this Law.

(3) This Law shall also apply to a domestic legal entity is liable for a criminal offence committed abroad.

(4) In the cases referred to in paragraphs 2 and 3 above, this Law shall not apply if special conditions from Article 138 paragraph 3 of the Criminal Code have been met.

8. Application of General Section of the Criminal Code

Mutatis Mutandis Application of the Provisions of the Criminal Code

Article 44

The provisions of the General Section of the Criminal Code on criminal offence (Article 5), manner of commission of criminal offence (Article 6), time of perpetration of criminal offence (Article 7), place of perpetration of criminal offence (Article 8), an offence of minor significance (Article 9), extreme necessity (Article 11), incitement (Article 24), aiding (Article 25), the limits of responsibility and punishability of accomplices (Article 27), punishment for inciters and aides for an attempt and minor criminal offence (Article 28), purpose of punishment (Article 32), purpose of suspended sentence (Article 54), revocation of suspended sentence due to a previously committed criminal offence (Article 56), revocation of suspended sentence due to the failure to meet particular obligations (Article 57), time-limits for revocation of suspended sentence (Article 58), duration of protective supervision (Article 63), consequences of failure to meet the obligations pertaining to protective supervision (Article 64), protection of injured party (Article 114), running and interruption of barring by time limits of criminal prosecution (Article 125), running and interruption of barring by time limits of enforcement of a penalty and a security measure (Article 128), applicability of criminal legislation with respect to time (Article 133) and definitions of terms (Article 142) shall apply *mutatis mutandis* to legal entities, unless otherwise provided by this Law.

III. PROCEEDINGS

Single Proceeding

Article 45

(1) For the same criminal offence, as a rule, proceedings against a legal entity shall be instituted and conducted together with proceedings against the responsible person.

(2) In a single proceeding, single indictment shall be brought against the accused legal entity and the accused responsible person and single judgement shall be passed.

(3) Proceeding may be instituted and conducted against the legal entity only in case if it is not possible to institute and conduct the proceeding against the responsible person for reasons prescribed by law or in cases when proceeding against the responsible person has already been conducted.

Appropriateness to Institute Proceedings

Article 46

(1) The State Prosecutor may decide not to institute criminal proceedings against a legal entity if:

1) circumstances of the case indicate that instituting the proceedings would not be appropriate due to insignificant contribution of the legal entity in committing the criminal offence,
2) the legal entity does not have any assets or bankruptcy proceeding has been initiated against the legal entity;
3) the legal entity reported the criminal offence before finding out that the prosecution authorities revealed that a criminal offence was committed in the legal entity;
4) the legal entity cooperated with the authorities competent for revealing and prosecution;
5) the legal entity compensated for the damages and rectified other harmful consequences caused by the criminal offence;
6) the legal person returned the material gain obtained by the criminal offence committed;

7) before the criminal offence committed, the legal person undertook all effective, necessary and reasonable measures with the aim to prevent and reveal the commission of the criminal offence;
8) the legal entity submitted to the authorities competent for revealing and prosecution data relevant for the liability of another legal entity, with which it is not connected organizationally, for the criminal offence punishable by law by imprisonment for term of ten years or a more severe punishment.

(2) When deciding not to institute the criminal proceedings, the State Prosecutor shall take into account the circumstances referred to in Article 16 of the present Law.

(3) The provisions of paragraph 1 above shall apply to criminal offence punishable by a fine or imprisonment for a term of up to three years.

Postponement of criminal prosecution

Article 47

(1) The State Prosecutor may decide to postpone prosecution for criminal offences punishable by a fine or imprisonment for a term not exceeding eight years, when s/he finds that it would not be appropriate to conduct the criminal proceedings due to the nature of the criminal offence and the circumstances under which the offence has been committed, previous business operations of the legal entity, if the legal entity accepts to fulfil one or several of the following obligations:

1) to compensate for the damage and to remove detrimental consequences caused by the criminal offence;

2) to pay a certain amount for the benefit of a humanitarian organisation, fund or public institution, provided that such an amount may not exceed ten thousand Euros;

3) to fulfil obligations related to the criminal offence committed or the obligations the fulfilment of which would have a preventive effect aimed at prevention of committing a new criminal offence;

4) to fulfil one or several obligations referred to in Article 27 of this Law.

(2) When deciding whether to postpone the criminal proceedings, the State Prosecutor shall take into account the circumstances referred to in Article 16 of the present Law.

(3) The legal entity shall be bound to fulfil the obligation assumed within a term which cannot be longer than six months.

(4) The obligations referred to in paragraph 1 above shall be imposed by a decision of the State Prosecutor. The decision shall be furnished to the legal entity, injured party, if any, or to the humanitarian organization or public institution in favour of which the enforcement is ordered.

(5) Before taking the decision referred to in paragraph 4 above, the State prosecutor shall obtain the consent of the injured party and the agreement of the legal entity. When specifying the obligations referred to in paragraph 1 above, the State Prosecutor may accept the proposal of the injured party.

(6) If the legal entity fulfils the obligation referred to in paragraph 1 above, the State Prosecutor shall dismiss the criminal complaint and the provisions of Article 59 of the Criminal Procedure Code shall not be applicable, of which the State Prosecutor shall inform the injured party before obtaining the consent.

Territorial Jurisdiction

Article 48

(1) The court in whose territory the criminal offence was committed or attempted shall have jurisdiction as a rule.

(2) If the proceedings are instituted only against the accused legal entity, the court in whose territory the accused legal entity has a registered office or the court in whose territory a unit of the accused foreign legal entity is located shall have jurisdiction.

Representative of the Accused Legal Entity

Article 49

(1) Accused legal entity shall be represented in criminal proceedings by a representative who is authorized to take all actions that make be taken by the defendant according to the Criminal Procedure Code. Each accused legal entity must have its representative.

(2) The representative of the accused legal entity shall be a person authorized to represent that legal entity on the basis of the law, an act of a competent state authority or the Articles of association or another general act of the legal entity.

Appointment of Representative of the Accused Legal Entity

Article 50

(1) A representative of the accused legal entity may not be a responsible person against whom a criminal procedure is conducted for the same criminal offence, except if that person is the only member of the legal entity.

(2) A management or governing body of the accused legal entity may appoint another person from among its members as the representative.

(3) An accused legal entity may have only one representative.

(4) In each individual case, the court must establish the identity of the representative of the accused legal entity and whether the representative is authorized for such representation.

(5) If the accused legal entity was dissolved before the criminal proceedings have been completed in final and legally binding manner, its legal successor shall appoint its representative within eight days from the date of dissolution of the accused legal entity. If the legal entity fails to appoint its representative, the court shall appoint the representative of the legal entity.

Representative of the Accused Foreign Legal Entity

Article 51

(1) The representative of the accused foreign legal entity shall be the person managing the branch of the foreign legal entity conducting business in the territory of Montenegro.

(2) If the accused foreign legal entity or a branch of the foreign legal entity is collectively represented by several persons, such persons shall designate the representative among themselves. If, upon the court's invitation to do that within a specified time, the representative has not been designated from among these persons or the court has not been timely notified of that in writing, the court shall appoint one of them as the representative.

Exemption of Representative

Article 52

(1) The representative of the accused legal entity may not be a person summoned to give testimony in the same legal matter.

(2) In the cases referred to in paragraph 1 above, the court shall demand from the accused legal entity or a branch of the foreign legal entity, that the competent body of the accused domestic legal entity or foreign legal entity appoint other representative and notify the court thereof in writing within the given time.

(3) If the accused legal entity fails to appoint another representative within eight days, the representative shall be appointed by the court.

Service of Documents

Article 53

Documents intended for the representative shall be served on the accused legal entity, or a branch of the accused foreign legal entity.

Causing the Representative to Be Brought before the Court

Article 54

If a duly summoned representative of the accused legal entity fails to appear, without providing an excuse for the absence, the court may order the representative to be brought involuntarily.

Costs of Representation

Article 55

(1) The costs of representing the accused legal entity shall be considered as the costs of the criminal proceedings. These costs shall not be paid in advance from the court's funds except in cases referred to in Article 50 paragraph 5 and Article 52 paragraph 3 above.

(2) Legal entity shall only bear the costs of the proceedings caused by its representative's fault.

Defence Attorney

Article 56

(1) In addition to the representative, the accused legal entity may also have a defence attorney.

(2) The provisions of the Criminal Procedure Code on obligatory defence attorney shall not apply to the accused legal entity.

(3) The accused legal entity and the accused responsible person may have a joint defence attorney unless that is contrary to the interest of their defence.

Dismissal of Criminal Complaint

Article 57

(1) In addition to the grounds for dismissal of criminal complaint referred to in Article 243 paragraph 1 of the Criminal Procedure Code, the State Prosecutor shall dismiss criminal complaint against a legal entity also in case that there are no grounds for the liability of legal entity referred to in Article 5 above.

(2) When the State Prosecutor determines that there are no grounds for prosecution of a criminal offence, the State Prosecutor shall be obliged, within eight days, to inform the injured party thereof and to instruct him/her that he/she can institute the prosecution him/herself, except in cases referred to in Articles 46 and 47 paragraph 5 of this Law. The court shall proceed in the same manner if it passed the decision on suspension of the proceedings due to the fact that the State Prosecutor has abandoned the prosecution.

Contents of Indictment

Article 58

An indictment or the bill of indictment against a legal entity must contain, in addition to the elements prescribed by Article 274 of the Criminal Procedure Code, the name under which the legal entity is appearing in legal transactions, its registered office, registration number and identification number, forename and surname of its representative and grounds for liability of the legal entity.

Hearing and Order of Closing Arguments

Article 59

(1) At the mean hearing, first the accused responsible person shall be heard, and then the representative of the accused legal entity.

(2) After completing the evidence procedure, the prosecutor's and the injured party's statements, first the defence attorney of the accused legal entity shall be allowed to speak, then the representative of the accused legal entity, the defence attorney of the responsible person and finally the responsible person him/herself.

Written Judgment

Article 60

In addition to the parts specified in Article 369 of the Criminal Procedure Code, a written judgment must contain:

1) in the introduction to the judgment - the name under which the legal entity is appearing in legal transactions, its registered office, registration number and identification number, forename and surname of its representative and grounds for liability of the legal entity who attended the main hearing;

2) in the operative part of the judgment - the name under which the legal entity is appearing in legal transactions, its registered office, registration number and identification number, decision pronouncing the accused legal entity responsible for the criminal offence it has been charged with, or releasing it from liability for such offence, or dismissing the charges.

Partial Suspension of Judgment of the First Instance Court

Article 61

The second instance court may suspend a judgment in the part relating to the accused legal entity only or to the accused responsible person only, if such part of the judgment may be separated without detriment to the proper adjudication.

Security Measures

Article 62

(1) In order to secure the enforcement of seizure of material gain, the court may, on a motion of a competent prosecutor, order a temporary security measure against the accused legal entity,

in accordance with the provisions of the Law on Enforcement Procedure. In that case, the provisions of Article 216 paragraphs 2 and 3 of the Criminal Procedure Code shall apply *mutatis mutandis*.

(2) If the circumstances justify the suspicion that within the accused legal entity the criminal offence may be committed again for which there is a reasonable suspicion that the legal entity is liable for it or another similar criminal offence, the court may, in the same proceedings and in addition to the measures referred to in paragraph 1 above, temporarily ban the accused legal entity from performing one or more of the specified business activities and/or other activities.

(3) If criminal proceedings have been instituted against the legal entity, the court may, on a motion of the state prosecutor or *ex officio*, prohibit amendments to the Articles of association that might lead to the deletion of the accused legal entity from the Central Registry of the Commercial Court or another registry kept by the competent state authority. Such prohibition shall be entered in the Central Registry of the Commercial Court or another registry kept by the competent state authority.

Application of the Criminal Procedure Code

Article 63

(1) Unless otherwise provided by this Law, the provisions of the Criminal Procedure Code shall apply *mutatis mutandis* in the criminal proceedings against legal entities.

(2) The provisions of Articles 511 – 520 and Article 522 of Criminal Procedure Code shall apply in the criminal proceedings against legal entities even when the criminal proceedings do not relate to the criminal offence of organized crime.

IV. TRANSITIONAL AND FINAL PROVISIONS

Article 64

(1) Commercial crimes provided for by separate laws shall become misdemeanours by entry into force of this Law.

(2) Proceedings for commercial crimes instituted before the day of entry into force of this Law shall be completed before the court before which the proceedings commenced, according to the regulations based on which they were instituted.

Article 65

Upon entry into force of this Law, the Law on Commercial Crimes (Official Gazette of SFRY, Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and Official Gazette of FRY, No. 27/92, 24/94, 28/96 and 64/01) shall cease to apply.

Article 66

This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Republic of Montenegro.

ANNEX VIII Condition and requirements for hiring of State Prosecutors

Condition and requirements for hiring of the State Prosecutors and Deputies as prescribed in the Law on State Prosecutors

Article 24

A person may be appointed as the State Prosecutor or the Deputy if he/she:

1) Is a citizen of Montenegro;
2) Is in a generally healthy state and possesses capacity to transact business;
3) Has the University Degree in Law and has passed the Bar exam;"

Article 25

A person may be appointed the State Prosecutor or the Deputy if he/she, in addition to the general conditions, possesses the following work experience in the field of law:

- For the Chief State Prosecutor and his/her Deputy – 15 years;
- For the High State Prosecutor and his/her Deputy – 10 years;
- For the Basic State Prosecutor – six years, and for his/her Deputy – three years."

Article 26:

The state prosecutor shall be appointed and removed from office by the Assembly of Montenegro (hereinafter referred to as: the Assembly) at the proposal of the Prosecutors Council.

Deputies shall be appointed and removed from office by the Prosecutors Council."

Article 28:

The office of the Deputy shall be permanent.

Exceptionally from paragraph 1 above, a Deputy Basic State Prosecutor shall be appointed for a term of three years when appointed for the first time. "

Article 31:

The State Prosecutor and the Deputy shall be appointed on the basis of public announcement.

The Prosecutors Council shall announce vacancies for positions of the State Prosecutor and Deputy.

The announcement of vacancies shall be published in the "Official Gazette of Montenegro" and in a daily newspaper issued in Montenegro.

Article 33a

The criteria for the appointment of the State Prosecutor and the Deputy State Prosecutor shall be as follows:

1) Specialized knowledge, working experience and working results;
2) Published professional papers and other activities in their line of work;
3) Additional professional training;
4) Ability to perform the function for which he/she applies impartially, conscientiously, diligently, determinedly and responsibly;
5) Communication skills;
6) Relationship with colleagues, conduct outside work, professionalism and reputation.

Apart from the criteria referred to in paragraph 1 above, organizational skills shall be also taken into account in particular for the appointment of the State Prosecutor.

More detailed criteria for the appointment of the State Prosecutor and the Deputy State Prosecutor shall be laid down by the Rules of Procedure of the Prosecutors Council."

Article 35:

The Prosecutors Council shall arrange an interview with the applicants who meet the requirements for appointment.

An applicant does not need to be interviewed:

1) If an interview which served as a basis for his/her assessment was conducted with him/her in the last twelve months;
2) He/she was given negative assessment several times when interviewed for a post of the state prosecutor or deputy state prosecutor, regardless of when he/she was last interviewed.

Based on the interview and documentation received, the Prosecutors Council shall assess each candidate taking into account the criteria referred to in Article 33a of this Law.

The Prosecutors Council shall decide by a majority vote of a total number of members on the assessment of the candidates.
Immediately after the interview, the Prosecutors Council shall fill in a standard candidate assessment form, which shall contain the assessment of each candidate and explanatory note on the assessment.

ANNEX IX Law on International Legal Assistance

The Law on International Legal Assistance in Criminal Matters
(Official Gazette of Montenegro, No. 04/08 dated 17.01.2008)

I. GENERAL PROVISIONS

Article 1

This Law shall regulate the conditions and procedure for provision of international legal assistance in criminal matters (hereinafter referred to as the "international legal assistance").

Article 2

(1) International legal assistance shall be provided in accordance with an international agreement.
(2) If there is no international agreement or if certain issues are not regulated under an international agreement, international legal assistance shall be provided in accordance with this Law, provided that there is reciprocity or that it can be expected that the foreign state would execute the letter rogatory for international legal assistance of the domestic judicial authority.

Article 3

International legal assistance shall include the extradition of the accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign criminal verdicts, delivery of documents, written materials and other cases relating to the criminal proceedings in a foreign state, as well as the undertaking of certain procedural actions such as: hearing of the accused, witnesses and experts, crime scene investigation, search of premises and persons and temporary seizure of items.

Article 4

(1) Domestic judicial authority shall forward letters rogatory for international legal assistance to foreign judicial authorities and receive the letters rogatory for international legal assistance of the foreign judicial authorities through the ministry responsible for the judiciary (hereinafter referred to as the "Ministry").
(2) In cases where there is no international agreement or reciprocity, the Ministry shall deliver and receive letters rogatory for international legal assistance through diplomatic channels.
(3) In cases when this has been provided for under an international agreement or where there is reciprocity, the Ministry shall deliver and receive letters rogatory for international legal assistance through the competent authority of the foreign state as a central communication authority.
(4) Without prejudice to the above, if provided for under an international agreement, domestic judicial authority may deliver letter rogatory for international legal assistance to a foreign judicial authority directly and receive letter rogatory for international legal assistance from a foreign judicial authority directly, while it shall be obliged to deliver a copy of the letter rogatory to the Ministry.
(5) In urgent cases, provided that there is reciprocity, letter rogatory for international legal assistance may be delivered and received through the National Central Bureau of the Interpol.
(6) The courts and the state prosecutors' offices shall be responsible for provision of international legal assistance in accordance with the law.

Article 5

International criminal assistance may be provided if the offence for which the provision of international legal assistance is requested is a criminal offence both under the domestic law and under the law of the foreign state the judicial authority of which presented the letter rogatory for international legal assistance.

Article 6

(1) Unless otherwise has been provided for by an international agreement or this Law, the letter rogatory for international legal assistance of the domestic or of the foreign judicial authority shall be accompanied with the translation of the letter rogatory into the language of the requested state, or one of the official languages of the Council of Europe, if the requested state accepts it. The replies to the letters rogatory of the foreign judicial authorities do not need to be translated.

(2) Domestic judicial authority shall also proceed upon the letter rogatory for international legal assistance of the foreign judicial authority if the letter rogatory has been presented electronically or by some other means of telecommunication providing delivery receipt, if it may verify its authenticity and if the foreign judicial authority is prepared to deliver the original of the letter rogatory within 15 days at latest.

Article 7

Unless otherwise has been provided for by an international agreement or this Law, signed and certified letter rogatory for international legal assistance shall contain:

1) the name and the seat of the authority making the request;
2) the name of the requested authority, and if its precise name is unknown, an indication that the letter rogatory is being sent to the competent judicial authority, and the name of the country;
3) legal basis for the provision of international legal assistance;
4) the form of the international legal assistance requested and the reason for the letter rogatory;
5) legal qualification of the criminal offence committed and the summary of the facts, except if the letter rogatory refers to the service of court writs (applications, documents and the like);
6) nationality and other personal details of the person regarding which the international legal assistance is requested and his status in the proceedings;
7) in case of service of court writs, their type.

Article 8

Unless otherwise has been provided for by an international agreement or this Law, the costs of provision of international legal assistance, under the condition of reciprocity, shall be borne by the state to which the letter rogatory for international legal assistance is sent.

Article 9

The expressions used in this Law shall have the following meaning:

1) 'domestic judicial authority' shall mean court and state prosecutor designated by law to provide international legal assistance;
2) 'foreign judicial authority' shall mean the state authority competent to provide international legal assistance under the law of the foreign state;
3) 'requesting state' shall mean foreign state the competent judicial authority of which sent the letter rogatory for international legal assistance;
4) 'requested state' shall mean the foreign state to which the letter rogatory for international legal assistance is sent;
5) 'letter rogatory' shall mean a document requesting international legal assistance;
6) 'domestic law' shall mean the law of Montenegro.

II. EXTRADITION OF ACCUSED AND SENTENCED PERSONS

Article 10

The extradition of the accused or sentenced persons shall be requested and enforced in accordance with this Law unless otherwise has been provided for under an international agreement.

Article 11

(1) The conditions for the extradition upon the request of the requesting state shall be as follows:

1) that the person claimed is not a national of Montenegro;
2) that the offence for which extradition is requested was not committed in the territory of Montenegro, against Montenegro or its national;
3) that the offence motivating the request for extradition is a criminal offence both under the domestic law and under the law of the country in which it was committed;
4) that the criminal prosecution or enforcement of criminal sanction has not been barred by the lapse of time under the domestic law before the person claimed has been detained or examined as an accused;
5) that the person claimed has not been already convicted by a domestic court for the same offence or he has not been acquitted of the same offence by the domestic court in a final and legally binding manner, except if the requirements prescribed by the Criminal Procedure Code for retrial have been met; or criminal proceedings have not been instituted in Montenegro for the same offence committed against Montenegro or a national of Montenegro; or the security for the fulfilment of property law claim of the victim has been provided if the proceedings have been instituted for the offence committed against a national of Montenegro;
6) that the identity of the person claimed has been established;
7) that the requesting state presented facts and sufficient evidence for a grounded suspicion that the person claimed committed the criminal offence or there is a final and legally binding judicial decision;
8) that it does not concern a minor offence, in accordance with the Criminal Code.

Article 12

(1) The extradition shall not be allowed for a political criminal offence, an offence connected with a political criminal offence or a military criminal offence within the meaning of the European Convention of Extradition (hereinafter referred to as “political and military criminal offences”).

(2) Prohibition referred to in paragraph 1 above shall not apply to the criminal offences of genocide, crime against humanity, war crimes and terrorism.

Article 13

(1) The extradition shall not be granted for the criminal offence punishable under the domestic law and the law of the requesting state by imprisonment for a term of up to six months or a fine.

(2) If the extradition of the sentenced person is requested to serve the sentence, his extradition shall not be granted if the duration of the imposed imprisonment sentence or the remaining portion thereof which is yet to be served does not exceed four months.

Article 14

If the law of the requesting state prescribes death penalty for the offence for which the extradition is requested, extradition may be granted only if that state gives assurance that the death-penalty will not be imposed or carried out.

Article 15

(1) The procedure for extradition of the accused or sentenced person shall be initiated upon the letter rogatory of the requesting state.

(2) Letter rogatory for extradition shall be delivered to the Ministry.

(3) The following shall be enclosed to the letter rogatory:

1) means required to establish the identity of the accused and/or of the sentenced person (accurate description, photographs, fingerprints and the like);

2) certificate or other information on the nationality of the person claimed;

3) indictment, verdict or detention order, or any other document equivalent to indictment, original or notarized copy, which shall contain the forename and surname of the person claimed and other information necessary to establish his identity, description of the offence, legal qualification of the offence and evidence for a grounded suspicion;

4) excerpt from the wording of the criminal law of the requesting country which is to be applied or which has been applied against the accused for the offence for which extradition is requested, and if the offence was committed in the territory of a third country, the excerpt from the wording of the criminal law of that country as well.

(4) If the information and documents referred to in paragraph 3 above were submitted in a foreign language, they shall be accompanied by a certified translation into the Montenegrin language.

Article 16

(1) The Ministry shall deliver letter rogatory for the extradition to the investigating judge of the court within the jurisdiction of which the person claimed resides or within the jurisdiction of which the person claimed happens to be.

(2) If the domicile or residence of the person claimed is unknown, his domicile or residence shall be established through the state administration authority competent for affairs relating to domicile and residence.

(3) If the letter rogatory was submitted in accordance with Article 15 above, the investigating judge shall issue the order to detain the person claimed, if there is a danger that the will avoid the procedure of extradition, or if other reasons referred to in the Criminal Procedure Code exist, and/or he shall undertake other measures to ensure his presence, unless it is obvious from the letter rogatory and delivered information and documents that the conditions for extradition have not been met.

(4) Detention referred to in paragraph 3 above may last until the decision on extradition is enforced at latest but no longer than six months.

(5) Upon a reasoned request of the requesting state, the Chamber of the competent court may extend the duration of detention referred to in paragraph 3 above in justified cases for additional two months.

(6) The investigating judge shall, after he establishes the identity of the person claimed, inform him without delay why and based on which evidence his extradition is requested and the investigating judge shall ask him to present his defence.

(7) The record shall be made of examination and presenting of defence. The investigating judge shall be obliged to inform the person claimed immediately that he may engage a defence attorney, or that a defence attorney *ex officio* may be appointed for him if the defence is mandatory for the criminal offence in question pursuant to the Criminal Procedure Code.

Article 17

(1) Detention aimed at extradition may be ordered under conditions referred to in Article 15 of this Law even before the letter rogatory of the requesting state is received, if requested by it, or if there is a grounded suspicion that the person claimed committed the criminal offence for which he can be extradited to the requesting state.

(2) Investigating judge shall release the person claimed when the reasons for detention terminate or if the letter rogatory has not been submitted within the period of time he determined while taking into consideration all circumstances, and which cannot exceed 40 days from the date of detention. The detention ordered pursuant to paragraph 1 above may be revoked if the letter rogatory has not been submitted within 18 days from the date of detaining the person claimed.

(3) The Ministry shall inform the requesting state about the deadlines determined by the investigating judge without delay. Without prejudice to the above, if there are justified reasons, the investigating judge may extend the duration of detention for additional 30 days at most, if requested by the requesting state.

Article 18

(1) Upon hearing the state prosecutor and the defence attorney, the investigating judge shall undertake other actions, if necessary, to determine if the conditions for extradition and/or surrender of the items on which or by which the criminal offence was committed, if these had been confiscated from the person claimed, are fulfilled.

(2) After the actions referred to in paragraph 1 above have been completed, the investigating judge shall deliver the case files to the competent Chamber along with his opinion.

(3) If the criminal proceedings are underway before a domestic court against the person claimed for the same or another criminal offence, the investigating judge shall note that in the case files.

Article 19

(1) If the Chamber of the competent court finds that the conditions for extradition prescribed by this Law have not been met, it shall make a decision to reject the letter rogatory for extradition.

(2) The order referred to in paragraph 1 above shall be submitted by the court *ex officio* directly to the higher court which may confirm, repeal or reverse the decision after it hears the state prosecutor.

(3) If the person claimed is held in detention, the Chamber of the competent court may decide that he remain in detention until the decision rejecting his extradition becomes final and legally binding.

(4) Final and legally binding decision rejecting the extradition shall be submitted to the Ministry which shall inform the requesting state thereof.

Article 20

(1) If the Chamber of the competent court finds that the conditions for extradition prescribed by this Law are met, it shall confirm this by passing a decision.

(2) The person claimed shall have right to complain against the decision referred to in paragraph 1 above directly to the court of higher instance within three days after the receipt thereof.

Article 21

If the court of second instance confirms the decision referred to in Article 20 above, or if the complaint has not been lodged against the decision of the court of first instance, the case shall be delivered to the minister competent for judiciary (hereinafter referred to as the Minister), in order to make decision whether to grant extradition.

Article 22

(1) In the event referred to in Article 21 above, the Minister shall pass the decision granting or refusing the extradition.
(2) When he grants the extradition, the Minister may make a decision to postpone the extradition because criminal proceedings are underway before a domestic court for another criminal offence against the person claimed or because this person is serving the imprisonment sentence in Montenegro.
(3) The Minister shall not grant the extradition of the person who enjoys the right of asylum in Montenegro or where it can be reasonably assumed that the person claimed shall be subjected to prosecution or punishment because of his race, religion, nationality, belonging to a specific social group or for his political beliefs, or that his status would be made more difficult for one of these reasons.
(4) The Minister shall refuse the extradition if the person claimed has not been given the possibility to have a defence attorney in the criminal proceedings preceding the extradition.

Article 23

(1) In the decision granting the extradition, the Minister shall state that without the consent of Montenegro:
1) the person claimed may not be prosecuted for another criminal offence committed prior to the extradition;
2) the punishment for another criminal offence committed prior to the extradition cannot be enforced against the person claimed;
3) a punishment more severe than the one to which he has been sentenced cannot be enforced against the person claimed;
4) the person claimed may not be extradited to a third state for prosecution for a criminal offence committed prior to the extradition which has been granted.

(2) Additionally to the conditions referred to in paragraph 1 above, the Minister may also impose other conditions for extradition.

Article 24

(1) The requesting state shall be notified of the decision concerning extradition through diplomatic channels.
(2) The decision granting extradition shall be submitted to the administration authority competent for police affairs which shall escort the person claimed to the border crossing where at an agreed place he will be surrendered to the authorities of the requesting state.

Article 25

(1) The requesting state shall take over the person the extradition of whom has been granted within 30 days as of the date of delivery of the decision on extradition.
(2) The Minister may extend the deadline referred to in paragraph 1 above for additional 15 days upon reasoned request of the requesting state.
(3) If the person the extradition of whom has been granted has not been taken over upon the expiry of the deadline referred to in paragraphs 1 and 2 above, he shall be immediately released, and the Minister may refuse repeat extradition request for the same criminal offence.

Article 26

If the extradition of the same person is requested by more than one country, either for the same offence or for different offences, the decision shall be taken having regard to seriousness of the criminal offences, the place of commission, the respective dates of the requests, the nationality of the person claimed, the possibility of subsequent extradition to another state, and other circumstances.

Article 27

(1) If the extradition is requested by a foreign state from another foreign state and the person claimed would have to be escorted through the territory of Montenegro, transit may be granted by the Minister upon the letter rogatory by the requesting state provided that the person concerned is not a national of Montenegro and that the extradition is not enforced for political or military criminal offence.
(2) Letter rogatory for transit of the person through the territory of Montenegro shall contain the information and documents referred to in Article 15 paragraph 3 of this Law.
(3) In the case of transit of the person through the territory of Montenegro by air transit, if no landing is expected, it shall not be necessary to obtain permit referred to in paragraph 1 above.
(4) The requesting state shall notify the Ministry of transit referred to in paragraph 3 above. The notification shall contain information such as: the name of the person escorted through the territory of Montenegro, the state to which the person is extradited, the criminal offence for which the person is extradited, and the time of air transit.

Article 28

(1) At the request of the requesting state, the competent court shall seize and surrender, in accordance with the domestic law, items which may serve as evidence materials or that resulted from the commission of criminal offence.
(2) The items referred to in paragraph 1 above shall be surrendered even in case when an already approved extradition may not be enforced due to the death or escape of the person claimed.
(3) If the items referred to in paragraph 1 above are subject to seizure or confiscation in the territory of Montenegro, they may be temporarily retained or surrendered provided that they are returned in connection with the ongoing criminal proceedings.
(4) The items referred to in paragraph 1 above, to which Montenegro and third persons have rights, shall be returned to Montenegro as soon as possible after the hearing is completed. The costs of returning of items shall be borne by the requesting state.

Article 29

(1) The person for the extradition of whom the foreign state submitted the letter rogatory if the conditions for extradition prescribed by this Law have been met may be extradited within a summary procedure if the person claimed consented.
(2) The consent referred to in paragraph 1 above shall be entered for the record before a competent court in accordance with the Criminal Procedure Code, in a way ensuring that the consent has been given voluntarily and that the person claimed has been aware of all consequences of such consent when the consent was given. The consent once given cannot be revoked.
(3) The decision on extradition in a summary procedure shall be passed by a competent court.
(4) The court shall notify without delay the Ministry about the decision referred to in paragraph 3 of this Article, and the Ministry shall inform the requesting state.
(5) The extradition within a summary procedure shall have the same force and effect as the extradition within an ordinary procedure.

Article 30

The costs of extradition incurred outside the territory of Montenegro shall be incurred by the requesting state.

Article 31

(1) If criminal proceedings are underway in Montenegro against a person located in a foreign state or if the person located in a foreign state has been sentenced by a competent Montenegrin court, the Minister may submit the letter rogatory for extradition.
(2) The letter rogatory shall be submitted to the requested state through diplomatic channels and it shall be accompanied by documents and information referred to in Article 15 of this Law.

Article 32

(1) If there is danger that the person claimed will flee or hide, the Minister may request to order to detain that person temporarily or to undertake other measures required to prevent his escape even before the actions are taken in accordance with Article 31 of this Law.
(2) The letter rogatory for temporary detention shall contain specifically the information on the identity of the person claimed, the name of the criminal offence for which the extradition is requested, indictment, verdict or detention order, date, place and name of the authority ordering detention, and/or information about the validity of verdict, as well as the statement that the extradition shall be requested through regular channels.

Article 33

(1) If the person claimed is extradited, he may be criminally prosecuted and/or the punishment may be enforced against him only for the criminal offence for which the extradition has been granted.
(2) If the person referred to in paragraph 1 above has been convicted finally and in a legally binding manner by the competent Montenegrin court for other criminal offences committed prior to extradition with regard to which extradition is not allowed, the provisions of the Criminal Procedure Code regulating the reversal of verdict without retrial shall apply *mutatis mutandis*.
(3) If the extradition has been granted under certain conditions with respect to the type or duration of sanction which may be imposed and/or enforced and if it has been accepted under such conditions, the court shall be bound by such conditions when pronouncing a sentence; while if the enforcement of an already imposed sentence is the subject of the extradition, the court adjudicating in the highest instance shall reverse the verdict and impose the punishment in accordance with the conditions of extradition.
(4) If the person extradited had been held in detention in a foreign country for the criminal offence for which he has been extradited, the time spent in detention shall be accounted for in the imprisonment sentence.

III. TRANSFER AND ASSUMING OF CRIMINAL PROSECUTION

Article 34

(1) If a foreigner whose place of residence is in a foreign state committed a criminal offence in the territory of Montenegro, that state can be surrendered the criminal files for the purpose of criminal prosecution and trial if the foreign state does not object to it, without prejudice to the conditions referred to in Article 11 of this Law.
(2) Before passing the decision to conduct investigation, the decision to transfer criminal prosecution shall be taken by the competent state prosecutor; and if the decision was passed prior to the commencement of the main hearing, the decision to transfer criminal prosecution shall be taken by the Chamber of the competent court composed of three judges.
(3) The decision to transfer criminal prosecution may be taken for the criminal offences punishable by imprisonment for a term of up to ten years and for the criminal offences of jeopardising public traffic.
(4) If the victim is a national of Montenegro, the transfer of criminal prosecution shall not be allowed if the victim opposes to it, unless a security for the settlement of his property law claim has been provided.
(5) If the accused is held in detention, it shall be requested from the requested state through the shortest possible means to inform the competent Montenegrin authority within fifteen days at latest whether it shall assume the prosecution.

Article 35

The competent court or the state prosecutor shall deliver the letter rogatory for the transfer of the criminal prosecution accompanied with the decision on the transfer of criminal prosecution and the case files to the Ministry.

The Ministry shall deliver the letter rogatory for the transfer of the criminal prosecution to the competent authority of the requested state, in accordance with Article 4 of this Law.

Article 36

(1) The request of the requesting state for Montenegro to assume the criminal prosecution of a national of Montenegro or a person whose residence is in Montenegro for the criminal offence committed in the requesting state, shall be delivered together with the files to the competent state prosecutor within the jurisdiction of whom that person resides.

(2) If the property law claim has been lodged with the competent authority of the requesting state, action shall be undertaken as if it were presented to the competent court.

(3) The requesting state shall be informed of the refusal to assume criminal prosecution as well as of the final and legally binding decision passed within the criminal proceedings, in accordance with Article 4 of this Law.

Article 37

(1) If the criminal prosecution has been assumed at the letter of request referred to in Article 36 of this Law, domestic law shall apply.
(2) The law of the foreign state shall apply in case when it is more favourable for the accused.

IV. ENFORCEMENT OF FOREIGN CRIMINAL VERDICT

Article 38

(1) Competent Montenegrin court shall enforce final and legally binding criminal verdict of a foreign court if this has been prescribed under an international agreement or if there is reciprocity and if it imposes the criminal sanction in accordance with the domestic law.

(2) In the case referred to in paragraph 1 above, the competent court shall pass the decision within a Chamber composed of three judges without presence of the parties.

(3) Territorial jurisdiction of the court shall be defined according to the last place of residence of the sentenced person in Montenegro and if the sentenced person has never reported his place of residence in Montenegro – according to the place of birth. If the sentenced person neither has had his place of residence nor was born in Montenegro, the Supreme Court of Montenegro shall identify one of the courts having subject-matter jurisdiction before which the proceedings shall be conducted.

(4) In the operative part of the verdict referred to in paragraph 2 of this Article, the court shall insert full wording of the operative part and the name of the court from the verdict of the foreign court and it shall pronounce the sentence. In the particulars of judgement, the court shall state reasons it took into account in the pronouncement of the sanction and refer to the reasons of the foreign court the verdict of which is enforced.

(5) State prosecutor and the sentenced person or his defence attorney may lodge a complaint against the verdict.

Article 39

(1) If the foreign court pronounced criminal sanction which is not prescribed by the domestic law, the competent Montenegrin court shall pronounce a criminal sanction which is most similar to the criminal sanction imposed by a foreign court by type and severity.
(2) In the event referred to in paragraph 1 above, the criminal sanction may not be more severe than the criminal sanction pronounced by a foreign court.

Article 40

The provisions of the domestic law regulating pardon, amnesty and conditional release shall also apply to the persons convicted by foreign criminal verdicts enforced in Montenegro.

Article 41

(1) A criminal verdict of a Montenegrin court may be enforced in a foreign state if this has been prescribed under an international agreement or if there is reciprocity.
(2) If the foreign national convicted in Montenegro or if a competent authority authorized by an international agreement submits a request to the competent Montenegrin court for the sentenced person to serve the sentence in his country, the court shall proceed pursuant to the international agreement.

V. OTHER FORMS OF INTERNATIONAL LEGAL ASSISTANCE

Article 42

Other forms of international legal assistance shall be: submitting documents, written materials and other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as undertaking of individual procedural actions; hearing the accused, witness and expert, including hearing through video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records and other procedural actions.

Article 43

(1) The Ministry shall deliver and receive letters rogatory for the forms of international legal assistance referred to in Article 42 of this Law in accordance with Article 4 of this Law.
(2) The permissibility and the method of enforcement of the action which is the subject matter of the letter rogatory of the foreign judicial authority shall be decided by the court in accordance with domestic law and international agreement.

Article 44

(1) At the letter of request of the foreign judicial authority, domestic judicial authority may approve the presence of a foreign official person and person having legal interest in the enforcement of the action requested by the letter rogatory.

(2) In case the presence at the letter of request referred to in paragraph 1 above is approved, domestic judicial authority shall send notice to the foreign judicial authority of the place and time of enforcement of the action requested by the letter rogatory.

Article 45

Procedural action undertaken by the foreign judicial authority in accordance with its law shall be deemed equal to the relevant procedural action undertaken by a domestic judicial authority within the criminal proceedings, unless this is contrary to the principles of the domestic judicial system and generally accepted principles of the international law.

Article 46

International legal assistance shall not be provided if the letter rogatory concerns military criminal offence.

Article 47

International legal assistance referred to in Article 42 of this Law may be refused:

1) if the letter rogatory of the requesting state concerns political criminal offences;
2) if the execution of the letter rogatory of the requesting state is likely to prejudice the sovereignty, constitutional order, security or other essential interests of Montenegro.

Article 48

(1) Domestic judicial authority may delay provision of international legal assistance referred to in Article 42 of this Law if this is necessary for criminal prosecution or conduct of criminal proceedings which is pending before domestic judicial authorities, and which is related to the letter rogatory delivered.

(2) If the domestic judicial authority delays the provision of international legal assistance, in accordance with paragraph 1 above, it shall notify the requesting state thereof and state reasons for delay.

Article 49

(1) Person deprived of liberty in Montenegro may be temporarily transferred to the requesting state at the letter of request of its competent judicial authority as a witness for the purpose of hearing, confrontation or crime scene investigation, for the proceedings initiated in that state, provided that:

1) the person gave a statement for the record of the competent court that he consents to temporary transfer;
2) the period of temporary transfer will not prolong his detention and jeopardize the criminal proceedings underway against him in Montenegro;
3) a person shall not be punished or another sanction imposed on him during temporary transfer;
4) it has been ensured that the transferred person shall be sent back to Montenegro immediately after the procedural action has been completed.

(2) The requesting state shall be obliged to send back the person referred in paragraph 1 above to Montenegro, without delay, immediately after the procedural action has been completed, within 60 days at latest.

(3) The decision on transfer shall be passed by the competent court within a Chamber composed of three judges and it shall be enforced in a manner prescribed by Article 24 paragraph 2 of this Law.

(4) The person the transfer of whom is requested shall have the right to lodge a complaint against the decision referred to in paragraph 3 above to the competent court within three days as of the receipt of decision.

Article 50

As regards the criminal offences of making and putting into circulation counterfeit money, money-laundering, unauthorized production, processing and sale of narcotic drugs and poisons, trafficking in human beings, as well as other criminal offences with respect to which the centralization of data is prescribed under international agreements, the authority before which the criminal proceedings are conducted shall be obliged to deliver to the National Central Bureau of the INTERPOL, without delay, data on criminal offences and the perpetrator, while the court of first instance shall be further obliged to submit a final and legally binding verdict.

Article 51

(1) The Ministry shall, at the request of domestic judicial authorities, obtain from the competent foreign judicial authorities texts of legislation which are applicable or were applicable in other countries, and, if necessary, notifications regarding certain legal issue.

(2) The Ministry shall, at the request of foreign judicial authorities, deliver texts of domestic legislation or notifications on certain legal issue.

Article 52

(1) International legal assistance referred to in Article 42 of this Law shall also be provided to the European Court of Human Rights and European Court of Justice, in accordance with this Law.
(2) Provision of international legal assistance to the International Criminal Court shall be prescribed under a separate law.

Article 53

The costs incurred in relation to expert examination, and the costs of temporary transfer of the person deprived of liberty for the purpose of hearing in the requesting state shall be borne by the requesting state.

VI. TRANSITIONAL AND FINAL PROVISIONS

Article 54

Unless otherwise has been provided for under this Law, the provisions of the Criminal Procedure Code shall apply *mutatis mutandis* to the provision of international legal assistance.

Article 55

The procedures for provision of international legal assistance underway on the date of entry into force of this Law shall be finalized in accordance with the provisions of Chapter XXX and XXXI of the Criminal Procedure Code (‘Official Gazette of SFRY’, Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and ‘Official Gazette of FRY’, Nos. 27/92 and 24/94).

Article 56

The provisions of Chapter XXX and XXXI of the Criminal Procedure Code (‘Official Gazette of SFRY’, Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and ‘Official Gazette of FRY’, Nos. 27/92 and 24/94) shall cease to be valid by entry into force of this Law.

Article 57

This Law shall enter into force eight days after the date of its publication in the Official Gazette of Montenegro.