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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

MONTENEGRO

16 April 2015

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LIST OF ACRONYMS USED

AML/CFT	Anti-money laundering/combating the financing of terrorism
APMLTF	Administration for the Prevention of Money Laundering and Terrorist Financing
CBM	Central Bank of Montenegro
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPC	Criminal Procedural Code
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GPO	General Prosecutor's Office
ISA	Insurance Supervision Agency
IT	Information Technology
LEA	Law Enforcement Agency
LPMLTF	Law on the Prevention of Money Laundering and Terrorist Financing
MFA	Ministry of Foreign Affairs
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NGO	Non-governmental organisation
NPO	Non-profit organisation
PEP	Politically Exposed Person
SEC	Security and Exchange Commission
SRO	Self-Regulatory Organisation
STR	Suspicious transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication

UN	United Nations
UNR	United Nations report
UNSCC	United Nations Security Council Committee
UNSCR	United Nations Security Council Resolution

I. PREFACE

1. This is the twenty fourth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 32, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related 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 "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. 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 3 to 8 March 2014, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Montenegro. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL experts in criminal law, law enforcement and regulatory issues and comprised: Mr Yehuda Shaffer (Deputy State Attorney (Financial Enforcement), Israel) and Ms Tatevik Nerkararyan (Methodologist-Legal Advisor, Legal Compliance Division, Financial Monitoring Centre, Central Bank of Armenia, Armenia), who participated as legal evaluators, Mr Andrew Le Brun (Director, Office of the Director General, Jersey Financial Services Commission, Jersey) and Ms Tamar Goderdzishvili (Deputy Head of Legal Department, National Bank of Georgia, Georgia), who participated as financial evaluators, Mr Amar Salihodzic (International Affairs Officer, Financial Intelligence Unit, Liechtenstein) who participated as a law enforcement evaluator and members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

    1. General information
    2. Legal system and related institutional measures
    3. Preventive measures - financial institutions
    4. Preventive measures – designated non-financial businesses and professions
    5. Legal persons and arrangements and non-profit organisations
    6. National and international cooperation

7. Statistics and resources

Annex (implementation of EU standards).

Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 29th Plenary meeting – 17 March 2009), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2014 or shortly thereafter.

[1] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Montenegro at the time of the 4th on-site visit (3 to 8 March 2014) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Montenegro received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round report. This report is not, therefore, a full assessment against the FATF 40 Recommendations and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of Montenegro.

2. Key findings

2. **The money laundering offence is now broadly in line with the Vienna and Palermo Convention and provisions dealing with liability of legal persons are in place.** The authorities have not been very effective in securing ML convictions.

3. **The financing of terrorism offence now also applies to the financing of terrorist organisations and individual terrorists without any link to the commission of a specific terrorist act.** Technical deficiencies remain, especially in relation to the acts which constitute an offence within the scope of, and as defined in, the treaties listed in the annex to the Terrorist Financing Convention.

4. **The legal framework governing confiscation and provisional measures is still not comprehensive enough.** There were very few instances were property was seized and confiscated in ML cases and none for proceeds-generating offences and FT.

5. **There are no specific laws and procedures for the freezing of terrorist funds or other assets of designated persons listed under UNSCR 1267 and 1373.** No terrorist assets have been frozen in Montenegro.

6. **The Administration for the Prevention of Money Laundering and Terrorist Financing (APMLTF) is an administrative-type financial intelligence unit (FIU) with a sound legal basis for receiving, analysing and disseminating of disclosures of suspicious transaction reports (STRs) and other information.** The APMLTF has sufficient operational independence and autonomy. The staff of the APMLTF perform their functions professionally. Some effectiveness issues were identified regarding the APMLTF's analysis and dissemination process.

7. **Law enforcement authorities have all the necessary powers to conduct ML/FT investigations.** Nevertheless, there is no concrete law enforcement policy to proactively investigate ML/FT. The number of ML investigations is very low. There were no investigations of FT.

8. **There are no powers to stop or restrain currency or bearer negotiable instruments in order to ascertain whether evidence of ML/FT may be found.** The Customs Administration periodically submits information to the APMLTF on cash declarations and suspicions of ML/FT. However, false and non-declarations are rarely identified.

9. **The Montenegrin authorities have taken some measures to revise the preventive requirements since the last evaluation**. However, significant deficiencies remain with respect to requirements for customer due diligence (CDD) and politically-exposed persons (PEPs). The

financial sector was found to have adequate knowledge of preventive measures. However, issues were identified with respect to the identification of beneficial owners. Awareness of preventive measures within the DNFBP sector is very low.

10. **The reporting of ML/FT suspicions is not entirely in line with the Standards.** Financial institutions over-rely on indicators established by the APMLTF and do not submit STRs unless the suspicion is linked to a transaction. Reporting by DNFBPs is not effective.

11. **To a large extent, most financial supervisory authorities have adequate powers to monitor and ensure compliance by financial institutions with preventive requirements.** However, the AML/CFT supervision of some financial institutions was not found to be comprehensive. A number of issues have a negative impact on the sanctioning regime available for financial institutions.

12. **The supervisory framework for DNFBPs needs to be significantly enhanced**. Supervisors for lawyers, notaries, accountants and auditors have no powers to conduct AML/CFT supervision. The APMLTF, which is responsible for a number of categories of DNFBPs, is not sufficiently staffed.

13. **There are legal provisions in place which provide for cooperation between competent authorities domestically.** However, in practice, operational coordination remains an issue and affects the timely flow of information amongst competent authorities.

14. **Mutual legal assistance is provided in a timely, constructive and effective manner. Information exchange by the APMLTF and law enforcements authorities with their foreign counterparts is conducted effectively.** Some issues were identified with respect to exchange of information by supervisory authorities.

3. Legal Systems and Related Institutional Measures

15. The money laundering offence was amended following the 3rd Round Evaluation and is now broadly in line with the Vienna and Palermo Conventions. The predicate offences for ML include insider trading and market manipulation, which were missing at the time of the 3rd Round. Amendments were carried out to further clarify that the ML offence does not require a prior conviction for the predicate offence. The offence now refers to property deriving from criminal activity, rather than a criminal act. Criminal liability of legal persons is adequately covered and the sanctions for the ML offence appear to be proportionate and comparable with proceeds-generating offences in the Montenegrin Criminal Code. Some missing elements were identified. The concealment or disguise of rights with respect to property does not appear to be covered. Additionally, the Criminal Code does not provide a definition of property and there is no jurisprudence supporting a wide interpretation of property in terms of the ML offence.

16. Two final ML convictions were achieved in the period under review. Despite amendments to the ML offence to ensure that a conviction for the predicate offence is not needed, the only cases which resulted in a ML conviction were prosecuted together with the predicate offence or in relation to which a prior conviction had been achieved. The criminal sanctions which were applied in the two ML cases do not appear to be dissuasive. None of the investigations and prosecutions for ML were initiated on the basis of FIU notifications. There were no ML investigations, prosecutions and convictions for legal persons.

17. The FT offence covers both the provision and collection of funds with the intention that they should be used or in the knowledge that they are to be used to finance a terrorist act, a terrorist organisation or an individual terrorist. The financing of terrorist organisations or individual terrorists does not depend on the commission of a specific terrorist act. However, the financing offence does not cover all the acts which constitute an offence within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention. The financing of the acts which are covered is only criminalised when those acts are subject to an additional purposive

element. The liability of legal persons only arises where the offence was committed with the intention to obtain gain for the legal entity. There were no FT investigations, prosecutions and convictions in the period under review.

18. The legal framework governing confiscation and provisional measures is still not comprehensive enough. In particular, the confiscation of indirect proceeds and property deriving from proceeds (including income, profits or other benefits) do not appear to be covered. There is no requirement to confiscate property of corresponding value to laundered property and instrumentalities. The evaluators remain concerned about some limitations affecting the regime for provisional measures. There were very few instances where property was seized and confiscated in ML cases and none for proceeds-generating offences and FT. There does not appear to be an overarching policy to identify and trace proceeds of crime with a view to seizing and confiscating such proceeds.

19. Since the adoption of the 3rd Round Evaluation, the framework for the freezing of terrorist funds has not changed. There are no specific laws and procedures for the freezing of terrorist funds or other assets of designated persons listed under UNSCR 1267 and 1373. Nevertheless, the APMLTF publishes lists of persons subject to sanctions of the UN Security Council on its website. In addition, the CBM circulates notifications to banks on sanctions which have been imposed by the UNSC and the EU.

20. The APMLTF serves as the Montenegrin FIU. It is an administrative-type FIU and has a sound legal basis for the receipt, analysis and dissemination of disclosures of STRs and other relevant information. Guidance on the manner and procedures of reporting is in place and reporting forms are available for all the different categories of reporting entities. The APMLTF may access financial, administrative and law enforcement information and request additional information from reporting entities if it estimates that there are reasonable grounds for a suspicion of ML/FT. The APMLTF appears to have sufficient operational independence and autonomy and appropriate safeguards are in place to ensure that information held by the APMLTF is securely protected and disseminated. No periodic reports are publicly released on typologies and trends.

21. The staff of the APMLTF met on-site displayed a good knowledge of AML/CFT issues and have sufficient expertise to properly undertake their functions. However, some issues were identified with respect to the analytical and dissemination functions of the APMLTF. It appears that limited use is made of available and accessible data and information for analysis purposes. Moreover, the absence of analytical tools has a negative impact on the analytical process. Some analytical reports are disseminated only to the Police Administration, notwithstanding the fact that the Police Administration has no power to initiate criminal investigations and is not sufficiently trained to conduct financial investigations.

22. The main law enforcement bodies involved in the fight against ML/FT are the State Prosecutor's Office and the Police Administration (the Department for Fight against Organised Crime and Corruption and the Department for Suppression of Economic Crime). There are sufficient powers in place to enable the authorities to compel production of, search persons and premises for and seize and obtain data and information and take witnesses' statements for use in investigations and prosecutions of ML, FT and other underlying predicate offences. Nevertheless, there is no concrete law enforcement policy to proactively investigate ML/FT, which was also evident from the absence of coordination between the various law enforcement authorities involved. The number of ML investigations initiated on the basis of a notification disseminated by the APMLTF is very low. There appears to be limited understanding by law enforcement authorities of the APMLTF's functions and the purpose behind the APMLTF's dissemination procedure. No ML/FT investigations were initiated independently of a notification from the APMLTF.

23. In order to detect the physical cross-border transportation of currency and bearer negotiable instruments (BNIs) related to ML/FT, Montenegro implemented a declaration system that requires all persons to declare any assets, cash and bearer negotiable instruments (BNIs) above the

threshold of EUR 10,000. The Customs Administration maintains records on all declarations filed and submits this information to the APMLTF periodically. It also reports to the APMLTF any identified suspicions of ML/FT. No significant progress was made to address the deficiencies identified in the 3rd round evaluation. There are still no powers to stop or restrain currency or BNIs for a reasonable time in order to ascertain whether evidence of ML/FT may be found and to request and obtain information from the carrier on the origin of the currency and BNI and their intended use, upon discovery of a false or non-declaration. The administrative sanctions for false or non-declarations set out in the law remain low. Very few false or non-declarations were identified. In these cases, the sanctions applied were not proportionate or dissuasive. No training is provided to Customs officials on ML/FT-related issues.

4. Preventive Measures – Financial Institutions

24. Montenegro has amended the Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF) to address deficiencies identified in the 3rd Round Evaluation, although some significant deficiencies still remain. The risk-based approach is embedded within the LPMLTF and related regulations and guidance.

25. The LPMLTF prescribes obligations for CDD, which must be conducted in full before entering into a business relationship with a customer. CDD measures must be applied both with respect to a customer and a beneficial owner when establishing a business relationship, conducting a transaction amounting to EUR 15,000, when there are doubts about the accuracy and veracity of identification data and when there are suspicions of ML/FT. Gaps were identified in relation to CDD measures which apply to certain legal persons and arrangements, including measures to verify that any person purporting to act on behalf of the customer is so authorised and understanding the ownership and control structure of the customer. Some deficiencies were also identified with respect to the measures on simplified due diligence and the requirements which should be applied when a financial institution is unable to complete CDD.

26. Overall the financial institutions met during the on-site visit displayed an adequate understanding of their obligations to identify and verify the identity of their customers. Nevertheless, many financial institutions are inclined to assume that information held at the Company Registry (and other public registries) will always reflect the beneficial ownership of a legal person.

27. There are requirements in place to mitigate the ML/FT risks arising from new and developing technologies that might allow anonymity and from non-face-to-face business relationships. The LPMLTF also provides for requirements concerning PEPs. Nevertheless, there is no requirement to adopt risk-management systems to determine whether a prospective customer or beneficial owner is a PEP. Senior management approval is not required when establishing a business relationship or conducting a transaction with a PEP. The requirement to establish the source of wealth of PEPs is unclear. Overall, the measures applied in practice by financial institutions do not appear to be effective.

28. Record-keeping requirements are largely in place. Financial institutions are required to keep records, *inter alia*, on identification documents and transactions for 10 years. Measures have been taken since the last evaluation to introduce requirements on wire transfers within the LPMLTF. Details on the content and type of data to be obtained and other obligations of the providers of payment operations or money transfer services are set out in a separate rulebook issues by the Minister of Finance. Some deficiencies were identified with respect to these measures. There is no requirement to verify an originator's identity using documentation that is reliable and independent. The supervisory framework to monitor compliance with wire-transfer rules is not comprehensive.

29. The requirement to report ML/FT suspicions is set out under the LPMLTF, which provides for both *ex-ante* and *ex-post* reporting. The requirement is linked to suspicions of ML/FT related to transactions and does not cover the requirement to report suspicions that funds are the proceeds of a

criminal activity. The FT reporting requirement does not extend to funds related or linked to terrorist organisations and those who finance terrorism and funds used by those who finance terrorism. The APMLTF issued guidance on ML (but not FT) indicators, which assists financial institutions but is sometimes over-relied on. In practice, financial institutions only file STRs with the APMLTF in the context of a suspicious transaction, to the exclusion of other circumstances where a suspicion might arise. Financial institutions did not appear to clearly distinguish between unusual and suspicious transactions. Some financial institutions also appeared not to report suspicious transactions where a related cash transaction report had been reported to the APMLTF already. Requirements on complex, unusual large transactions need to be updated. No direct requirement to pay special attention to business relationship and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is set out in the LPMLTF. The APMLTF however publishes the FATF public statements (and AML/CFT Compliance document) on high-risk and non-cooperative jurisdictions on its website.

30. Responsibilities for AML/CFT supervision are set out in the LPMLTF. The CBM, the ISA and the SEC exercise their supervisory powers under the sector-specific legislation regulating the financial institutions under their supervision. The supervisory powers of the APMLTF are set out under the (general) Law on Inspection Supervision. There is no clear legal basis for the Agency for Telecommunication and Postal Services to supervise post offices providing Western Union services and it has not done so in practice. There is no (legal or institutional) supervisory framework for certain (less risky) financial activities subject to the LPMLTF, in relation to which no licensing and regulatory framework currently exists in Montenegro. All supervisors are required to inform and consult with the APMLTF on planned supervisory activities ahead of an on-site examination and the measures taken subsequently to examinations.

31. To a large extent, the CBM, the ISA, the SEC and the APMLTF have adequate powers to monitor and ensure compliance by financial institutions with preventive requirements, except for the SEC in relation to stock brokers. There are some gaps in the powers given to the CBM and the SEC to compel production of, or obtain access to, all records, documents or information relevant to compliance monitoring. The SEC and the APMLTF cannot take 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 in the institution for which they have supervisory responsibility. A number of issues have a negative impact on the sanctioning regime available for financial institutions. The number of sanctions imposed by all supervisors is considered to be low.

32. The CBM, the ISA and the SEC regularly conduct on-site inspections of most institutions under their supervision. Microcredit institutions, which fall under the responsibility of the CBM, are not directly supervised. The ISA has only visited one life insurance broker despite having assumed responsibility of brokers and agents since 2012. Overall, it appears that the SEC may not have treated AML/CFT issues as a priority. The APMLTF examines those financial institutions which pose the highest risk on the basis of data held within its database and information gathered from other authorities. Given the large number of financial and non-financial institutions under its supervision, the number of staff dealing with supervisory matters of the APMLTF is considered to be inadequate.

33. At the time of the on-site visit there was no regulatory and legal framework governing persons providing money or value transfer services.

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

34. All categories of DNFBPs are subject to preventive measures, except for Trust and Corporate Service Providers. The application of preventive measures to online casinos is unclear.

35. DNFBPs are subject to the same AML/CFT requirements as financial institutions and the same deficiencies apply. Lawyers and notaries are subject to certain specific requirements, which do not cover the full range of preventive requirements under Recommendations 5, 6, 8, 11 and 21.

Overall, it was found that the implementation of preventive measures by DNFBPs is weak. This raises concerns in light of the higher ML risk posed by the real estate sector.

36. The reporting requirement which applies to financial institutions also applies to DNFBPs, except for lawyers and notaries. The deficiencies identified under Recommendation 13 and SR IV also apply to the reporting requirement of DNFBPs. A specific reporting requirement applies to lawyers and notaries, which presents the same deficiencies as the requirement for financial institutions. The number of STRs submitted by DNFBPs is very low, which raises significant concerns.

37. Casinos are regulated and licensed by the Administration for Games of Chance. There are no measures in place to prevent criminals or their associates from being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino. The Administration for Inspection Affairs is responsible for monitoring AML/CFT compliance by casinos and has adequate powers to do so. However, only one inspection was carried out in the period under review. The legal basis for the imposition of sanctions for breaches of AML/CFT requirements by the Administration of Inspection Affairs is unclear. No sanctions were imposed.

38. The APMLTF monitors certain categories of DNFBPs for compliance with the LPMLTF, including the real estate sector and dealers in precious metals and stones. The APMLTF focuses most of its resources on the real estate sector, which is considered to pose the highest ML/FT risk. Despite the efforts of the APMLTF, it is doubtful whether the supervision of the APMLTF of the sector is effective, due to the sheer volume of entities under its supervision and the limited number of staff with supervisory responsibilities. There is no legal framework governing the AML/CFT supervision of lawyers, notaries, auditors and accountants. No supervision has been carried out in practice. The sanctioning regime for DNFBPs is not considered to be effective.

6. Legal Persons and Arrangements & Non-Profit Organisations

39. The Law on Business Organisations regulates the incorporation of legal persons in Montenegro. Information on the setting up, nature and activity of legal persons is found in the Central Business Registry. Information on shareholders, partners, members of the Board of Directors and other involved parties are made available to the public by the Central Business Registry on its website. A legal person commits an offence if it does not submit data on a timely basis at the time of registration and when subsequent changes occur.

40. There is no requirement for legal persons to submit information on beneficial ownership to the Central Business Register. According to the Montenegrin authorities, the Law on Prevention of Illegal Business Operations requires all legal persons to open a bank account, which would entail the application of all CDD measures, including the identification of beneficial owners. However, all the banks visited on-site confirmed that a customer who is a legal person would be requested to provide information on beneficial ownership at the time of applying to open an account and explained that this information would be compared to data held in the Central Business Registry. The Central Business Registry does not hold beneficial ownership information in all cases (e.g. where the shareholder is a legal person). It is therefore doubtful whether the current system ensures adequate transparency concerning the beneficial ownership of legal persons and enables competent authorities to obtain adequate, accurate and current beneficial ownership information.

41. Non-profit organisations are regulated by the Law on Non-Governmental Organisations and the LPMLTF. NPOs are required to submit information on their activities, their purpose and objectives, the identity of the founders, the identity of persons on the managing board and information on initial endowments. However, it is not clear that the identity of all persons who own, control or direct the activities of NPOs would be required to be submitted to the Registry of NGOs, within the Ministry of Interior. No specific reviews have been undertaken to identify the

features and types of NPOs which are at risk of being misused for terrorist financing and no outreach was undertaken to the NPO sector on FT risks. Additionally, there are no sanctions in place for breaches of the Law on NGOs. It was not demonstrated that effective supervision has been carried out in relation to NPOs which control significant portions of financial resources of the sector and substantial share of the sector's international activities.

7. National and International Co-operation

42. Since the last evaluation, the Montenegrin authorities have set up the National Commission for the implementation of the National Strategy for the Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing. The commission is composed of officials from the Ministry of Interior, the National Security Agency, the Ministry of Finance, the APMLTF, the Prosecutor's Office, the Police Administration, the Customs Administration and the financial and non-financial sector supervisors. Its main function is to coordinate and monitor activities of competent authorities in the implementation of the national strategy. The evaluation team could not assess the effectiveness of the work of the commission since it did not have the opportunity to meet with any of its senior members.

43. The law enforcement authorities, the FIU, and supervisory authorities have the necessary powers to cooperate and exchange information in the field of AML/CFT. A number of MoUs were negotiated between all authorities involved. Despite these developments, operational coordination remains an issue and affects the timely flow of information amongst competent authorities.

44. The legal framework for the provision of mutual legal assistance (MLA) is broadly in place and remains as at the time of the 3rd Round Evaluation. All the necessary forms of MLA can be provided (including the production, search and seizure of information, evidence and documents, taking statements of witnesses, etc.). The authorities competent for the provision of MLA are the courts and the Prosecutor's Office, while the authority responsible for receiving and sending MLA requests is the Ministry of Justice. Feedback received from other countries with respect to their experience of international cooperation indicated that the Montenegrin authorities provide the widest possible range of mutual legal assistance in a timely, constructive and effective manner. However, little data was provided by the authorities about cooperation.

45. The APMLTF provides information to its foreign counterparts in a rapid, constructive and effective manner. There are no disproportionate and unduly restrictive conditions which limit FIU-to-FIU information exchange. The APMLTF proactively seeks information from foreign counterparts and has never refused to provide information following a request. Law enforcement authorities (including the Customs Administration) are also authorised to exchange information with their foreign counterparts and are also active in the area of informal information exchange. The situation is different for supervisory authorities. There are no clear and effective gateways to facilitate and allow exchanges of information directly between counterparts. Insufficient details were provided on the controls and safeguards in place to ensure that information received is used only in an authorised manner. With the exception of the APMLTF, as a supervisor, assistance is not requested from, or by, other supervisory authorities.

8. Resources and statistics

46. Since the time of the 3rd evaluation round report, the APMLTF's budget has been decreased considerably, due to the financial crisis that impacted all state authorities' budget. As a result there are still vacancies within the structure of the APMLTF, as at the time of the 3rd round. The evaluators observed a certain disproportion in the distribution of human resources, given that only 8 out of 39 employees are assigned to APMLTF's core business activities. Moreover, the high turnover of the staff members, due to the low level of salaries, represents a significant problem.

The training of APMLTF's staff is overall very satisfactory, with a number of events and workshops being held. Technical resources need to be enhanced as a matter of priority.

47. The Prosecutor's office did not raise any issues with the number of staff having AML/CFT responsibilities. The persistent shortage of law enforcement officers within the Police Administration with training on financial investigations continues to raise significant concerns. The Customs Administration does not appear to be adequately staffed. No training on AML/CFT-related issues is provided.

48. The financial supervisory authorities indicated that they were satisfied with the resources available. Training to supervisory staff on AML/CFT issues should be improved. The resources of DNFBP supervisory authorities do not appear to be sufficient. The level of training provided is not adequate.

49. The competent authorities maintain statistics on a number of matters relevant to the effectiveness and efficiency of AML/CFT systems. However, statistics on disseminated STRs, on confiscation and provisional measures for ML and predicate offences and supervisory examinations were incomplete.

III. Mutual Evaluation Report

1 GENERAL

1.1 General Information on Montenegro

General

1. This section provides a factual update of the information previously detailed in the third round mutual evaluation report on Montenegro covering the general information on the country, the key aspects of its international relations, economy, system of government, legal system and hierarchy of norms, transparency, good governance, and measures against corruption.

2. Montenegro is located in the Balkans region and its territory covers the area of 13,812 km². It is bordered by the Adriatic Sea to the south-west, Croatia to the west, Bosnia and Herzegovina to the northwest, Serbia to the north-east, Kosovo* to the east and Albania to the south-east. Montenegro is divided into twenty-three municipalities (opština), and two urban municipalities, subdivisions of the Podgorica municipality.

3. The 2011 census indicated that the population of Montenegro amounted to 620,029 inhabitants, of whom 185,937 (around 30%) lived in the capital city Podgorica. According to the Statistical Office of Montenegro (MONTSTAT), the estimated population on January 1, 2014 amounted to 621,521 inhabitants. The major ethnic groups remain the same as at the time of the 3rd round evaluation, with the most significant group being Montenegrins, amounting to 45% of the population, followed by Serbs (28,7 %), Bosnians (8,6%), Albanians (4,9%), Croats (0,9%) and smaller minorities of Yugoslavs, Macedonians, Slovenians and Hungarians. The religious determination of the population has not changed since the 3rd evaluation round. According to the 2011 Census, most Montenegrin inhabitants are Orthodox (72%). There is also a sizeable number of Muslims (19,1%) and Catholics (3,4%).

4. The official language is Montenegrin, but according to the Constitution of Montenegro, Serbian, Bosnian, Albanian and Croatian "*shall also be in the official use*".

International relations

5. Montenegro is a member of the UN, World Trade Organisation, Organisation for Security and Co-operation in Europe, Council of Europe, Central European Free Trade Agreement and it is one of the founding members of the Union for the Mediterranean.

6. As part of the preparation measures for accession to the NATO, Montenegro is participating since 2010 in the Membership Action Plan programme. Furthermore, Montenegro maintains close relations with the European Union; the Stabilisation and Association Agreement between Montenegro and the EU has entered into force in May 2010 and in December the same year Montenegro was granted candidate status. The accession negotiations were officially started in June 2012.

Economy

7. The official currency used in Montenegro is since the year 2002 the euro.

8. According to MONSTAT, Montenegro's GDP was EUR 3327 million in 2013. Even though the values have been steadily increasing over the past years, the GDP per capita in purchasing power standards remains at around 40% of the EU average.

Table 1: Key economic indicators in Montenegro in the years 2009 to 2013

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

		2009	2010	2011	2012	2013
1.	GDP in current prices, € million[2]	2 981	3 104	3 234	3149	3327
2.	Real GDP growth, %[3]	-5.7	2.5	3.2	-2.5	3.3
3.	Inflation[4]	3.5	0.7	3.2	3.6	2.1
4.	Unemployment rate, %[5]	19.1	19.7	19.7	19.6	19.8
5.	FDI – net, in € million[6]	1,066	552	389	462	324

9. The World Bank describes Montenegro as an upper-middle-income country with high growth potential. According to the IMF, its service-based economy is highly reliant on tourism and FDI, as key drivers of the economy activities and growth. Its annual growth in the period leading up to the global financial crisis (2006-2008) averaged at almost 9%. However, the combined impact of reduced access to credit, loss of export markets and lower demand suffered in the tourist sector led to a recession in 2009. As can be observed from the table above, the Montenegrin economy during 2009 and especially during the beginning of 2010 faced the transferred impact of the economic and financial crisis, finalising 2009 with an economic depression, decreasing foreign direct investment and a sharp downturn in real GDP by 5,7%. In 2013 Montenegro emerged from the recession and real GDP grew by 3,5%, supported by tourism services, export of electric energy and the beginning of several tourism-based investment projects.

10. In the past decade, Montenegro has undergone a significant privatisation of its economy, this process being managed by the Privatization and Capital Projects Council. The majority of the state owned companies have already been privatised, with the remaining businesses being planned to undertake privatisation in the upcoming years. Participation in the privatisation process is open to both to the citizens of Montenegro and foreign nationals.

11. Montenegro's dominant industry is the manufacturing of heavy metals, with steel, iron and especially aluminium sector also contributing significantly to foreign trade.

12. According to the MONSTAT, in 2013 the value of export of goods was EUR 375.5 million (an increase of 2.4% compared to previous year), and imports were EUR 1 773.2 million (a decrease of 2.6%). The main export goods are electric current and mineral fuels, with the most significant trading partners being Serbia, Croatia and Slovenia, respectively. Montenegro imports mainly food and live animals, with the principal trading partners being Serbia, Greece and China.

13. Foreign investment in Montenegro reached its peak in 2009, when the authorities promoted with success investment especially into real estate by foreign investors as a mean to overcome possible incidences of the crises. These foreign investments were undertaken mainly with the purpose to serve as long-term investments in the growing Montenegrin tourism industry.

14. According to the Central Bank of Montenegro (CBM), in 2011 the largest FDI in Montenegro came from Russia (22,6%), Italy (9,6%); Cyprus (7,8%); Poland (7,5%); Serbia (5,6%); Switzerland (5,4%); Luxembourg (5,2%) and Slovenia (3,9%). Montenegro has been particularly

[2] Source: MONSTAT

[3] Source: MONSTAT

[4] Source: World Bank

[5] Source: World Bank

[6] Source: IMF

attractive for Russian nationals as a touristic destination. Aside from the real estate sector, Russian capital is also significantly present in the ownership of legal entities, where MONSTAT stated in its Release on the Number and Structure of Foreign-owned Business Entities in Montenegro in 2012 that 32% of foreign-owned companies registered in Montenegro were owned by Russian nationals or Russian legal persons.

System of Government, Legal System and Hierarchy of Laws

15. No significant changes have been reported in relation to the system of government, the legal system and hierarchy of norms, the reader is therefore referred to pages 20 to 22 of the third round mutual evaluation report (paragraphs 14-27) for more detail on this topic.

Transparency, good governance, ethics and measures against corruption

16. In December 2010, GRECO adopted two 3rd round evaluation reports with regard to Montenegro. The areas which were assessed were "Incriminations" and "Financing of Political Parties". In December 2012, a compliance report following both of the themes was adopted.

17. In the "Incriminations" report, GRECO identified several deficiencies, these being mainly shortcomings of the wording of the provisions of the Criminal Code related to bribery, bribery in private sector or to jurisdictional issues. In the compliance report, the evaluators acknowledged that all of the recommendations previously made have been satisfactorily implemented, mainly due to several amendments to the Criminal Code.

18. Concerning transparency of political funding, in compliance with GRECO recommendations, Montenegro has adopted the Law on Financing of Political Parties in 2011. This new Law, along with its implementing regulations, represents a positive enhancement to better ensure transparency, control and responsibility in the relevant area. Since December 2011, oversight responsibility for party funding is shared by the State Audit Institution and the State Election Commission. Nonetheless, GRECO report points out further steps to be taken in relation to the internal discipline of political parties, the use of public facilities during elections and the sanctioning provisions.

19. GRECO concludes the compliance report by acknowledging the efforts made by the Montenegrin authorities and by recognising the significant improvements achieved on the technical side. It was however stressed that the key issue is going to be the application of the provisions in practice, where effectiveness will only have to be observed after the provisions have been established and utilised for a relevant period of time.

20. The need for effective fight against corruption has been raised also by the European Commission in the 2012 Progress Report, where it has been stressed that Montenegro needs to focus on the actual application of the measures against corruption in practice, in particular regarding high-level corruption. The commitment to these issues by the national authorities is embedded in the Strategy for the fight against corruption (2010-2014), which was adopted in 2010 by the Government, and the pertaining Action Plan (2010-2012), followed by the current Action Plan (2013-2014).

21. As a result of the efforts made by Montenegro in the past years, it was ranked by Transparency International 67th (out of 177 states) in 2013 on the Corruption Perception Index, compared to the 85th (out of 180 states) position at the time of the last evaluation.

1.2 General Situation of Money Laundering and Financing of Terrorism

22. As can be observed from the table below, a considerable decrease has been noted since the 3rd round evaluation in the total number of recorded criminal offences in Montenegro; this number falling from 4,059 in 2008 to 2,373 in 2013. The most common criminal offences have been theft, burglary, forgery and offences related to drug trafficking and production of drugs. Nonetheless,

according to the 2013 Serious and Organised Crime Threat Assessment[7] conducted by the Montenegrin Police Directorate, the volume of the shadow economy, which accounted for approximately 20% of GDP in 2012, indicates that financial criminal offences are committed but not recorded. In order to address this issue, in May 2012 the Government of Montenegro adopted the Operational Plan for combating the shadow economy.

Table 2: Recorded criminal offences in the years 2008 to 2013

	2008	**2009**	**2010**	**2011**	**2012**	**2013**
CRIMINAL OFFENCES AGAINST PROPERTY						
Theft	772	605	530	673	857	628
Burglary	1633	1673	1381	1234	1383	1075
Fraud	20	47	32	4	0	2
Robbery	6	7	3	4	7	6
Theft of vehicles	22	51	40	48	43	39
Concealment	48	63	16	56	29	38
Other CO against property	/	/	/	/	/	/
CRIMINAL OFFENCES of ECONOMIC NATURE						
Business fraud	/	/	/	/	/	/
Fraud	132	280	245	88	78	82
Issuing of an uncovered cheque, misuse of a credit card	13	19	32	22	8	1
Tax evasion	25	31	26	31	5	13
Forgery	544	350	395	165	171	138
Abuse of authority or rights	16	14	24	4	1	51
Embezzlement	45	50	39	30	4	4
Usury	1	2	10	/	/	/

[7] http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.mup.gov.me%2FResourceManager%2FFileDownload.aspx%3FrId%3D162628%26rType%3D2&ei=Z4sRVa3MLtLgaJnvgfgN&usg=AFQjCNFIz0HVms33PnbcuosmZnH7kILkQA&sig2=c7CqzoC_QYEF9D5zI0y3zA&bvm=bv.89184060,d.d2s

Abuse of Insider Information	/	/	/	/	/	/
Abuse of Financial Instruments Market	/	/	/	/	/	/
Unauthorised Use of Another's Mark or Model	/	/	/	/	/	/
Other CO of economic nature	/	/	/	/	/	/
Approximate economic loss or damage from c.o. of economic nature	**19.368.845,75**	**12.058.334**	**34.268.111,28**	**25.010.407**	**3.297.389,12**	**2.491.697,18**
OTHER CRIMINAL OFFENCES						
Production and trafficking with drugs	460	398	316	307	187	161
Illegal migration	/	/	/	/	/	/
Production and trafficking with arms	/	/	/	/	/	/
Falsification of money	113	24	12	25	19	14
Corruption	112	183	180	120	96	79
Extortion	7	13	4	4	1	3
Smuggling	43	77	84	64	17	17
Murder, Grievous bodily harm	23	24	15	20	16	8
Prohibited Crossing of State Border or Territory, Trafficking in Human Beings	12	9	13	1	12	4
Violation of Material Copyright	3	3	3	/	1	1
Kidnapping, False Imprisonment	9	15	15	14	7	9
Burdening and Destruction of Environment	/	/	/	/	/	/
Unlawful Acquisition or Use of Radioactive or Other	/	/	/	/	/	/

Dangerous Substances						
Pollution of Drinking Water	/	/	/	/	/	/
Tainting of Foodstuffs or Fodder	/	/	/	/	/	/
TOTAL						
OTHER CRIMINAL OFFENCES (NOT INCLUDED ABOVE) against life and limb, human rights, honour, sexual integrity, public health, etc.	/	/	/	/	/	/
NUMBER OF ALL CRIMINAL OFFENCES	4059	3938	3411	2914	2942	2373
Approximate economic loss or damage of all criminal offences	19.368.845,75	12.058.334	34.268.111,28	25.010.407	3.297.389,12	2.491.697,18
TOTAL economic loss						96.494.784,33

23. The Organised Crime Threat Assessment of Europol of 2011 confirms the existence of at least 35 organised criminal groups operating on the territory of Montenegro. The authorities provided tables 2.2 and 2.1 below indicating the number of indictments and convictions involving criminal organised groups. The Serious and Organised Crime Threat Assessment of Montenegro of 2013 notes a decrease in the number of organised criminal groups to 20. However, the authorities state that often smaller groups merge with larger ones.

Table 2.1: Cases involving organized crime groups, number of indictments and convictions

	2011	**2012**	**2013**
Indictments	5	3	4
Conviction	1	7	8

Table 2.2: Organized crime groups, number of indictments and convictions (persons)

	2011	**2012**	**2013**
Indictments	17	46	12
Conviction	5	22	94

24. Montenegrin organised criminal groups are characterised by their strong tight core of key members, usually united by family ties, as well as by the fact that they are often engaged in

legitimate activities, which they use as a cover for their criminal acts. There seems to be a strong connection between the different groups operating within the country, but also with the organised criminal groups from the other countries of the region, especially Serbia and Albania. This is mainly due to the international aspect of the criminal activities, in which the groups engage, which are, apart from violent crimes, above all drug or weapon trafficking, trafficking with human beings, smuggling of goods (such as tobacco), stolen vehicles, or loan sharking.

25. Drug trafficking is one of the key problems in Montenegro, as it is predominantly connected with the activities of organised criminal groups and often contains an international aspect. The UNODC Drug Situation Analysis Report on South Eastern Europe from 2011 has identified Montenegro as a country particularly vulnerable to drug trafficking due to its strategic geographic position. It is located on the Balkan route, which connects the heroin producers in Afghanistan with the consumer countries in Western Europe, as well as cannabis (i.e. marihuana and skunk) is trafficked through Montenegro to Western Europe from Albania. Marihuana and heroin appertain to the drugs which are most popular on the domestic market, even though only about 15% of the quantity smuggled through Montenegro is actually consumed locally. International reports, such as OCTA from EUROPOL, have also pointed out that Montenegro, together with other neighbouring countries, serves as one of the hubs for smuggling cocaine from South America to Western Europe. On the other hand, the extent of illicit drug production in the country is rather insignificant; although a few cases have been reported in 2012.

26. Regarding trafficking in human beings, the US Department of State 2013 Report on Trafficking in Human Beings identified Montenegro as a source, transit and destination country. Victims brought to Montenegro usually come from the neighbouring Balkan countries or from Eastern Europe, women for the purposes of sexual exploitation and men as a labour force for the developing Montenegrin construction business. Victims being transferred through Montenegro or originating from there are usually destined for Western European countries.

27. In order to handle the consumption of narcotic drugs and especially heroin in Montenegro, and to mitigate the risks the country presents as a transit country, the Government adopted in February 2013 the Strategy for the Prevention of Drug Abuse for the period of 2013-2020 and the corresponding Action Plan for the period of 2013-2016, both prepared by the Ministry of Health. In order to address the issues related to trafficking with human beings, the Government of Montenegro adopted in September 2012 the National Strategy on the Fight against Trafficking in Human Beings 2012-2018 and the Action Plan for its implementation (both prepared by the Ministry of Interior).

28. As the nature of the issues raised above is predominantly international, it is highly important for Montenegro to cooperate with other countries, especially at the level of the Balkan region. Apart from cooperation on case-by-case basis (such as joint investigations, joint workshops, etc.), Montenegro is a member state of the Southeast European Law Enforcement Centre (SELEC), to which the Southeast European Cooperative Initiative was transformed in 2011, and which unites 12 countries of the region in common initiatives. The purpose of this organisation is to provide support for its member states and enhance coordination and cooperation with regard to the prevention and combating crime, including serious and organized crime, where such crime involves trans-border activity.

Money Laundering

29. The Montenegrin authorities stated that the most common predicate offences to investigated and prosecuted money laundering cases were trafficking in drugs, corruption and illegal organising of games of chance, corruption as predicate offence being committed predominantly abroad.

30. In general, factors that facilitate and increase Montenegro's vulnerability to ML are the high use of cash for purchases and the fact that Montenegro utilises as an official currency the euro, despite not being a member of the Eurozone. The latter is highly attractive for the purposes of moving

funds further to Western European countries, this being particularly underlined by the considerable level of cooperation between Montenegrin banks and Western European banking groups.

31. ML threats and vulnerabilities affecting the Montenegrin system also have an international element: the above described economic relations with Western Europe, the tight historical nexus with the countries in the region, which potentially facilitates the existence of trans-border organised criminal groups (as discussed above), as well as the extremely significant economic involvement by Russian individuals and companies on the Montenegrin market.

32. The authorities met during the on-site visit generally agreed that particularly vulnerable to abuse is the real estate sector. The rapid development of this sector and the related construction sector during the years 2009 and 2010 attracted predominantly foreign investors and the authorities have underlined that it is presumed that there is a significant risk in this domain.

33. According to the aforementioned 2013 Serious and Organised Crime Threat Assessment, the most common ML method is using "phantom" firms in order to legalise and redirect deposited funds. In these firms, the managerial positions are frequently occupied by persons close to OCGs. Another ML method which was identified consists in purchasing movable or luxury goods for personal use and immovable properties, which are registered in name of relatives and friends. The main areas through which ML is carried out are: the real estate market, games of chance, hospitality and sporting activities.

Terrorist Financing

34. The authorities consider the risks of terrorism and the financing of terrorism in Montenegro to be almost inexistent. In their view, the possibility that international terrorist organisations or their supporters operate on the territory of Montenegro is remote. As concerns the financing of terrorism or any other offences connected with terrorism, no such cases have been identified (see Moneyval progress reports).

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

Financial sector

35. The financial market in Montenegro is composed of credit institutions, leasing companies, factoring companies, microfinance institutions, as well as the capital market (brokerage companies, investment funds, investment fund management companies) and the insurance sector. The predominant share of the financial sector in the country is represented by the banking sector.

Table 3: Number of financial institutions operating in Montenegro in the year 2013

Financial Institutions		
Type of business	**No. of Registered Institutions**	**Supervisor**
Banks	11	Central Bank of Montenegro
Microfinance institutions	6	Central Bank of Montenegro
Factoring companies	2	Central Bank of Montenegro
Financial leasing companies	4	Regarding AML/CFT, financial leasing providers are subject to supervision by the APMLTF. The Ministry of Finance is

		responsible for the adoption and implementation of the regulatory framework.
Money and value transfer businesses	11 banks the Post of Montenegro	Central Bank of Montenegro Telecommunications Agency of Montenegro
Broker/dealers	9	The Securities and Exchange Commission
Investment funds Voluntary pension funds	9 2	The Securities and Exchange Commission
Fund management companies	7	The Securities and Exchange Commission
Insurance	6 life insurance companies 8 life insurance brokers and agents	Insurance Supervision Agency
Money and currency exchange	11 banks (money and currency exchange can be conducted exclusively by banks)	Central Bank of Montenegro

Credit institutions

36. The financial sector is dominated by the banking sector, which includes 11 banks, all licensed by the CBM. As at 31 December 2013, assets under management of banks stood at approximately 3 billion EUR. The banking sector comprises about 97% of the financial sector assets and is highly concentrated: the three largest banks accounting for half of total assets and deposits; in particular, the largest bank accounted in the beginning of 2014 for 21% of assets and 25% of deposits. The main activities undertaken by the banks are lending and deposit taking. The level of deposits fluctuated significantly between the years 2008 and 2013 due to financial crisis, but at the end of Q3 2013, overall deposits recorded an increase of almost 10% compared to 2008.

37. As results from the table below, nine of the commercial banks in Montenegro are foreign owned. This is primarily due to the fact that a predominant share of Montenegrin banks appertains to international holding groups, with several of these groups focusing specifically on South-Eastern Europe.

Table 4: Ownership structure of commercial banks between the years 2008 and 2013

	2008	**2009**	**2010**	**2011**	**2012**	**2013**
Foreign ownership more than 50%	9	9	9	9	9	9
Foreign ownership less than 50%	2	2	2	2	2	2
Resident Shareholders 100%	0	0	0	0	0	0

Foreign Branches	0	0	0	0	0	0
Total number of banks	11	11	11	11	11	11

38. As at the time of the 3rd round mutual evaluation, there are no independent money exchange bureaus in Montenegro, as pursuant to the Banking Law, exclusively banks may perform money exchange operations.

The insurance sector

39. There were 11 insurance companies operating in Montenegro at the time of the on-site visit, out of which five undertake only non-life insurance and 6 exclusively life insurance. Additionally there were 6 companies registered as brokers in insurance and 19 registered as agents in insurance. All insurance companies have been completely privatised since the 3rd round evaluation. Life insurance premiums for the year ended 2013 were approximately 11 million EUR.

40. The legislative framework remains the same as the time of the 3rd round evaluation, the main piece of legislation being the Insurance Law, subject to several amendments adopted with the Law on Amendments to the Insurance Law (published in the Official Gazette of Montenegro, No 45/12 of 17 August 2012). The regulatory and supervisory body remains the Insurance Supervision Agency (ISA).

41. The adoption of the Law on Compulsory Traffic Insurance in 2012 presented a significant development in the insurance sector in Montenegro, as in 2013 the insurance of owners or users of motor vehicles against liability for damages caused to third parties accounted for almost 30% of all insurance premiums.

42. The importance of life insurance has also increased since the 3rd round report, rising from 11.57% in December 2007 of the overall premiums in the insurance market to 14.5% in 2012, but in general its significance still remains very low, as the share of life insurance premiums amounts only to 0.29% of the GDP.

Capital market

43. The capital market in Montenegro is composed of broker-dealer companies, custodian banks, investment funds, voluntary pension funds and fund management companies. All the above mentioned institutions are subject to regulation and supervision by the Securities and Exchange Commission (SEC). The Central Depository Agency registers dematerialised securities and carries out operations related to these (clearing, transfer, etc.).

44. In 2013, the Montenegrin Stock Exchange had 12 members, being mainly brokerage companies or banks. The participation of the members on the turnover was highly concentrated, as more than 82% of the total turnover was undertaken by the three of its 12 members. The Stock Exchange consists of an official market and a free market; the securities traded at the Stock Exchange are subject to a number of requirements, such as having to be registered at the Central Depository Agency, they have to be freely transferable, tradable on an organised market and fully paid for. In order to trade shares at the official market, high requirements are posed on companies related to the amount of capital, number of shareholders, etc. The trend in the past years has shown that the free market in average amounts to between 60 and 80% of the total turnover of the stock exchange.

45. At the time of the 3rd round evaluation, Montenegrin capital market presented a significant and rapid development, with high foreign investment and citizen participation. Since then the values have strongly decreased to market capitalisation value of EUR 2.8 billion (compared to EUR 5.5 billion in 2007) and stock exchange turnover to GDP ratio decreased from 28.72% to less than 1% in 2012. The yearly decrease has been most significant in 2012, where the stock exchange turnover was 40% lower than in 2011. At 31 December 2013 the gross asset value of funds

managed by investment fund management companies was approximately 86 million EUR. The gross asset value of funds managed by pension fund managers was approximately 0.5 million EUR. The value of stocks bought and sold by stockbrokers during the year ended 31 December 2013 was 47 million EUR.

Designated Non-Financial Businesses and Professions (DNFBPs)

46. The basic legal framework governing DNFBPs remains the same as at the time of the 3rd round mutual evaluation. The AML/CFT framework established by the Law on the Prevention of Money Laundering and Terrorist Financing[8] (the LPMLTF) applies to DNFBPs in the same way as to financial institutions; only for lawyers and notaries some obligations are set apart in a special section of the LPMLTF. All DNFBP categories as required by the FATF recommendations are covered, apart from TCSPs. Furthermore, the LPMLTF goes beyond the international requirements by including several other service providers, such as catering providers, sport organisations, dealers with motor vehicles, vessels and aircraft, travel organising, etc. All the other service providers included as reporting entities in the LPMLTF are all subject to supervision by the AMPLTF, which is the Montenegrin FIU.

Table 5: Number of Designated Non-financial Businesses and Professions in Montenegro in 2013

Type of business	No. of Registered Institutions	Supervisor
1. Casinos (which also includes internet casinos)	6	Games of Chance Administration, Administration for Inspections Affairs.
2. Real estate agents	928+426 (legal persons that trade personally built real-estate)	APMLTF
3. Dealers in precious metals and precious stones	60	APMLTF
4. (a) Lawyers, (b) notaries, (c) other independent legal professionals and (d) accountants and auditors	(a) 685 (b) 44 (c) 0 (d) 63	(a) The Bar Association (b) The Notary Chamber (c) (d) Ministry of Finance
5. Trust and Company Service Providers	0	-

Casinos

47. The number of land based casinos rose from four in 2008 to six in 2013. At the time of the 3rd round evaluation, the authorities stated, that even though provision of on-line gaming services wasn't expressly prohibited by the legislation, no such licences were attributed at the time. Nevertheless, at the time of the 4th round on-site visit, four entities were registered with the

[8] No. 01-1425/2 adopted on 14th December 2007(Official Gazette of Montenegro , No. 14/07 from 21st Dec 2007, 04/08 from 17th Jan 2008, 14/12 from 7th March 2012).
It should be noticed that this law is no longer in force, except for the provisions of articles 28 and 29, and has been replaced by the Law on Prevention of Money Laundering and the Terrorist Financing (Official Gazette of Montenegro, No. 33/14)

Games of Chance Administration as online casino providers. The Games of Chance Administration is not only the authority responsible for licensing and registration, but it is also the supervisor of the gaming sector for both prudential and AML/CFT purposes.

Real estate agents

48. The number of real estate agents rose significantly from about 600 in 2008 to almost a thousand in 2013; this was probably caused by the significant increase of investment in the real estate market in the past years. Real estate agents are subject to supervision of the APMLTF.

Lawyers and notaries

49. There were 685 lawyers registered in Montenegro at the time of the on-site visit (compared to 520 in 2008) and 45 notaries. The number of notaries is subject to a numerus clausus, as every notary is appointed to a specific district of the country.

50. A significant development has been caused by the amendments to the Law on Notaries in 2011, which now requires all contracts concerning real estate to be registered at the Real Estate Registry in the form of a notary act, therefore the services of a notary must be used in every change of status of a real estate.

Trust and company service providers

51. Trust and company service providers are not subject to preventive measures, except for persons managing third persons' property. There is no clear prohibition for TCSPs to operate on the territory of Montenegro. However, as the legislation neither regulates the establishment nor the existence of TCSPs, it is assumed by the authorities that there are no such providers on the territory of Montenegro.

52. As to company service providers, the provision of such services is usually undertaken by lawyers or notaries. It is not clear if other legal persons or professionals may undertake such activities as a way of business. There are nevertheless no provisions requiring registration or licencing of CSPs as such.

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

53. As no major changes have been reported, the reader is referred to pages 29 to 33 of the 3rd round MER (paragraphs 80-106) for more detail on this topic.

Non-profit organisations

54. NPOs are regulated by the Law on Non-Governmental Organisations (Official Gazette of Montenegro No. 11/07, Law on NGOs), which was adopted in June of 2011. This law addresses the manner of establishment, registration, terms and forms of associations of citizens in Montenegro.

55. The Law defines non-governmental organizations either as non-governmental associations, non-governmental foundations and foreign organizations. All NGOs established in accordance with this Law have to be registered in the Register of NGOs, administrated by the Ministry of Interior. Pursuant to the adoption of the new Law on NGOs, branches of foreign entities also register in the Register of NGOs of the Ministry of Interior, whilst formerly they registered with the Ministry of Justice. According to the Registry on NGOs, currently there are approximately 3.096 NGOs registered in Montenegro; the authorities have clarified though, that a significant share of them are not active, they provide only sports or leisure activities to a restricted number of members, or their financial turnover is very low.

56. Non-governmental organisations in Montenegro are defined as NPOs; under certain limitations they may however provide also business activities. In order to undertake business activities,

NGOs have to be registered in the Central Business Registry. According to the authorities, the share of profit generating NGOs is rather insignificant.

57. Apart from administrating the Registry, the Ministry of Interior through its Office for Cooperation with NGOs also undertakes analysis of the sector, prepares strategies for cooperation and ensures training and awareness raising for representatives of NGOs.

58. According to the LPMLTF, all non-governmental organisations are defined as reporting entities and the law poses on them therefore the same obligations as on the other reporting entities. NGOs are supervised in relation to the implementation of AML/CFT measures by the APMLTF.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

59. The APMLTF prepared in 2010 the first strategic document of Montenegro addressing AML/CFT issues, the Strategy for Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing for the period 2010-2014. The Strategy was adopted by the Government on 30 September 2010. It defines a framework of action for Montenegro in the areas of fight against terrorism, money laundering and terrorist financing and aims to improve the existing measures and mechanisms and to develop new ones.

60. The principal objectives set by the National Strategy are the following:

- Promotion of the cooperation and exchange of information with regional and international partners in the fight against terrorism, money laundering and terrorist financing;
- Adoption and application of international standards;
- Definition of the principles and methods of improving cooperation between the competent institutions.

61. For the purpose of the implementation of the Strategy, the Government adopted an Action Plan for the period of two years (2010-2012), which defines specific measures, competent authorities, deadlines, performance indicators, risk factors and sources of funding. These goals were further developed in the Action Plan for the years 2013-2014, which was adopted by the Government in July 2013.

62. In May 2013, the Action Plan for Fight against Corruption and Organized Crime for the period 2013-2014 was adopted. The adoption of the Action Plan has initiated the second phase of implementation of the Strategy for the Fight against Corruption and Organized Crime 2010-2014. The Action Plan defines the practical application of the priorities of Montenegro at the national and international level in the fight against corruption and organized crime.

b. The Institutional Framework for Combating Money Laundering and Financing of Terrorism

63. The following institutions are the main bodies and authorities involved in combating money laundering or financing of terrorism.

The National Commission for the Implementation of the Strategy for Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing

64. The Commission was established by the Government established in September 2010 (Decision n. 03 – 5889/5). Its primary competencies are to organise, coordinate and monitor activities of government agencies, public administration bodies and other competent institutions in implementing the Strategy and to evaluate the results achieved in implementing the actions and measures from the Action Plan. The Commission is bound to submit at least twice a year a report to the Government on the activities which have been carried out, together with an assessment of

the current situation and a proposal of future measures. The Commission in composed of representatives of the legislative, executive and judicial power, and of the civil society.

Ministry of Interior and Public Administration

65. The Ministry of Interior and Public Administration has undergone a significant reorganisation, based on the Rulebook on Internal Organization and Systematization of the Ministry of Interior, which was adopted by the Government in 2013 and which defines the competencies of the Ministry and changes its structure. Due to these developments, the Police Directorate is newly organized within the Ministry of Interior and is regulated by the new Law on Internal Affairs.

The Ministry of Finance

66. The competence of the Ministry of Finance lies in economy, finance, games of chance sector and international cooperation in these matters. It undertakes the necessary actions regarding the preparation of the budget, undertakes state treasury duties and is responsible for fiscal policies. As the Ministry is also responsible for the management of state property, the Asset Management Agency was established in 2009 as a part of the Ministry of Finance.

67. Additionally, the Ministry of Finance continues to exercise administrative supervision over the APMLTF and the Games of Chance Administration. In June 2013 the Government of Montenegro adopted a new rulebook on internal organisation and systemisation of the Ministry of Finance, pursuant to which the Customs administration became an executive body within the Ministry of Finance and was no longer a separate legal entity.

68. According to the LPMLTF, supervision of auditors and accountants falls under the competencies of the Ministry of Finance, an appropriate supervision department is at present in the course of being established, as will be discussed further in the report.

Ministry of Foreign Affairs

69. The MFA receives the UN consolidated terrorist lists, which it subsequently distributes to the relevant authorities, such as the AMPLTF, the Ministry of Interior or the Ministry of Finance. Apart from this, the Ministry is now the authority responsible for the implementation of SR.III, in particular for preparing the legislative framework. This issue will be discussed in further detail in the relevant section of the report.

Ministry of Justice

70. As has been stated in the 3rd round evaluation report, the main competency of the Ministry of Justice is its legislative function, drafting laws and secondary legislative acts, which fall under its competence (such as criminal legislation). Furthermore, the Ministry of Justice is responsible for MLA, both regarding the relevant legislative framework, as well as the mediation of the requests between foreign authorities and domestic courts, which are responsible for the actual undertaking of the MLA.

The Public Prosecution Office

71. The Public Prosecution Office is composed of three levels, the Supreme State Prosecutor, two High State Prosecutors (one in Podgorica and one in Bijelo Pole) and 13 Basic State Prosecutors. Within the Supreme State Prosecutor's Office, a Department for the Suppression of Organised Crime, has been established. Under the amendments introduce in June 2008 to the Law on Public Prosecutor's Office ("Official Gazette of RMN", No. 69/03 and "Official Gazette of MN", No. 40/08) the power of this Department were extended to include criminal prosecution of corruption, terrorism, and war crimes, in order to concentrate the specialised expertise and enhance prosecutions of such crimes. The Department is headed by the Special Prosecutor.

72. On 19th February 2010, the Special Investigative Team was established at the Supreme State Prosecutor Office. The Team is composed of representatives from the Supreme State Prosecutor` s

Office, Police Directorate, Tax Administration, APMLTF and Customs Administration and is headed by the Special Prosecutor. Its aim is establishing new methods of cooperation and ensuring efficiency in prosecution as far as the area of organised crime and corruption are concerned.

73. The general competency for investigating money laundering falls within the authority of the High State Prosecutors. The only exception is if the related predicate offence falls within the competency of the Supreme State Prosecutor or if the money laundering offence was committed in an organised manner, where in both cases the related money laundering investigation would be undertaken by the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crime within the Supreme State Prosecutor's Office. In case a predicate offence would be investigated by a Basic State Prosecutor and there would be a need to open a related money laundering case, the Basic State Prosecutor would deliver the entire case (including the predicate offence) to the prosecutor competent to investigate the money laundering offence.

74. The competency for terrorist financing investigations falls exclusively under the authority of the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crime.

Administration for the Prevention of Money Laundering and Terrorist Financing (APMLTF)

75. The APMLTF is the FIU of Montenegro; it was established in 2004 as an independent body under the supervision of the Ministry of Finance. The operational independence of the institution was strengthened by the Regulation on the Organization and Manner of Work of State Administration, adopted by the Government in December 2011, which explicitly pronounces the AMPLTF as an independent body subject only to administrative supervision of the Ministry of Finance.

76. Apart from the duties as the national FIU, the APMLTF is also responsible for the supervision of several DNFBP sectors, NGOs, as well as companies providing factoring and other service providers as defined under the LPMLTF.

The Central Bank of Montenegro (CBM)

77. The CBM supervises the implementation of the LPMLTF in banks (including foreign banks' branches) and other of financial institutions, savings and loan institutions, organisations performing payment transactions, exchange offices and institutions for issuing electronic money. The total number of staff at the end of 2013 was 335, of which 49 were employed in the Banking Supervision Department.

The Administration for Games of Chance and the Administration for Inspection Affairs

78. Since 2011, the supervision over providers of games of chance is divided between the Administration for Games of Chance and the Administration for Inspection Affairs. The former has kept its regulatory functions, as well as it is in charge of licencing and granting concessions, whilst the latter monitors and controls the regulated entities and undertakes inspections. This share of competencies was established by an amendment to the Decree on the State Administration Organisation and the Manner of Working from 2011.

The Asset Management Agency

79. As has been stated above, the Asset Management Agency was established in 2009 under the Ministry of Finance in order to enhance the effectiveness of the management of state owned property. A special department operating within this Agency is in charge of the management of property seized or confiscated within criminal proceedings. At the time of the on-site visit, this department had 4 employees.

80. In 2012, the Ministry of Finance adopted Regulations on the Lease and Selling of Temporarily Seized Property, in order to broaden the competencies of the Agency regarding the management of seized property and to enable the sale of confiscated assets.

Other authorities of the AML/CFT framework

81. There are other authorities relevant within the AML/CFT framework, such as the SEC, which is in charge of the institutions operating on the capital market, the ISA, which is responsible for the insurance sector and the Agency for Telecommunication and Postal Business Operations responsible for supervising the Post Office. All of the listed authorities have both regulatory and supervisory powers, the latter both with regard to prudential supervision, as well as in AML/CFT matters.

82. In addition, the National Security Agency is an intelligence agency established for the purposes of identifying and mitigating threats to national security and constitutional order. It is therefore the National Security Agency that is in charge of terrorism issues.

83. For further information about the above described authorities, the reader is referred to pages 36 and 40-41 of the 3rd round MER (paragraphs 120-124 and 151-162), as there have not been significant changes in the competencies or regulation of these authorities.

c. The Approach Concerning Risk

84. Montenegro has undertaken first preparatory steps in order to undertake a National Risk Assessment. In particular, the APMLTF employees attended several workshops organized by the OSCE, the World Bank, the Council of Europe and the FIU of Serbia. The authorities have also defined five working groups as follows: Proceeds of crime, Risk exposure at national level – legislation, Banking sector, Capital market and Non-financial sector[9].

85. Although no formal risk assessment has been carried out, the threats and vulnerabilities are discussed in more detail under paragraphs 31 and 33 of this report. The Montenegrin authorities have highlighted that money laundering linked to drug trafficking and other drug related offences poses a significant threat in Montenegro, whilst the real estate sector is considered to be particularly vulnerable to being used as a means to launder the illicit funds.

86. According to the Montenegrin authorities, no concrete information on terrorism and terrorism financing threats has been identified and the threat of terrorist financing is generally considered to be low. The authorities explained that Montenegro has undertaken several steps in order to initiate a national risk assessment also in this field. This assessment is expected to be commenced in the course of the year 2014[10].

87. A risk-based approach is also required from the reporting entities, which should, pursuant to Art. 8 of the LPMLTF, undertake a risk analysis of their clients and relationships. Based on this article, the Ministry of Finance adopted in 2009 the Rulebook on the Development of Guidelines on Risk Analysis with a View to Preventing Money Laundering and Terrorism Financing, pursuant to which Guidelines on Risk Analysis with a View to Preventing ML and TF were adopted in 2009 by the APMLTF and the Administration for Games of Chance, in 2010 by the CBM, in 2011 by the ISA and in 2012 by the SEC. These guidelines are dedicated to provide guidance for the reporting entities on how to prepare and conduct such a risk assessment of their clientele, but they also inter alia specify the various risk categories of customers and the criteria for defining them.

d. Progress since the last mutual evaluation

88. Since the 3rd round on-site visit in September 2008, Montenegro has taken several measures to develop and strengthen its AML/CFT system.

89. Several amendments have been made to the Criminal Code in 2010, 2011 and 2013, mainly concerning the definition of the offence of money laundering and certain designated categories of

[9] In 2014, the World Bank is expected to prepare another workshop for Montenegrin authorities in order to present to them its methodology, which is going to be used for the purposes of conducting the National Risk Assessment. The World Bank is also going to provide Montenegro with its experts.

[10] At the time of the adoption of the report, the NRA was well underway.

proceeds-generating offences; more specifically the offence of formation of a criminal organisation was introduced, as well as the offence of abuse of authority in business activities, unlawful influence, market manipulation, etc. The scope of the terrorist financing offence has also been broadened, as more terrorist acts were introduced and others brought more in line with the international requirements. Some issues however still remain outstanding, as will be discussed below in the relevant sections of the report.

90. A new Criminal Procedural Code entered into force in August 2009. Its gradual application was initiated in procedures for criminal offences in the field of organized crime, corruption, terrorism and war crimes in August 2010, while its full application started in September 2011. The CPC now empowers the prosecutors to carry out all the necessary investigations related to money laundering or terrorist financing, enables the use of secret surveillance in relation to the offence of money laundering and it further strengthens the confiscation and seizure regime, as the amendments have also introduced extended confiscation for property, legitimate origin of which has not been proven.

91. Following the changes of the provisions related to confiscation, Regulations on the Lease and Selling of Temporarily Seized Property were adopted in 2012 by the Ministry of Finance, with the aim to improve the management of seized or confiscated proceeds of crime by the Asset Management Agency and provide a legal basis for the sale of these assets.

92. In June 2011, the Government adopted a new Law on NGOs (Official Gazette of Montenegro No. 11/07), which regulates the establishment and types of NGOs, as well as the procedure of their registration. Following the changes in the NGO regime, the Office for Cooperation with NGOs has been established within the Ministry of Interior and an electronic Register of NGOs was launched, as has been described in more detail above.

93. On the basis of the (at the time) newly adopted the LPMLTF (which was adopted in December 2007), and to ensure its full implementation and provide further guidance, the APMLTF issued in December 2008 and during the year 2009 the following rulebooks and guidelines:

    – Rulebook on the Manner of Work of the Compliance Officer, the Manner of Conducting the Internal Control, Data Keeping and Protection, Manner of Record Keeping and Employees' Professional Training;
    – Rulebook on the Manner of Reporting Cash Transactions in the Amount of 15,000 Euros and more and Suspicious Transactions to the APMLTF;
    – Rulebook on Developing Risk Analysis Guidelines with a view to Preventing Money Laundering and Terrorist Financing;
    – Rulebook on Indicators for Recognising Suspicious Clients and Transactions.

94. The LPMLTF was amended in 2012 to further align the preventive measures with international standards. Following this amendment, the Rulebook on Content and Type of Payer's Data accompanying Electronic Funds Transfer was issued. Several rulebooks and guidelines were also issued by the respective supervisory authorities. These documents provide sector specific procedures, indicators for suspicious transactions, guidance for undertaking risk assessment of customers, and others.

95. Other laws governing the supervisory, criminal, judicial and law enforcement framework have been amended in order to ensure compliance with the above mentioned legislative changes to the CC, the CPC and the LPMLTF, and with a view of further enhancing the AML/CFT regime in Montenegro. Amongst the amended laws were the Law on Public Prosecutor's Office, Law on Courts, Law on Judicial Council, Law on Free Access to Information, Law on Conflict of Interest, Law on Witness Protection, Law on Criminal Liability of Legal Persons and others.

96. A MOU on Mutual Cooperation and the Exchange of Information was concluded in May 2013 between the principal authorities involved in the AML/CFT regime: SEC, Ministry of finance,

Ministry for Internal Affairs, APMLTF, CBM and ISA, which now facilitates the exchange of information and cooperation between the authorities involved in the ML framework.

97. On the international level, the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism (CETS 198) entered into force in Montenegro in February 2009.

98. The APMLTF has also entered into several bilateral relations with its foreign counterparts since the 3rd round mutual evaluation; Memorandums of Understanding were signed with the FIU of Bermuda, Ukraine, United Arab Emirates and others. The full list of MOUs signed by the FIU is in the Annex 6.

99. In 2009, the SEC has signed the IOSCO Multilateral MOU Concerning Consultation and Co-operation and the Exchange of Information. In the same year the ISA has become a full member of the International Association of Insurance Supervisors and has also subsequently signed MOUs with its counterparts in Austria, Slovenia, and Croatia.

100. Further information on the progress achieved since the 3rd round mutual evaluation is referred to under the specific sections of this report.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

101. Recommendation 1 was rated PC in the 3rd round mutual evaluation based on the following deficiencies:

- The limitation to "*banking, financial or other business operations*" when concealing proceeds was found not to be fully consistent with the Vienna and Palermo Conventions.
- Insider trading and market manipulation were not covered as predicate offences.
- Effectiveness issues:
  - Relatively low number of prosecutions and only 1 conviction
  - Simultaneous prosecution for money laundering offence and the predicate offence was required in practice.

Legal Framework

102. The money laundering offence is set out under Art. 268 of the Criminal Code of Montenegro, which has been amended since the 3rd round mutual evaluation to bring it more in line with the Vienna and Palermo Convention. However, there are still some outstanding issues concerning the scope of the money laundering offence, including, deficiencies with regard to the material elements and the narrow application of corporate liability.

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

103. Money laundering is criminalised under Article 268 of the Criminal Code:

"(1) Anyone who converts or transfers money or other property knowing that they are derived from criminal activity for the purpose of concealing or disguising the origin of the money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from criminal activity, or who conceals or misrepresents the facts on the nature, origin, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from criminal activity shall be punished by a prison term from six months to five years.

(2) The punishment under para. 1 above shall apply to the principal of the offence under para. 1 above if he was at the same time the principal or the accomplice in the commission of the criminal offence by which the money or property referred to in para. 1 above was acquired.

(3) Where the amount of money or value of the property referred to in paras 1 and 2 above exceed forty thousand euros, the perpetrator shall be punished by a prison term from one to ten years.

(4) Where the offences under paras 1 and 2 above were committed by several persons who associated for the purpose of committing such offences, they shall be punished by prison term from three to twelve years.

(5) Anyone who commits the offence under paras 1 and 2 above and could have known or should have known that the money or property was derived from criminal activity shall be punished by a prison term up to three years.

(6) The money and property referred to in paras 1, 2 and 3 above shall be confiscated."

104. The wording of the ML offence, as amended following the 3rd round, is now more aligned with the wording found in the Vienna and Palermo Convention, albeit with some missing

elements. The conversion or transfer of money or other property is not criminalised when it is carried out for the purpose of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions. The authorities referred to Article 387 of the CC which criminalises, *inter alia*, assisting a perpetrator by hiding the means or traces of a criminal offence or otherwise assisting him to avoid detection. . The term *"hiding the means or traces of a criminal offence"* seems however more restrictive than *"conversion or transfer of property…"*, as conversion and transfer of proceeds of crime for the purposes of helping the perpetrator avoid legal consequences can be done without hiding any element. Furthermore, "avoiding detection" would not cover all the possible "legal consequences", as foreseen by the international conventions. The assessment team does not consider this to be a major deficiency.

105. The concealment or disguise of rights with respect to property also does not appear to be covered.

106. The evaluation team noted that the definition of money laundering in the LPMLTF mirrors the physical and material elements of the offence as prescribed by the Palermo and Vienna Conventions. This definition is however limited only "*for the purposes of this Law*". It reads:

"For the purposes of this Law, the following conduct shall be regarded as money laundering:

(a) the conversion or transfer of money or other property, knowing that they are derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or assisting any person involved in the commission of such activity to evade the legal consequences of his action;

(b) the concealment or disguise of the true nature, source, location, movement, disposition or ownership of money or other property, knowing that they are derived from criminal activity or from an act of participation in such activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the points 1, 2 and 3.

Money laundering shall be regarded as such even in cases when the activities from paragraph 1 of this Article were carried out in the territory of another country"

107. The existence of a full and comprehensive definition of money laundering in the LPMLTF, which is different in some aspects from that of the Criminal Code, and which is only applicable within the scope of the LPMLTF, has a potential negative effect on the interpretation and scope of the money laundering offence. During the onsite visit this point was discussed with the Montenegrin prosecutors, who see no such negative impact. Nevertheless, it is the view of the evaluation team that the two definitions should ideally be in line with each other since the Montenegro courts could potentially attempt to attribute a more restrictive interpretation to the ML offence within the Criminal Code by comparing it with the definition of ML in the LPMLTF, wrongly assuming that the legislator intended the scope of the preventative measures to be wider than that of the criminal.

The laundered property (c.1.2) & Proving property is the proceeds of crime (c.1.2.1)

108. Art. 2 (d) of the Palermo Convention defines "*property*" as "*assets of every kind, whether corporeal or incorporeal, movable and immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets*". "*Proceeds of crime*" are defined by Art. 2 (e) of the Palermo Convention as "*any property derived from or obtained, directly or indirectly, through the commission of an offence*". The same definitions are found in Article 1 (p,q) of the Vienna Convention.

109. The offence of money laundering in the Montenegrin CC applies to "*money or other property"* without consideration of its value. Nevertheless, the CC only contains a definition for the term "*money"* in Art. 142 (26)[11]. The Montenegrin authorities claimed that the concept of property in terms of the criminal offence of money laundering is understood in the broadest sense and includes money, valuable objects, movable and immovable property, property rights and any other form of property, irrespective of its value, which directly or indirectly represent proceeds of crime, without limitation of minimum value of that property. However, there is no jurisprudence to support this claim. In comparison article. 449 (2) of the CC criminalizing TF defined "funds" as *"…all funds, material or non-material, movable or immovable, irrespective of the way in which they were obtained or the form of the document or certificate, including electronic or digital forms, by which one proves ownership or a share in such funds, including bank loans, travellers cheques, securities, letters of credit and other funds.*

110. Article 5 of the LPMLTF does provide a comprehensive definition of property as "*assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets".* While this definition only applies in the context of the LPMLTF, it is assumed that the prosecution and the judiciary would refer to it for guidance in ML proceedings. However, to ensure an even and consistent judicial interpretation of the term property in all ML cases, the authorities should introduce a definition of property which is applicable to the ML offence in the CC.

111. The authorities referred to Article 142 (12) of the CC, which provides a definition of "pecuniary gain". This reads as follows:

> *"(12) Pecuniary gain originating from a criminal offence is understood to mean pecuniary gain obtained directly from a criminal offence which consists in an increase or prevention of a decrease of the gain resulting from the commission of the crime, the property for which pecuniary gain obtained directly from a criminal offence is replaced or into which it is converted, as well as any other benefit obtained from the pecuniary gain directly obtained from the criminal offence irrespective of whether it is located in or outside of the territory of Montenegro."*

112. This definition of pecuniary gain is applicable to confiscation and provisional measures (see analysis of R.3). There is however no reference to it in the definition of the offence of ML. In fact, the definition in Art. 113 of the CC of assets, which may be subject to confiscation, refers to "*money, property of value and other pecuniary gain"* , which as a general and comprehensive definition logically implies that the more specific terms "*money*" and "*property*" used in Art. 268 are in fact limited to only those examples specifically, and *a contrario* exclude some other property gain, and therefore do not cover the full scope of the necessary elements of the Palermo and Vienna Convention definitions.

113. With respect to Criterion 1.2.1, during the 3rd round evaluation, the evaluators came to the conclusion that despite the fact that a prior conviction for the predicate offence was not explicitly required by the legislation, as a standard practice the money laundering offence and the predicate offence were prosecuted simultaneously, as identification and proof of a specific predicate offence was required by the courts. The authorities claimed during the on-site visit of the 4th round that this problem had been overcome as a result of the amendments to the CC. Whereas previously the property had to originate from a "criminal act", which implicated the necessity to prove a concrete criminal act from which the property was derived, the ML offence now refers to "criminal activity", which according to the authorities enables a broader interpretation, though no prosecutorial guidelines illustrating this were provided.

[11] Money is understood to mean both metal coins and paper banknotes or money made of some other material which by law is a legal tender in circulation in Montenegro or in a foreign country.

114. Despite the legislative efforts, the evaluators were not presented with any domestic cases of prosecution of and conviction for autonomous ML. Although there have been some successful prosecutions for ML of proceeds of crime of foreign predicate offences, as well as of third party ML, in general the predicate offence is regularly prosecuted together with the money laundering offence or a previous conviction is available, which implies that there might be an evidentiary problem when the predicate offence cannot be prosecuted. The evaluators therefore remain of the opinion of the 3rd round evaluators, which were concerned that this presents an effectiveness problem.

The scope of the predicate offence (c.1.3)

115. As has been already stated by the evaluators in the 3rd round evaluation, the criminalisation of money laundering reflects the "all crime" approach. All criminal offences, which generate proceeds, can therefore be predicate offences for money laundering purposes.

116. One issue previously identified in the 3rd round evaluation report was the lack of criminalisation of market manipulation and insider trading as criminal offences, and consequently them not being predicates to ML. Following the amendments to the CC, both of these offences are now covered in the Montenegrin legislation under Articles 281 (Misuse of insider information) and 281a (Manipulation in the stock market and market in other financial instruments) of the CC. All the designated categories of predicate offences are therefore covered under the Montenegrin legislation.

Threshold approach for predicate offences (c.1.4)

117. As Montenegro applies the all crime approach, Criterion 1.4 is not applicable.

Extraterritorially committed predicate offences (c.1.5)

118. The ML offence in Article 268 has been amended to refer to 'criminal activity', rather than 'criminal offence'. This enables the broadest application of the ML offence to property that is derived from conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted an offence had it occurred domestically.

119. During the on-site visit the authorities confirmed that the introduction of this wording was explicitly designed to enable the broadest application possible and to overcome the restrictions posed by dual criminality. It has been however noted by the evaluation team that the authorities were not able to present any jurisprudence, which would have dealt with such cases (though as mentioned above some success was achieved in prosecuting cases where the predicate offence was committed abroad). It is therefore recommended to the authorities to ensure that appropriate measures are taken to ensure that this interpretation is unanimously accepted and applied

Laundering one's own illicit funds (c.1.6)

120. Self-laundering is explicitly criminalised in Art. 268 para. 2, which provides that the punishment for ML shall be equally applicable to the perpetrator also if he was the perpetrator or if he was an accomplice in the commission of the predicate offence. The following paragraphs of Art. 268, which define aggravated circumstances and negligent ML, are also applicable to self-laundering. Self-laundering is punishable by the same range of sanctions as third-party ML.

Ancillary offences (c.1.7)

121. Ancillary offences to money laundering are mostly covered, including association and conspiracy to commit (Articles 400 and 401 of the CC), attempt (Art. 20 of the CC), aiding and abetting, facilitating, and counselling the commission (Art. 23, 24 and 25 of the CC). However, according to Montenegrin jurisprudence conspiracy to commit a crime under article 400 is limited to cases where the crime has not been committed. Indicting a co-principal including cases where prior agreement to commit a crime has been made is possible under article 23(2) of the CC but

this is restricted under that article only to cases where the conspirer has made a *"significant contribution".*

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

122. The ML offence applies to "money or property derived from criminal activity" which ensures the widest possible interpretation covering the additional element under c.1.8.

Recommendation 2 (rated C in the 3rd round report)

Summary of 2009 factors underlying the rating

123. In the 3rd round report, Recommendation 2 was rated "Compliant".

Liability of natural persons (c 2.1)

124. Criterion 2.1 had already been met at the time of the 3rd round mutual evaluation and no changes have since taken place in this respect. In addition, it is noted by the evaluators that Montenegrin criminal legislation goes beyond the minimum knowledge standard of Recommendation 2 by rendering also the negligent form of money laundering a criminal offence in Art. 268 para. 5 of the CC.

The mental element of the ML offence (c 2.2)

125. As has been stated in the 3rd round MER, the mental element (knowledge, purpose, intent) is extrapolated from the factual circumstances of the case by the courts and State Prosecutors based on the principle of free evaluation of evidence, which is one of the basic principles of Montenegrin criminal procedure (Art. 17 of the CPC).

126. The evaluators are therefore of the opinion that technically the legislation is compatible with the criterion 2.2. In one ML case, which is not yet final, the Court inferred the knowledge of the accused to conceal the source of illegally obtained property from objective factual circumstances. Nevertheless, there is no similar current jurisprudence where the elements of intent or purpose were inferred from objective factual circumstances.

Liability of legal persons (c 2.3)

127. Criminal liability of legal persons had already been applicable at the time of the 3rd round mutual evaluation. The relevant provisions are found under the Law on Criminal Liability of Legal Entities for Criminal Acts. No changes have occurred since the previous evaluation. In accordance with Art. 3 of the Law on Criminal Liability of Legal Entities for Criminal Acts, "*Legal entities may be held liable for criminal offences referred to in the special section of the Criminal Code* [which include the offences of 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*." Art. 5 of the Law on Criminal Liability of Legal Entities for Criminal Acts specifies 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".* .

128. Montenegrin authorities further stressed the importance of an additional part of Art. 5 which reads *"The responsibility of a legal entity exists even when the performance of the responsible person was contrary to the business policy and orders of the legal entity."* In their view, this paragraph in conjunction with the text of the rest of the Law on Criminal Liability of Legal Entities for Criminal Acts sufficiently fulfils requirements of Recommendation 2 and Art. 10 of the Warsaw Convention and also enhances the ability to prosecute legal entities.

129. Finally, the criminal liability of legal entities, as established by the above mentioned Law, does not technically rely on the prosecution of the responsible natural person, nor does it inhibit the liability of such natural person.

130. It can therefore be concluded that Montenegrin legislation is broadly in line with the requirements of c.2.3, even though it may be too restrictive.[12]

Liability of legal persons should not preclude possible parallel criminal, civil or administrative proceedings (c 2.4)

[12] *Liability of legal persons (c 2.3)*

The Montenegro authorities claim that 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."

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".* Parallel litigation or administrative proceedings in respect of legal entities is not excluded. The penalty for money laundering is up to 5 years of imprisonment for natural persons.

Article 31 of the CC of Montenegro provides that criminal liability of legal persons and sanctions to be applied thereto shall be laid down by law.

Consequently, criminal liability for legal entities is limited and depends upon proof of *"gain"* for the legal entity, which may in many cases be a practical impediment for successful prosecution.

The Montenegrin authorities refer to an additional part of article 5 which reads *"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. the responsibility of legal entity exists even when the performance of the responsible person was in contrary with the business policy and orders of the legal entity."* In their view reading this in conjunction with the text it is clear that Montenegrin law fulfil requirements form the Rec 2 as well as from the Article 10 of the Warsaw Convention

While this additional part of article 5 does in fact enhance the ability to prosecute legal entities even when the Actus reus was "in contrary with the business policy and orders of the legal entity" , the need to prove that the legal entity "gained" from this action still remains. This additional element is in the eyes of the evaluators a practical impediment on effective prosecution of ML with regard to legal entities

131. Montenegrin criminal legislation does not exclude explicitly the possibility to initiate civil or administrative proceedings in the cases of criminal prosecution. Furthermore, Art. 114 and others of the CC establish conditions for the treatment of parallel civil claims related to the committed offence. Regarding administrative proceedings, the principle of *ne bis in idem*, according to Art. 36 of the Constitution of Montenegro would apply for cases, where the object and the protected value are identical. There should be however no obstacle to initiate administrative proceedings for misdemeanours, as set by sectorial laws for violations for example of the AML/CFT obligations.

132. The authorities confirmed that parallel criminal, civil or administrative proceedings in respect of legal persons are not excluded in Montenegro. This Criterion is therefore considered as fully observed.

Sanctions for ML (c 2.5)

Natural persons

133. The penalty for money laundering for natural persons is up to 5 years of imprisonment. Due to the amendments of the CC, self-laundering is currently subject to the same penalty (at the time of the 3rd round evaluation, maximum penalty for self-laundering was 8 years of imprisonment). If the amount of the money or property laundered exceeds €40,000, the punishment is imprisonment from one to ten years, if the offence is committed by one or more persons associated for this purpose they shall be punished by imprisonment of three to twelve years. In cases of negligence the punishment is imprisonment of up to three years. Imprisonment is the only sanction applicable to the ML offence under the Montenegrin CC.

134. The evaluators are of the opinion that technically the sanctions applicable to the ML offence are proportionate to the sanctions applicable for comparable crimes in the CC. They also appear to be comparable with the sanctions applied for the ML offence by other MONEYVAL countries. The table below shows the basic penalties for the enumerated offences set by the Montenegrin CC, as well as the maximum penalty applicable under aggravated circumstances.

Table 6: Penalties applicable to serious crime under Montenegrin CC

Criminal offence	Basic sanction	Maximum penalty under aggravated circumstances
Money laundering	Six months to five years	Three to 12 years
Embezzlement	Up to two years	One to eight years
Fraud	Up to three years	Two to 10 years
Usury	Up to three years and by a fine	One to eight years and by a fine
Counterfeiting money	Two to 12 years	Five to 15 years
Evasion of taxes and contributions	Up to three years and by a fine	One to eight years and by a fine
Trafficking in persons	One to 10 years	Three to 15 years
Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs	Two to 10 years	Three to 15 years

135. Furthermore, Art. 48 of the CC stipulates that when a perpetrator is tried for several offences simultaneously, the *"court shall first pronounce the punishment for each of the respective*

criminal offences, and then impose a cumulative punishment for all the offences". When the perpetrator is therefore prosecuted for the predicate offence together with the ML, the aggregate penalty imposed should reflect the gravity of all the offences committed.

136. Despite the range of applicable sanctions and the provisions of Art. 48, the sanctions actually applied in practice are far from being dissuasive, and in fact add little, if anything, to the punishment. In the two cases provided by the authorities, no separate attention was given by the court to money laundering as a separate protected value, and it seems that no additional punishment was added to the predicate offence.

137. The following table shows the sanctions applied in the final convictions pronounced in the period under review:

Table 7: Sanctions imposed for ML in 2009-2013 by final judgements

Case and year	Crime	Number of persons	Length of punishment
Case n. 1 (2009)	Unauthorised organisation of games of chance, money laundering	2	3 years
			3 years
Case n. 2 (2012)	Unlawful trade, counterfeiting documents, money laundering	3	3 years and 9 months
	Counterfeiting documents, money laundering		7 months
	Counterfeiting documents, money laundering		7 months

Legal persons

138. Regarding legal entities, the Law on Criminal Liability of Legal Entities for Criminal Acts provides for two types of penalties, a fine or dissolution of the legal entity. According to Art. 14, *"A fine shall be determined depending on the amount of the damage caused or illicit material gain obtained…"* and the *"Fine may not be less than two-fold the 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".* Article 22 stipulates that *"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"*. Both of these penalties may be imposed only as principal sanctions and cannot be therefore imposed to a legal person jointly.

139. Instead of the above-mentioned sanctions or in conjunction with them, the convicted legal entity may be also imposed one of the security measures, which are, pursuant to Art. 28, developing and implementing the programme of effective, necessary and reasonable measures; seizure of items; publication of the sentence or a ban on conducting certain business or other activities.

140. Given that no prosecutions of legal persons have ever taken place, it is not possible to assess the dissuasiveness of the sanctions applied in practice to legal persons.

Recommendation 32 (money laundering investigation/prosecution data)

141. At the time of the 3rd round evaluation, no comprehensive statistics were maintained by the authorities regarding criminal cases. In 2011, a new computerised system was set up (Justice Informative System) and the evaluation team was presented with statistics regarding convictions for proceeds-generating crimes, as well as for money laundering cases.

142. In the period under review, there were two final ML convictions. In 2010, 2 persons were convicted for laundering the proceeds of unauthorised organisation of games of chance, each receiving a 3 year imprisonment term. In 2013, 3 persons were convicted by a first instance court for the crime of illicit trade of oil and derivates, forgery of documents and ML. The penalties applied were 3 years and 9 months (illicit trade, forgery of documents, money laundering) for the main offender and 7 months (forgery of documents and money laundering) in respect of the other two.

143. The evaluators were also presented with one case where the predicate offence was abuse of office in a foreign country and the defendant has already been convicted by the foreign court before a judgment was pronounced in Montenegro, so the Montenegrin court decided on acquittal. Finally, in 2013 in a proceeding for abuse of office and fraudulent balance sheet, together with money laundering, the prosecutor withdrew the charges for lack of evidence.

144. No investigations or prosecutions have been initiated against legal persons and no convictions handed down.

Effectiveness and efficiency

145. The evaluators have met with committed and professional Montenegrin prosecutors and judges, and are convinced that Montenegrin judiciary has accepted the combat against money laundering as part of its international obligations. The authorities have demonstrated in some cases effectiveness of the prosecution of both third party money laundering and of cases were the predicate offence was committed abroad, which are all commendable achievements.

146. Nevertheless, the evaluators are concerned about the effectiveness of the overall system. The successful prosecution of money laundering cases is still rare (2 final convictions and 2 first instance convictions in the period 2009 to March 2014) and does not represent an overall effort against profit generating crime, which does not seem to be effectively focused on money laundering. In all cases there was no discussion in the judgment as to the separate and elements (additional to those of the predicate offence) needed in Montenegrin jurisprudence for securing an ML conviction. Additionally, although the most common (recorded) proceeds-generating offences in Montenegro are drug production and trafficking, theft, burglary, forgery, fraud and corruption, the predicate offences generating the proceeds in the above-mention ML convictions were unauthorised games of chance and counterfeiting of documents[13]. Convictions for corruption,

[13] Case 1: a VAT fraud case involving false documentation regarding fictitious import/export of petrol. The case involved international cooperation and forensic investigation proving that no petrol actually was imported/exported. The persons convicted were convicted both of the predicate offences and of Money laundering for which they were sentenced to 2 years imprisonment and 6 months imprisonment.
Case 2: a conviction of ML art. 268 Par 3 and 4 in relation to Par 1 and 2 of the Criminal Code of Montenegro. The conviction was both of ML regarding the concealing the manner on which the accused acquired money previously obtained by criminal offence unauthorized organization of games of chance , and a conviction of the relevant predicate offences. As described in the judgment the accused were using a commercial business (as the responsible persons in a company for manufacturing, commerce and services, export-import - the company itself was not accused). Once convicted they were sentenced to imprisonment for a term of 3(three) years in total for both the ML and the predicate offence.
Case 3: A case where bank accounts opened in Montenegro were used to send money to the People's Republic of China in transactions which concealed the manner which they obtained money which they knew was the proceeds of crime.(Predicate offences which they were also convicted of (Art. 15, 32 , 36, 42 , 45, 46, para. 1 , item 2, 51, 68, 75, 268 , paragraph 6 of the Criminal Code of Montenegro)and of money laundering under Art . 268 para . 4 in relation to para. 3 and para. 1 and sentenced (for both the predicate offence and the ML offence) to 1 year in prison.
Case 4: In an additional case provided a decision to end prosecution as brought due to lack of sufficient evidence Some reference to additional cases was provided recently to the evaluators but unfortunately no details were provided to further assist the evaluators in assessing the effectiveness of the system. (Montenegrin authorities claim no details can be provided as the convictions are not final)

which is a tangible threat, are very modest. No convictions for criminal association, establishment of a criminal organisation and human trafficking were recorded, despite publicly-availably information indicating that these pose a heightened risk in Montenegro. This raises concern as to the ability of the Montenegrin authorities to fight these phenomena and related ML-activities.

147. The authorities also indicated that a number of foreign citizens, mostly from Russia, invest proceeds of crime from corruption, generated in their country, in Montenegro. Very little action has been taken by the authorities in this respect, since according to the authorities information on the offences committed abroad is very limited or is not provided on a timely basis by the foreign counterparts. This however indicates that the authorities in Montenegro still require a significant level of proof regarding the predicate offence to pursue ML, as will be discussed later in this section.

148. The number of ML convictions seems particularly disproportionate when compared to the data regarding proceeds generating crime in the country. In the year 2013, convictions for the offences established under the FATF designated categories of predicate offences have been achieved in 807 cases, with regard to 956 persons; regarding the drug trafficking offence alone there have been convictions in 101 cases (174 persons) in 2013. The authorities indicated that in their view in all these cases no significant proceeds were generated (although estimated figures of the amount generated by drug offences could not be provided) and there was therefore no need to initiate a ML investigation. Nevertheless, the Montenegrin authorities admit that significant criminal proceeds have been laundered in Montenegro, some of which were seized and confiscated which leaves the evaluators unsatisfied as to the extent of the investigative effort in this context. When asked to explain why in recent years no STRs have led to successful investigation and prosecution of ML, the Montenegrin authorities go further and point at lack of ability to obtain beneficial ownership information regarding funds sent to or obtained from legal persons and structures offshore. When assessing the statistics provided as to the very limited number of MLA requests, and after lengthy deliberation with the authorities on this point, the evaluators remain concerned as to the effectiveness of the investigative and prosecutorial effort with regard to money laundering, which seems to be also negatively affected by the overall effectiveness of the "whole chain" starting with preventative measures with regard to the private sector's performance of CDD and STR reporting , the FIU operations, and the police.

149. Although the fight against money laundering has been enhanced by criminalising negligent money laundering, no use has been made yet of this provision and there have been no prosecutions under Art. 268 (5) of the CC.

150. At the time of the 3rd round evaluation, a ML conviction could not be obtained in practice without a prior or simultaneous conviction of a concrete predicate offence. During the 4th round visit, the authorities claimed that the amendment to the ML offence, which changed the term "criminal act" to "criminal activity", was intended to address this issue. It is sufficient for a prosecutor to demonstrate that the property derived from criminal activity without it being necessary to identify a concrete predicate offence. However, the only cases which have resulted in a ML conviction were prosecuted together with the predicate offence or in relation to which a prior conviction had been achieved. This seems to imply that there might be an evidential problem, when the predicate offence cannot be prosecuted. The evaluators therefore remain concerned that this presents an effectiveness problem.

151. In the two final judgments presented to the evaluators by the authorities, there was no discussion in the judgment as to the separate elements (additional to those of the predicate offence) needed in Montenegrin jurisprudence for securing an ML conviction. This issue, together

with the need to prove the commission of a concrete predicate offence, shows the lack of real effort to establish a specific case law for money laundering.

152. The criminal sanctions applied in practice are far from being dissuasive, and in fact add little, if anything, to the punishment of the predicate crime. In the view of the evaluators, this is also caused by the lack of clear jurisprudential sense of the additional separate protected value related to money laundering.

153. A further practical issue, which may have a negative impact on the prosecution of money laundering, is the time gap between the commission of the predicate offence and the final court decision in the money laundering case. In all the cases presented to the evaluation team, in average 8 to 10 years passed between the commission of the predicate offence and the final ML judgment. This decreases the accessibility of evidence, as well as the traceability of assets susceptible to confiscation. Furthermore, the value of the repressive effects of the sanctions becomes questionable.

154. Additionally, the evaluators were informed that during the period under review none of the money laundering investigations or prosecutions were initiated on the basis of FIU notifications resulting from STRs. This could point to a low quality or exploitability of the STRs, insufficient attention paid to such information by the law enforcement authorities or a low level of cooperation between the different authorities involved.

155. The prosecutorial anti-money laundering effort seems to be exclusively focused within the specialized high level prosecutorial units focused on organized crime and cases initiated internationally. The evaluators welcome that convictions have been achieved with regard to ML of foreign committed predicate offences; it seems however that the majority of all the ML investigations and prosecutions have been initiated on the basis of a request for assistance from a foreign country. This raises concerns about the authorities' own commitment and pro-active approach to the fight against ML of the Montenegrin authorities.

156. During the on-site visit, the evaluators have also encountered several times a reference to a wide application of prosecutorial discretion, as it has been stated several times by the authorities, with reference to cases of organised crime or other proceeds generating offences, that a prosecution for money laundering has not been initiated due to fact that it was not considered necessary or useful. In some of the above mentioned cases, the evaluators were informed that the persons involved in the offences were very poor and therefore the prosecutors did not see any use in adding charges for money laundering to the indictment for the predicate offence.

157. Despite the efforts of the legislator to criminalise all the predicate offences, as required by the international standards, no prosecutions have taken place with regard to the newly established offences of insider trading and market manipulation. It also resulted from the on-site visit that no efficient cooperation is in place between the law enforcement and the other authorities (such as the SEC) to share the necessary expertise for the prosecution of such offences, given their highly particular nature.

2.1.2 Recommendations and comments

Recommendation 1

158. The authorities are encouraged to proceed with the national risk assessment. The extent to which money laundering is being properly investigated and prosecuted should be assessed in light of the results of the risk assessment. Efforts should be focussed on those areas which present the highest ML risks.

159. The perception among law enforcement authorities and the judiciary of the importance of the added value of money laundering prosecutions should be enhanced. The relevant authorities should identify and analyse the difficulties encountered in ML investigations and prosecutions.

Measures should be taken to ensure that ML cases are investigated and prosecuted in a timely manner.

160. The authorities should address the following technical shortcomings in relation to the ML offence:

- a definition of property applicable to the ML offence should be introduced in the CC;
- *"The conversion or transfer of property…for the purpose of…helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action*" should be specifically included in the ML offence;
- The acts of concealment and misrepresentation within the ML offence should be extended to the '*rights with respect to property'.*

161. Jurisprudence should be developed in order to avoid the obligation of proving a concrete predicate offence in ML prosecutions.

162. The efforts and competencies of law enforcement and the judiciary should be more coordinated and enhanced in order to ensure a higher interest in the fight against ML, as well as more effective and timely investigations, prosecutions and proceedings. A more pro-active approach towards prosecution of ML cases should be promoted. The law enforcement should put to higher use the information received from the FIU.

163. The definitions of money laundering in the different pieces of legislation should be aligned.

164. While it is commendable that the authorities have ratified and implemented the Warsaw Convention, the evaluation team urges the authorities to make full use of the additional tools provided by the Convention, such as for instance the application of provision for criminalization of negligent ML under Article 268(5) of CC.

Recommendation 2

165. More priority should be given to the investigation and prosecution of legal entities for ML offence.

166. The importance of the protected value of the ML offence should be reflected more significantly in the sanctions applied.

Recommendation 32

167. The establishment of the Justice Informative System is a significant development. The authorities should utilise this system to maintain more detailed statistics with regard to ML investigations, prosecutions and proceedings with comprehensive breakdowns on relevant data.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating[14]
R.1	**PC**	• Not all types of property are covered by the ML offence; • The concealment or disguise of rights with respect to property is not covered. **Effectiveness**

[14] Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness and should contain any relevant statistical data

		• Very low number of ML investigations, prosecutions and convictions; • Concerns over evidential thresholds to establish underlying predicate criminality; • Underutilisation of FIU generated reports for the prosecution of ML resulting in convictions; • Issues regarding timeliness of ML proceedings.
R.2	**LC**	**Effectiveness** • The sanctions that have been actually applied by the Courts for ML are not dissuasive and effective; • No ML investigations, prosecutions or convictions for legal persons.

2.2 Criminalisation of Terrorist Financing (SR.II)

Description and analysis

Special Recommendation II (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

168. Special Recommendation II was rated PC in the 3rd round mutual evaluation report based on the following conclusions:

- Funds were 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 offence to money laundering, were included;
- No autonomous criminalisation for financing of terrorist organisations or an individual terrorist for any purpose unless linked to a specific criminal act.

Legal framework

169. The Federal Republic of Yugoslavia ratified the 1999 UN International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) in 2002 and the Government of Montenegro succeeded to it in 2006.

170. As has been mentioned above in the analysis under Recommendation 1, since the last evaluation report, the Parliament of Montenegro adopted amendments to the CC, which also modified several elements of the TF offence. By virtue of these amendments, the definition of "funds" was introduced, also the amendments supplemented the list of crimes qualified as terrorist acts, and criminalised financing of terrorist organizations, their members, and individual terrorists for any purpose.

Criminalisation of financing of terrorism (c.II.1)

171. TF is criminalized in Art. 449 of the CC of Montenegro as follows:

"Article 449

Financing of Terrorism

(1) Anyone who in any manner procures or raises funds for the purpose of using them partly or wholly to finance criminal offences under Articles 447, 447a, 447b, 447c, 447d and 448 hereof, or to finance organizations which have set the commission of these offences as their aim, or the members of such organizations or an individual whose aim is to commit such offences shall be punished by a prison term from one to ten years.

(2) The funds referred to in paragraph 1 above shall be understood to mean all funds, material or non-material, movable or immovable, irrespective of the way in which they were obtained or the form of the document or certificate, including electronic or digital forms, by which one proves ownership or a share in such funds, including bank loans, travellers cheques, securities, letters of credit and other funds.

(3) The funds referred to in paragraph 1 above shall be confiscated."

172. The CC of Montenegro provides that procurement and raising of funds for the purpose of financing the criminal offences referred to in Art. 449 of the CC constitute the offence of TF. The authorities of Montenegro claimed that the term procurement should be understood as equivalent to the term provision of funds. Moreover, Explanatory Note to the CC of Montenegro (dated 2010) uses the terms "collect and provide", thus Article 449 of the CC therefore covers both acts, provision and collection of funds, as required by the international standards. As the wording of Art. 449 does not explicitly specify that the provision and collection should be done either directly or indirectly, the evaluators have reached the conclusion that both possibilities are covered.

173. The mental element of the TF offence seems to be rather restrictive since the FT offence would only arise where the funds are procured or raised for the purpose of using them (i.e. with the intention) to finance a terrorist act, a terrorist organisation (or members thereof) or an individual terrorist (henceforth 'for terrorist purposes'). While this covers the requirement under the TF convention to criminalise the collection of funds with the intention that they should be used for terrorist purposes (direct intention), it does not cover the collection of funds in the knowledge that they are to be used for terrorist purposes (indirect intention). However, the Explanatory Note on the CC of Montenegro (dated 2010) provides that *wrongful intent of the perpetrator may include the awareness of the funds purpose i.e. that these funds are intended for financing of the above mentioned criminal offences of terrorism. This awareness must exist in the period when the funds were collected or provided.* This explanation of the intentional element of the TF offence appears to indicate that the indirect intention would be covered as well.

174. In the 3rd round MER it was noted that the TF offence did not cover the financing of terrorist organisations and individual terrorists without a link to a terrorist offence. Pursuant to the amendments of the CC, the criminalisation of the financing of such organisations, their members and individual terrorists no longer depends on the commission of specific terrorist acts, and therefore constitutes a crime when such financing is done for any purpose. The shortcoming has therefore been addressed.

175. It is to be noted that no definition of terrorist organisations and individual terrorists exists. The commission of the terrorist acts referred in Article 449is the aim for terrorist organizations and individual terrorists. However, this formulation is not in line with the definitions provided by the FATF glossary. The definitions in the FATF Glossary provide, among others, that terrorist and terrorist organization is correspondingly a natural person and a group of terrorists that contributes to the commission of terrorist acts by a group of persons acting with a common purpose *where the contribution is made intentionally and with the aim of furthering the terrorist act* or *with the knowledge of the intention of the group to commit a terrorist act*. The formulation provided in Article 449 of the CC of Montenegro covers only the cases, when the contribution is made *intentionally and with the aim of furthering the terrorist act* and doesn't cover the cases when the contribution is made *with the knowledge of the intention of the group to commit a terrorist act*.

176. Furthermore, as will be discussed below, the terrorist acts, to which reference is made in Art. 449 of the CC, present some shortcomings with regard to international requirements, and therefore using this list of offences to define a terrorist organisation and individual terrorists restricts also the scope of these definitions.

177. The terrorist acts to which applies the TF offence, are defined in Art. 449 of the CC by a list of offences, which are Article 447 (Terrorism), Article 447a (Public Call for the Commission of

Terrorist Acts), Article 447b (Recruitment and Training for Commission of Terrorist Acts), Article 447c (Use of Lethal Device), Article 447d (Destruction or Damage of Nuclear Facility) and Article 448 (Endangering Persons under International Protection).

178. Whilst Art. 1 (b) of the Terrorist Financing Convention is fully covered by Art. 449, together with Art. 447 (1)(1) (Terrorism), shortcomings were identified regarding Art. 1 (a) of the Terrorist Financing Convention, which refers to the offences included in the Treaties listed in the Annex to the Convention ("Annex Conventions"). The majority of these offences are implemented in the Montenegrin CC, but many of them are not fully in line with the international requirements or a reference has not been made to them in Art. 449 of the CC in order to designate them as acts of terrorism for the purposes of the TF offence. The implementation of the "annex offences" in Montenegrin legislation, as well as their designation as terrorist acts, are discussed in detail in the table below.

179. Furthermore, the acts from the Annex Conventions, which are partially covered under Art. 447 (Terrorism) are subject to a condition to be undertaken *"with the intention to intimidate the citizens or to coerce Montenegro, a foreign state or an international organisation to act or refrain from acting, or to seriously endanger or violate the basic constitutional, political, economic or social structures of Montenegro, a foreign state or of an international organisation"*. Such a condition is acceptable under Art. 1 (b) of the TF Convention, but not in relation to the "Annex offences" under Art. 1 (a).

Table 8: Offences under the Annex Conventions, as implemented in the Montenegrin CC in relation to the TF offence

Conventions listed in the Annex to the TF Convention	**Ratification of the Conventions by Montenegro, implementation of the offence into the CC of Montenegro**
Convention for the Suppression of Unlawful Seizure of Aircraft	**Ratification by Montenegro:** 20.12.2006 (succession) **Implementation of the offence into the CC of Montenegro** **Hijack of Aircraft, Ship or Other Means of Transport (Article 343)** Elements, which are not covered • Seizure of aircraft • Exercising control of an aircraft by any other form of intimidation, apart from using force or the threat of using force
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	**Ratification by Montenegro:** 20.12.2006 (succession) **Implementation of the offence into the CC of Montenegro** **Endangering Air Traffic Safety (Article 341)** **Endangering Security of Air and Maritime Traffic or of Fixed Platform (Article 342)**
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons,	**Ratification by Montenegro:** 23.10.2006 (succession) **Implementation of the offence into the CC of Montenegro** **The definition of public official (Article 142(3))** **Aggravated Homicide (Article 144(5))**

including Diplomatic Agents	**Prevention of Public Officials from Performing Official Acts (Article 375)** **Attack on Public Official in Discharge of Official Duty (Article 376)** **Endangering Persons under International Protection (Article 448)** Elements, which are not covered • The definition of public official doesn't cover all the officials whenever any such official is in a foreign state, as required by the Convention, as well as family members who accompany such officials; • Article 144(5), 375 and 376 do not protect the family members of internationally protected persons; • Preventing a public official from performing an official act undertaken within the limits of his powers is subject to a condition of using force ot threats of directly using force; • The discharge of public officer's duties is subject to a condition of attack or threatens to attack; • Given that there is no definition of "persons under international protection" in the CC, it is unclear whether all the necessary categories, as required by the Convention, are covered, as well as it is unclear whether the scope of the offence would cover the commission of the acts against a family member of an internationally protected person; • Threat to commit acts under Article 448 is subject to a condition of endangering the safety of such person, as well as it covers only the act of attacking such person; • Attack on the official premises, private accommodation or means of transport is criminalised only when committed in a manner that endangers the safety of the person, being more restrictive than "likely to endanger".
International Convention against the Taking of Hostages	**Ratification by Montenegro:** 23.10.2006 (succession)
Convention on the Physical Protection of Nuclear Material	**Ratification by Montenegro:** 21.3.2007 (succession) **Implementation of the offence into the CC of Montenegro** **Taking hazardous substances in and out of the country (Article 313)** **Unlawful use, production, processing, possession, disposal, and storage of hazardous substances (Article 314)** **Endangering Safety with Nuclear Substances (Article 337)** Elements, which are not covered • The receipt, alteration and dispersal of nuclear material; • Theft or robbery, embezzlement or fraudulent obtaining of nuclear material; • Demanding for nuclear material by threat or use of force or any other form of intimidation; • Threat of using of nuclear material to cause substantial property

	damage; • Threat to steal nuclear material in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act.
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation	**Ratification by Montenegro:** 20.12.2006 (succession) This offence is not covered.
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	**Ratification by Montenegro:** 28.6.2006 (succession) **Implementation of the offence into the CC of Montenegro** **Endangering Air Traffic Safety (Article 341)** **Endangering Security of Air and Maritime Traffic or of Fixed Platform (Article 342)** **Hijack of Aircraft, Ship or Other Means of Transport (Article 343)** Elements, which are not covered • Seizure of a ship • Exercising control of a ship by any other form of intimidation, apart from using force or the threat of using force • Causing damage to the cargo of the ship
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf	**Ratification by Montenegro:** 28.6.2006 (succession) **Implementation of the offence into the CC of Montenegro** **Endangering Security of Air and Maritime Traffic or of Fixed Platform (Article 342)** **Hijack of Aircraft, Ship or Other Means of Transport (Article 343)** Elements, which are not covered • Seizure of a fixed platform • Exercising control of a fixed platform by any other form of intimidation, apart from using force or the threat of using force
International Convention for the Suppression of Terrorist Bombings	**Ratification by Montenegro:** 23.10.2006 (succession)

180. The definition of funds, which has been also newly introduced within the amendments to the CC, is broad enough to include all kinds of assets defined in the TF Convention. Also, the description "irrespective of the way in which they were obtained" leads to the conclusion that such funds can have either legitimate or illegitimate source.

181. The language of the TF offence does not require that the funds were actually used to carry out or attempt a terrorist act; it also does not require that the funds should be linked to a specific terrorist act. The provisions of the Montenegrin CC related to the funds used for financing of terrorism appear to be fully in line with international requirements.

182. Article 20(1) of the CC provides that anyone who commences the commission of a criminal offence with wrongful intent but does not complete it shall be punished for attempted criminal offence punishable under law by a prison term of five years or longer, whereas other attempted criminal offences shall only be punishable where it is explicitly provided for by law that the punishment also applies to an attempt. Although Art. 449 doesn't explicitly provide that the punishment for TF also applies to an attempt, TF is punished by a prison term from one to ten years, which means that pursuant Art. 20(1) of the CC attempted TF is also an offence in Montenegro.

183. Ancillary offences to TF are covered by the same provisions as the ancillary offences to ML, as has been discussed above under Recommendation 1, so by Articles 23-25 (principal and co-principal, instigation and aiding), Article 400 (conspiracy to commit), Article 25 (directs) and Article 449a (terrorist association) of the CC..

184. As for the participation as an accomplice in TF, Article 23(2) of the CC provides that where several persons jointly take part in the commission of a crime with wrongful intent or by negligence, or where they follow their prior arrangement and jointly act with wrongful intent *and thus make a significant contribution to the commission of the criminal offence,* each person shall receive a punishment prescribed for the crime in question. The language of the mentioned article limits the scope of the application of Article 23(2) for cases when there is *a prior arrangement to commit* TF and there is no *significant contribution to the commission of the criminal offence* by the accomplice (co-principal). In this case, the person would be charged with aiding under Article 25, in which case the sentence to be imposed may potentially be lower. Additionally, it is the view of the evaluators that the additional requirement of proving a significant contribution may have a restrictive effect in the context of financing of terrorism where assessing the extent of the contribution may be irrelevant in many cases.

Predicate offence for money laundering (c.II.2)

185. Montenegro has applied the "all-crime approach" to establish predicate offences to ML, which means that TF is a predicate offence for money laundering.

186. However, given the shortcomings of the TF offence presented above, the evaluators consider that the scope of TF as a predicate offence for ML is limited.

Jurisdiction for Terrorist financing offence (c.II.3)

187. Article 449 does not contain any reference to territorial limitations of the scope of the TF offence, it applies therefore regardless of whether the terrorist or terrorist organizations are located, or the terrorist acts occurred or will occur, in the same or in a different country, than in which was committed the TF offence or in which is located the person, who has allegedly committed such offence.

188. Additionally, the authorities of Montenegro explained that even if there is reference to specific offences prescribed under Art. 449 of the CC, it is not an impediment to apply criminal liability for TF even if such acts occur in another country.

The mental element of the FT (applying c.2.2 in R.2)

189. The principle of free evaluation of evidence, which results from Art. 17 of the CPC and gives the courts and the State Prosecutors the discretion to appraise the existence or non-existence of facts on which to base their decision, applies generally throughout the criminal procedure, it is therefore applicable also to the TF offence.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

190. Pursuant to Art. 3 of the Law on Criminal Liability of Legal Entities for Criminal Acts, legal entities may be held liable for criminal offences referred to in the special section of the CC and for other criminal offences provided for under a separate law, if the conditions of liability of a legal

entity prescribed by the mentioned law have been fulfilled. Grounds for liability of a legal entity are provided by Art. 5 of the same law and provide that legal entities 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. The grounds provided restrict the scope of criminalisation of a legal entity to cases where there is an "*intention to obtain any gain for the legal entity*", whereas in most of TF cases the offence is committed without an intention to obtain any gain for legal entity.

Sanctions for FT (applying c.2.5 in R.2)

191. According to Article 449 (1) of the CC, TF is punished by a prison term from one to ten years. Though the sanctions set by the law are proportionate, as compared with other countries, the dissuasiveness and the effectiveness of the sanctions cannot be established as there were no cases of TF.

Recommendation 32 (terrorist financing investigation/prosecution data)

192. There were no cases of TF in Montenegro.

Effectiveness and efficiency

193. Due to the absence of cases before the prosecutors or the courts, it is not possible to assess the effectiveness of the procedures.

194. The representatives of the National Security Agency informed the evaluators that there exist some risks of terrorism and terrorist financing related to the operation of Salafist supporters (which is rare), as well as further risks could emanate from the use of hawala-like MVTS providers. As neither has been confirmed, the national authorities stated that they focus for the moment mainly on the prevention of terrorism. It seems however that insufficient attention is being given to the prevention of terrorist financing, which can be observed from the insufficient guidance about TF indicators to reporting entities, as well as from the scarce reviews, monitoring and outreach with regard to the NPO sector.

195. Given the lack of proactive approach by the authorities with regard to investigations, together with the insufficient attention given to the TF risks within the preventive measures, it is therefore possible that some possible threats have not been detected.

2.2.2 Recommendations and comments

Special Recommendation II

196. Given the fact that there were no cases of TF in Montenegro, the authorities claimed that the risk of TF is very low. However, the authorities are invited to assess the risk of TF in Montenegro not only based on the legislation in place, but also in relation to the conducts, which should be designated as terrorist acts pursuant to international requirements..

197. The authorities should amend the legislation in order to criminalise all the offences listed in the treaties from the Annex to the TF Convention, to bring them in line with the Conventions, and to include these offences as terrorist acts for the purposes of Art. 449 of the CC.

198. The financing of the offences under the Annex Conventions, which are partially covered under Art. 447 (Terrorism), should be criminalised without being subject to be committed *with the intention to intimidate the citizens or to coerce Montenegro, a foreign state or an international organisation to act or refrain from acting, or to seriously endanger or violate the basic constitutional, political, economic or social structures of Montenegro, a foreign state or of an international organisation".*

199. The grounds of criminal liability of legal entities should be broadened so as to include cases when the legal entity doesn't commit the TF offence with the intention to obtain any gain for legal entity.

200. The scope of the terms "individual terrorist" and "terrorist organisation" should clearly cover the scope of these terms envisaged by the FATF standards, including contribution to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made *with the knowledge of the intention of the group to commit a terrorist act*.

201. Criminal liability for the co-principal should be provided for the cases when the co-principal commits the TF offence with the prior arrangement without any limitation of making significant contribution to the commission on the crime.

202. A more pro-active approach should be adopted by all the involved authorities in the detection of TF risks and their assessment and mitigation. The cooperation between national authorities should be enhanced in this matter, specifically between the prevention, intelligence and law enforcement authorities.

Recommendation 32

203. Given the lack of cases of TF, it was not possible for the evaluators to assess the quality of the collection of statistics regarding TF by the authorities.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The FT offence is limited in scope, as it does not cover all the acts listed in the Annex Conventions; • The financing of the offences under the Annex Conventions, which are partially covered under Art. 447 (Terrorism), are subject to an additional purposive element; • The scope of the definition of "*individual terrorist*" and "*terrorist organisation*" is not in line with the FATF Standards; • The scope of the application of criminal liability of legal entities is limited due to the grounds provided by the Law on Criminal Liability of Legal Entities for Criminal Acts.

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

2.3.1 Description and analysis

Recommendation 3 (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

204. Recommendation 3 was rated Largely Compliant in the 3rd round MER. The deficiencies identified were the following:

- No convictions for ML or TF implies no confiscation (conviction-based), additionally, the effectiveness of the general confiscation system remains unproved.
- No measures to allow the voiding of contracts or actions.

Legal framework

205. The legal framework governing confiscation and provisional measures is set out in the Criminal Code and the CPC. It is worth noting that Article 4 of the CC states that criminal sanctions shall include, *inter alia*, security measures, which are dealt with under Title V of the CC entitled Security Measures (Articles 66 to 78). One of the security measures provided under Article 67 is the confiscation of objects. The confiscation of objects (which extends to

instrumentalities and objects which resulted from the commission of a criminal offence) is set out under Article 75(1), which is also found under Title V and according to Article 85 of the CPC these objects can also be temporarily seized. Article 66 states that the purpose of security measures is to eliminate the situations or conditions which might influence a perpetrator to reoffend. Article 75 must therefore be read within the context of Article 66, which raises the question as to whether the confiscation of objects may only be ordered by the courts when the purpose under Article 66 is fulfilled. This would appear to impose an additional burden on the prosecution and the judiciary in the application of confiscation measures.

206. In addition to Article 75, there are other provisions in the CC which provide for confiscation measures. Both the ML and FT offence contain a special provision requiring the confiscation of the laundered property and funds used in the commission of the FT offence, under Article 268(6) and Article 449(3) respectively. Articles 112 and 113[15] provide for the confiscation of money, property and any other pecuniary gain resulting from the commission of a criminal offence.

Confiscation of property (c.3.1)

The laundered property

207. Article 268 of the CC, which sets out the ML offence, provides for the mandatory confiscation of the laundered money and property (paragraph 6)[16]. There is however an issue regarding the extent to which 'money and property' cover all the elements set out under the definition of property in the FATF Glossary (see analysis under Recommendation 1).

Proceeds from ML, FT or other predicate offences

208. The confiscation of proceeds acquired through a criminal offence (including ML, FT and other predicate offences) is to some extent covered by Articles 75, 112 and 113 of the CC.

209. Article 75(1) provides for the (discretionary) confiscation of objects which resulted from the commission of a criminal offence, provided that they are owned by the perpetrator. It is unclear what constitutes an object for the purpose of this article. Additionally, the requirement for the object to be owned by the perpetrator may restrict the scope of the confiscation measures.

[15] These articles are Under Title VII CONFISCATION OF PECUNIARY GAIN The legal nature of these measures is not the same as the legal nature of the Security Measures as provided in Title V.

[16] *"(1) Anyone who converts or transfers money or other property knowing that they are derived from criminal activity for the purpose of concealing or disguising the origin of the money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from criminal activity, or who conceals or misrepresents the facts on the nature, origin, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from criminal activity shall be punished by a prison term from six months to five years.*

(2) The punishment under para. 1 above shall apply to the principal of the offence under para. 1 above if he was at the same time the principal or the accomplice in the commission of the criminal offence by which the money or property referred to in para. 1 above was acquired.

(3) Where the amount of money or value of the property referred to in paras 1 and 2 above exceed forty thousand euros, the perpetrator shall be punished by a prison term from one to ten years.

(4) Where the offences under paras 1 and 2 above were committed by several persons who associated for the purpose of committing such offences, they shall be punished by prison term from three to twelve years.

(5) Anyone who commits the offence under paras 1 and 2 above and could have known or should have known that the money or property was derived from criminal activity shall be punished by a prison term up to three years.

(6) The money and property referred to in paras 1, 2 and 3 above shall be confiscated."

Nevertheless, Article 75(2) provides that objects may be confiscated even if they are not owned by the perpetrator subject to three conditions (which are not cumulative) (1) if so required for reasons of security of people or property (2) for moral reasons and (3) where there is still risk that they may be used for the commission of a criminal offence. These conditions appear to be wide enough to remove any obstacle in confiscating all objects deriving from a criminal offence.

210. Article 112 sets out the general principle that no person may retain a pecuniary gain originating from a criminal offence. Such gain is subject to mandatory confiscation following a decision of the court. Article 113(1) states that money, property of value and any other pecuniary gain originating from a criminal offence shall be confiscated from the perpetrator (mandatory confiscation). According to Article 142(12) of the CC, pecuniary gain originating from a criminal offence is understood to mean a material benefit obtained directly from a criminal offence consisting in (1) an increase or prevention of a decrease of assets resulting from the commission of the crime (e.g. money generated by drug trafficking or prevention of decrease in value of shares through market manipulation), (2) the property for which pecuniary gain obtained directly from a criminal offence is replaced or into which it is converted[17] (e.g. immoveable property purchased with money gained from drug trafficking), as well as any other benefit obtained from the pecuniary gain directly obtained from the criminal offence (e.g. bank account interest generated by money gained from drug trafficking), irrespective of whether it is located in or outside of the territory of Montenegro.

211. This comprehensive legislative framework provides for both provisional measures and confiscation of the proceeds of crime. Nevertheless, the evaluators remain concerned as to several issues. One is the lack of definition of *"property"* or "objects" as described above in the analysis of R.1 another is with regard to" *indirect proceeds"*. The definition of *"pecuniary gain"* does not seem to cover adequately the FATF definition of proceeds set out under the FATF Glossary, as, since it only applies to gain obtained *"directly"* from a criminal offence, while the definition of proceeds in the FATF Glossary refers to "*any property derived or obtained, directly or indirectly, through the commission of an offence.* The Montenegrin authorities assured the evaluators that all proceeds whether direct or indirect would actually be covered, but unfortunately did not substantiate this interpretation or offer any case law to support it.

Instrumentalities used or intended to be used

212. Pursuant to Article 75(1) of the CC, the objects which were used or intended for use in the commission of a criminal offence may be confiscated, provided that they are owned by the perpetrator. The latter qualification may restrict the confiscation of all instrumentalities used or intended to be used in a crime. Nevertheless, Article 75(2) provides that instrumentalities may be confiscated even if they are not owned by the perpetrator subject to three conditions (1) if so required for reasons of security of people or property (2) for moral reasons and (3) where there is still risk that they may be used for the commission of a criminal offence. It is the view of the evaluation team that these three conditions are not unreasonable.

213. In addition, Article 449(3) provides for the mandatory confiscation of funds used in the commission of the FT offence.[18]

Property of corresponding value

214. Article 113(1) provides that where the confiscation of money, property and any other pecuniary gain originated from a criminal offence is not possible, the perpetrator shall pay the equivalent amount in money. While this provision applies to proceeds of ML, FT and other predicate offences, it does not cover the laundered property and instrumentalities. Also worth

[17] This may to some extent also be considered to cover confiscation of the laundered property.

[18] Article 449(3): The funds referred to in paragraph 1 (FT offence) above shall be confiscated.

emphasizing is that Article 113(1) does not order the confiscation of equivalent value but imposes a requirement on the perpetrator to pay such amount. In the view of the evaluation team, such a payment order falls short of "confiscation" as it is merely a "debt" to be paid by the perpetrator, rather than a legal tool to obtain ownership by the state of property with corresponding value to the proceeds of crime.

Property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits

215. Article 113 states that money, property of value and any other pecuniary gain originating from a criminal offence shall be confiscated from the perpetrator. Under Article 142(12), pecuniary gain is defined, *inter alia*, as any other benefit obtained from the pecuniary gain directly obtained from the criminal offence. This provision does not cover property that is derived indirectly from proceeds of crime. Additionally, since reference is only made to 'benefits, it is also not clear whether this formulation is wide enough to encompass income and profits.

Confiscation of property regardless of whether it is held or owned by a criminal defendant or a third party

216. The CC does not restrict the confiscation of the laundered property, proceeds and property of corresponding value depending on whether the property is held or owned by the defendant or a third party. Indeed, Article 113(5) provides that confiscation of proceeds (pecuniary gain) is to be ordered even where it has been transferred to other persons free of charge or where such persons knew, could have known, or were obliged to know that the property constituted proceeds. Additionally, according to Article 113(6), proceeds are also subject to confiscation if they were obtained for another person. The Montenegrin authorities referred to examples (referred to in the section 'Extended Confiscation' below) where property held by third parties was temporarily seized, with a view to eventual confiscation.

217. As mentioned previously, instrumentalities may only be confiscated if they are owned by the perpetrator of the offence. Nevertheless, Article 75(2) provides that instrumentalities may be confiscated even if they are not owned by the perpetrator subject to three conditions (1) if so required for reasons of security of people or property (2) for moral reasons and (3) where there is still risk that they may be used for the commission of a criminal offence. It is the view of the evaluation team that these three conditions are not unreasonable.

Extended confiscation

218. Article 113(2) provides for the possibility of applying extended confiscation, which is applicable to proceeds from crime for which there is a reasonable suspicion to believe that they originate from criminal activity unless the perpetrator makes it probable to believe that their origin is legitimate.

219. Pursuant to Article 113(3), the confiscation of proceeds from crime referred to in Article 113(2) may apply if the perpetrator has been convicted under a final judgment of any of the following:

- any of the criminal offences committed through a criminal organisation (Art.401a);
- any of the following criminal offences:
  a) crime against humanity and other values protected under international law and committed out of greed;
  b) money laundering;
  c) unauthorised production, possession and distribution of narcotics;

d) criminal offences against payment operations and economic activity and criminal offences against official duty, which were committed out of greed, and which carry eight year prison term or a more severe punishment.

220. Extended confiscation can be applied to proceeds of crime if they were obtained in the period before and/or after the commission of any of the criminal offences under Article 113(3) until the finality of judgment, and if the court establishes that the time when the proceeds from crime was obtained and other circumstances of the case in question justify the confiscation of the proceeds from crime (Article 113(4)). In three cases (of ML), where the prosecution is still underway, the court ordered the temporary seizure of property, which potentially may be subject to extended confiscation [19].

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

221. The CPC provides for provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation. These provisional measures are applicable to the laundered property, proceeds, instrumentalities used or intended to use for the commission for the criminal offence, as well as to property subject to extended confiscation, but do not include the ability to temporarily seize assets with the view to confiscate them as property of equivalent value – which is in Montenegrin jurisprudence a payment ordered by the perpetrator, and not an act of confiscation. Provisional measures are imposed by a court ruling pursuant to Article 85 of the CPC, which states:

"Objects which have to be confiscated according to the Criminal Code or which may be used as evidence in the criminal procedure, shall, at the proposal of a State Prosecutor, and by way of a court ruling, be provisionally seized and delivered for safekeeping to the court or their safekeeping shall be secured in another way…."

222. Article 481 of the CPC provides for Imposing Provisional Security Measures when conditions for the confiscation of property gain are met, by the court, upon the proposal of the state Prosecutor.

223. The evaluators remain concerned about some limitations of this regime, as set out in paragraphs (5) and (6) of Article 85:

"(5) The following objects cannot be provisionally seized:

1) papers and other documents of public authorities, publication of which would violate the obligation to keep data secret in terms of regulations laying down data secrecy, until the competent authority decides otherwise;

2) the accused persons' letters to their defense attorney or the persons referred to in Article 109, paragraph 1, items 1, 2 and 3 of the present Code unless the accused decide to hand them over voluntarily;

3) recordings, extracts from the register and similar documents that are in possession of persons referred to in Article 108, item 3 of the present Code and that are made by such persons in relation to the facts obtained from the accused person while performing their professional service, if publication thereof would constitute violation of the obligation to keep a professional secret.

(6) The prohibition referred to in paragraph 5, item 2 of this Article shall not apply to the defense attorney or persons exempted from the duty to testify pursuant to Article 109,

[19] The authorities also referred to one final conviction of attempted corruption, where the prosecutor initiated proceedings, which are still pending, for extended confiscation.

paragraph 1 of the present Code if reasonable doubt exists that they aided the accused parties in committing the criminal offence or they helped them after the criminal offence was committed or if they acted as accomplices by virtue of concealment."

224. Additionally, the CPC includes several specific provisions related to provisional measures, such as provisions related to the provisional measures related to "*extended confiscation" (*Art. 90 of the CPC) and provisional measures with regard to a civil property claim raised during criminal proceedings (Art. 243 of the CPC).

225. The above described provisional measures are imposed by a court ruling, which is either based on a proposal by the competent prosecutor, or in some cases *ex officio*. Additionally, under Art. 89 of the CPC, state prosecutors may request that the competent authority or organization temporarily suspends the payment, issuing of suspicious money, securities and objects, at the longest for six months. In matters of urgency, the CPC further enables the application of provisional measures directly by police authorities, subject to conditions defined under Articles 257(2) and 263(1) of the CPC.

226. The provisional measures applicable within the criminal procedure are further enhanced by the powers given to the APMLTF (FIU) in this matter, which may, according to Art. 51 of the LPMLTF, suspend a transaction for up to 72 hours.

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

227. Pursuant to Art. 85 of the CPC, the order for seizure of the property, which is susceptible to confiscation according to the CC, is given by the Court on the proposal of the State Prosecutor. There is no obligation for prior notice to the person, whose property is being seized. This criterion is therefore implemented fully in line with international requirements.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

228. Law enforcement authorities are given a wide range of powers under the CPC, such as the search of dwellings, other premises, persons, etc. (Art. 75 et seq), securing of objects relevant for the proceedings (Art. 85). State prosecutors may request that a competent public authority performs control over the financial operations of certain persons and to submit them documentation and information which can be used as evidence for a criminal offence or of the proceeds of crime, as well as information about suspicious monetary transactions (Art. 89). They may also order financial investigations for the purposes of extended confiscation (Art. 90). Article 157 and following also provide for the application of measures of secret surveillance.

229. Generally, the duties of the police authorities are defined in Art. 257 of the CPC, the division of competences of law enforcement authorities during investigation are established in Articles 276 to 278 of the CPC. For detailed information about the powers of the law enforcement authorities and the division of their competencies, the reader is referred to the analysis under Recommendation 27.

230. The powers of the law enforcement authorities under the regulations of criminal procedure are complemented by the powers of the FIU and the obligations for provision of information by other authorities to the FIU, which are embedded in Chapters V and VI (Articles 47 to 69) of the LPMLTF.

Protection of bona fide third parties (c.3.5)

231. *Bona fide* third parties are protected under Article 113(5) of the CC, which states that proceeds originating from a criminal offence may be confiscated only where the proceeds have been transferred to other persons free of charge or where such persons knew, could have known, or were obliged to know that the pecuniary gain originated from a criminal offence.

232. In addition, Article 114 of the CC states that where the injured party has been awarded his claim for damages in criminal proceedings, the court shall order the confiscation of pecuniary gain only insofar as such pecuniary gain exceeds the adjudicated claim of the injured party.

233. Where the rights of *bona fide* third parties are affected within criminal proceedings, the CPC provides the person to whom confiscation measures have been applied the right to request retrial with regard to the decision of confiscation, as well as the right to appeal against such decision. These rights are provided for in Articles 483 and 484 of the CPC.

234. With respect to instrumentalities, Article 75(2) provides that instrumentalities may be confiscated even if they belong to a third party subject to three conditions (1) if so required for reasons of security of people or property (2) for moral reasons and (3) where there is still risk that they may be used for the commission of a criminal offence.

Power to void actions (c.3.6)

235. In the course of criminal proceedings, the court is only authorised to void legal transactions under Article 241 of the CPC in relation to a property claim. As at the time of the 3rd round evaluation, there is therefore no clear power given to the authorities to void actions, as required under Criterion 3.6.

Additional elements (c.3.7)

C.3.7.a – Confiscation of the property of criminal organisations

As to criminal organisations which are legal entities, the Law on Criminal Liability of Legal Entities for Criminal Acts contains, in Article 22, as one of the possible sanctions dissolution of the legal entity. This sanction *"may be ordered if the business conducted by the legal entity was wholly or considerably in the function of committing the criminal offence"* and all the assets of the legal entity remaining after the dissolution are to be confiscated. *"Legal entity"* is defined in article 4 of this law as "…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;"

C.3.7.b – Civil forfeiture without a conviction

236. The Montenegrin CPC provides in Art. 482 the cases when a confiscation of pecuniary gain may be ordered. Apart from a judgment pronouncing a conviction of the accused for a crime, confiscation may be also applied when the court pronounces a ruling on imposition of a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment out of the institution (this applies to a mentally incapacitated perpetrator).

237. There are no other cases for which non-conviction based confiscation would be foreseen by Montenegrin legislation.

C.3.7.c – Reversed burden of proof

238. The burden of proof is shifted to the perpetrator on the basis of Art. 113 para. 2, which introduces into the Montenegrin system extended confiscation. Extended confiscation can be applied in cases when a crime from the list of the criminal offences set out in the Art. 113 para. 3 of the CC has been committed. Article 486 of the CPC then defines the conditions under which extended confiscation is executed. The reader is referred for more detail on extended confiscation to the analysis above.

Recommendation 32 (statistics)

239. The authorities provided the following statistics regarding confiscations and provisional measures applied within ML proceedings:

Table 9: Confiscations and provisional measures applied within ML proceedings

Year	Seized	Confiscated
2009	0	0
2010	0	0
2011	Around 44,1 million EUR (3 cases)	0
2012	0	0
2013	0	376,386.00 EUR (2 cases)

240. From the judgments provided by the authorities, it resulted that in the two cases where final convictions were achieved, instead of confiscation, a payment of a sum of money was ordered by the court under Art. 113 (1). In the judgment from 2009 the defendant was ordered to pay 161.065 EUR and in the judgment from 2013 the defendant was ordered to pay 215.321,56 EUR.

241. As may be observed from the table above, the exact value of property seized, as well as the exact date of the payment or ordering of payment of the sums as described in the preceding paragraph are not clear. It seems therefore that the authorities do not maintain comprehensive statistics on confiscations and provisional measures ordered within criminal proceedings, or that such statistics do not contain breakdowns, which would enable the traceability of the measures which were ordered specifically with regard to ML cases.

242. No information has been provided on confiscation measures that have been applied for predicate offences. No confiscation measures have been applied with respect to FT.

Effectiveness and efficiency

243. The statistics provided by the Montenegrin authorities do not demonstrate an effective regime for seizure and confiscation, indicating that there is no overarching policy to identify and trace proceeds of crime at the earliest possible stage of the investigation with a view to seizing and freezing such proceeds.

244. The evaluators were informed during the on-site visit that property was temporarily seized with a view to apply extended confiscation in three ML cases. The judgments in these cases are however not yet final and it has not been presented for the purposes of an assessment. Despite the positive effects the provision for extended confiscation could have on the effectiveness of the confiscation regime, as it is a new concept, it seems that there remain doubts with regard to the evidence necessary for its imposition. Jurisprudence should be developed in order to enhance the use of extended confiscation.

245. The effectiveness of the confiscation and provisional measures regime is clearly inhibited by the low number ML investigations and prosecutions of the ML offence. Furthermore, the lack of a pro-active approach towards the fight against money laundering is reflected equally in the insignificant efforts to identify and trace property related to criminal offences.

246. Highly relevant in this matter is not only the small number of cases, where confiscation or seizure have been ordered, but also the contrast between the value of property temporarily seized and property confiscated. This may be explained by the extensive length of ML investigations and proceedings, as raised above under R.1, which also negatively impacts on the traceability of property, which would be otherwise subject to confiscation.

247. In addition, a significant number of the ML cases presented to the evaluators involved a legal entity. No legal entities have however been prosecuted for ML in Montenegro. Given that the legal entities have been used either as a mean for the commission of the predicate offence or for the money laundering itself, in order to ensure confiscation of all the property related to criminal activity, prosecution of legal entities should be enhanced in higher number of cases.

248. The evaluators also remain with doubts about the sufficient expertise of the involved law enforcement authorities to undertake complex financial investigations, amongst others based on the fact that no specific ML training is provided for police authorities.

249. Finally, the evaluation team also met with a new unit set up for managing seized property, the Asset Management Agency, which has been established in 2009. This is a most welcome development which may enhance effectiveness of confiscation of proceeds of crime on Montenegro.

2.3.2 Recommendations and comments

250. The authorities should amend the law to include the ability of confiscation of proceeds of crime obtained indirectly.

251. The authorities should also introduce the following measures:

- Confiscation of property of corresponding value to proceeds based on a confiscation order (rather than an order of payment on the perpetrator);
- Confiscation of property of corresponding value to laundered property and instrumentalities;
- Power to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
- Remove the limitations regarding seizure of objects "(5) The following objects cannot be provisionally seized regarding persons that are exempted from the duty to testify pursuant to Article 109 of the CPC (e.g. family members)

252. The restrictions applicable to provisional measures under Article 85 paragraphs 5 and 6 should be removed.

253. The authorities should, as a matter of priority, establish a policy for the confiscation of property in ML, FT and predicate offences. This should include specialised training to law enforcement and prosecutorial authorities in the identification and tracing of funds.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• The absence of a definition of property in the CC may restrict the widest use of the confiscation regime; • The confiscation of proceeds is not adequately covered; • No requirement to confiscate property of corresponding value to laundered property and instrumentalities and the requirement to confiscate property of corresponding value to proceeds is inadequate; • No requirement to confiscate property that is derived indirectly from proceeds; including income or profits; • No power to prevent or void actions which may prejudice the

		authorities' ability to recover property subject to confiscation. **Effectiveness** • No information was provided on confiscation measures for predicate offences; • No information was provided on provisional measures applied for predicate offences; • Very low number of provisional measures and confiscation orders for ML offences.

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

2.4.1 Description and analysis

Special Recommendation III (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

254. Special Recommendation III was rated NC in the 3rd round report. This rating was based on the following factors:

- 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).

Legal framework

255. Since the adoption of the 3rd round MER, the legislative framework related to the freezing of terrorist funds has not changed.

256. Nevertheless, it is important to note that a new Law on International Restrictive Measures was drafted and was planned for adoption in the course of 2014. Given that at the time of the onsite visit this law had not yet been adopted, the evaluation team could not take it into account for the purpose of the assessment.

257. There are currently therefore no specific preventive arrangements in Montenegro governing the freezing of terrorist assets. The system is based purely on the FIU's authority to freeze assets and the judicial authorities' powers of seizure.

Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

258. There are no specific 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.

259. Funds or other assets owned or controlled by Al-Qaida or the Taliban may only be frozen on the basis of existing administrative (freezing) and criminal (seizure) procedures. In the case of a suspicion of TF, reporting entities are required to submit a STR to the AMPLTF before executing

a suspicious transaction. Once such a report has been made, the APMLTF may within 72 hours, pursuant to Art.51 of the LPMLTF, order the temporary freezing of the funds in question for up to 72 hours. Further measures must by applied by a competent authority on the basis of the provisions of the CPC, as described above under the analysis of provisional measures.

260. With regard to S/RES/1373(2001), there is no statutory basis for Montenegro to draw up its own lists of persons and bodies, whose funds and other assets must be frozen, or for the freezing such assets.

Freezing actions taken by other countries (c.III.3)

261. There are no specific laws and procedures in place to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.

262. Pursuant to Art. 62 of the LPMLTF, the APMLTF is authorised, under the condition of reciprocity, to temporarily suspend a transaction for 72 hours on the basis of a request of a competent foreign authority.

263. Further requests to freeze assets from other countries would be dealt with under the general criminal procedure rules, particularly following a formal request for international mutual assistance.

Extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

264. None of the above mentioned laws, which would currently be applied to freeze funds or assets controlled by designated persons, contains a definition of funds and assets compliant with c.III.4.

Communication to the financial sector (c.III.5)

265. Given that the Law on International Restrictive Measures is still in draft, there have been no measures taken under c.III.1-III.3, which could be communicated to the reporting entities. Notwithstanding this, the APMLTF has explained that changes in UN lists of individuals and entities subject to sanctions of the UN Security Council that are forwarded to it by the MFA are immediately published on the APMLTF's website. In addition, the APMLTF publishes on its website a link to the list of terrorists designated by the UN Security Council List established and maintained by the Al-Qaida Sanctions Committee with respect to individuals, groups, undertakings and other entities associated with Al-Qaida (which says when the list was last updated), a link to OFAC's "Specially designated nationals list" (again dated), and a link to a list of persons designated by the EU (again dated).[20]

266. In addition, the Central Bank circulates to banks notifications that it receives from the Directorate for International Cooperation and European Integration about countries, legal persons and natural persons upon which sanctions have been imposed by the UN Security Council and under EU Regulations.

Guidance to financial institutions and other persons or entities (c. III.6)

267. No explanation is provided on the APMLTF's website as to the status of each of the lists, nor what reporting entities (and others) are expected to do with the lists, pending enactment of the Law on International Restrictive Measures.

268. However, guidance published by competent supervisory bodies under Art. 8 of the LPMLTF does refer to UN resolutions (and one set of guidelines also to EU lists).

269. Section 3.2 of the Guidelines on Bank Risk Analysis aimed at Preventing ML and TF published by the Central Bank states that a bank shall define, by means of an internal act, reasons for rejecting establishing a business relationship with a client, especially if the client is a person

[20] See: http://www.aspn.gov.me/rubrike/liste-terorista-i-teroristickih-organizacija/130852/Lista-terorista-i-terosristickih-organizacija.html.

from the list composed according to the UN Security Council Resolutions. The Central Bank has explained that the effect of this guidance would be to: prevent any business relationship being established by a bank with a person from the list "composed according to the UN Security Council Resolutions"; and, in the case of a business relationship established pre-listing, trigger a STR. However, section 3.2 of the Guidelines published by the Central Bank does not refer to persons designated by the EU in the context of Security Resolution 1373.

270. In addition, the Central Bank writes to every bank each time that it receives information on sanctions from the Directorate for International Cooperation and European Integration. It requests that it be informed of any "open or concluded business relationships with corporate clients, companies and individuals who are listed" - by a specified date. The Central Bank also highlights the need for banks to act in accordance with the LPMLTF, and internal policies and procedures. Banks are expected to search their client databases. So far, no bank has reported a match.

271. Whilst the Central Bank's guidelines and letter sent to banks do not consider ways in which persons listed may hold funds or other assets indirectly, for example as the beneficial owner of a client of the bank, the Central Bank has explained that, by virtue of provisions in Articles 19 and 20 of the LPMLTF, a bank would also be obliged to refuse to establish a business relationship with a client or to make a STR in a case where the beneficial owner of a client is listed.

272. Guidelines for Risk Analysis aimed at Preventing ML and TF for Capital Market Participants published by the SEC requires capital market participants to establish which customers present a high risk, which includes clients that are *"registered on the list of persons against whom United Nations or the Council of Europe measures are in force"*. Further, it states that the following relationships shall be considered as a transaction risk: *"transactions intended for persons, i.e. entities against which there are measures in force introduced by the United Nations or the Council of Europe"*; and *"transactions which a client would execute for and on behalf of the person or entity against which there are measures in force introduced by the United Nations or the Council of Europe"*.

273. Article 5 of the Guidelines on Risk Analysis of ML and TF in Insurance Companies published by the ISA states that an obligor shall consider a number of cases as risk factors for the purpose of determining a client's acceptability and establishing its risk grade profile. One such case is when a client, a majority owner or a beneficial owner of a client, or persons that perform transactions with a client, are persons that corrective measures have been instituted against in order to establish institutional peace and safety, all in accordance with UN Security Council Resolutions.

274. In contrast, Section 6.1 of Guidelines on developing Risk Analysis with a view to Preventing ML and TF published by the APMLTF states explicitly that it is prohibited to conduct business activities with customers that are listed as persons against whom UN Security Council or EU measures are taken. These relevant measures include financial sanctions, such as *"freezing assets on the account and/ or prohibition on assets usage (economical sources) or military embargo …"*. The Guidelines also set a prohibition on executing a transaction and a requirement to close a business relationship with a customer in the following cases: transactions are intended to be sent to persons or subjects against which UN Security Council or EU measures apply; transactions that a customer executes on behalf of persons against which measures are applied; and business relationships with listed persons. However, it is not clear on what legal basis such a prohibition is set, given the status of the guidelines.

275. Guidance summarised above does not consistently deal with the different ways in which a person that is listed may be connected to a client. It also appears that some competent supervisory authorities allow relationships to be established with listed persons, so long as they are treated as presenting a higher risk. In general, in the absence of relevant legislation establishing a comprehensive framework with regard to the measures required under the UNSCRs, the guidance issued by the authorities does not reflect the urgency and imperativeness of the measures that should be undertaken against the persons listed on the UN Lists.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

276. As stated in the 3rd round MER, there are no effective and timely procedures for de-listing requests or for releasing funds or other assets of persons or entities erroneously subject to freezing.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

277. There are no publicly-known procedures in place for unfreezing in a timely manner the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

Access to frozen funds for expenses and other purposes (c.III.9)

278. There are no procedures in place for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

Review of freezing decisions (c.III.10)

279. Given that the only procedures applicable for the freezing of assets under Montenegrin legislation would be ordered by a court ruling, the person affected by such a decision could present an appeal to such decision.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

280. The confiscation mechanism also applies to terrorist-related funds. Article 449 (3) of the CC of Montenegro provides that funds, as defined in Art. 449(1) are to be confiscated. The general confiscation regime and provisional measures, as described in the analysis under R.3 apply equally to the TF offence. It is to be noted, however, that the definition of funds and property, as set under Art. 449 and the general confiscation regime, does not cover all the "funds and other assets" as defined in Special Recommendation III, which affects the application of the provisional measures as well.

Protection of rights of third parties (c.III.12)

281. As for the protection of the rights of bona fide third parties, there are, rights of bona fide third parties are only partially protected within criminal proceedings, as discussed above under R.3.

Enforcing obligations under SR.III (c.III.13)

282. There are no laws and procedures in place for 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.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14)

283. The measures set out in the FATF Best Practices paper for SR. III are not implemented.

Implementation of procedures to access frozen funds (c.III.15)

284. The analysis under c. III.9 also applies to c. III.15.

Recommendation 32 (terrorist financing freezing data)

285. There were no cases of assets frozen under UNSCRs in Montenegro.

Effectiveness and efficiency

286. It is not possible to assess the effectiveness and efficiency of SR.III as there are no laws and procedures in place yet.

287. One of the banks visited explained that lists of higher risk countries (and individuals) were circulated by the CBM. A second confirmed that FATF public statements were distributed by the APMLTF. A third said that FATF public statements were always circulated promptly. However, a fourth made reference only to lists produced by OFAC, the Order Prohibiting Transactions with Iranian Institutions, and the Internet. On this basis, it is not clear that the system adopted by the Central Bank for communicating lists is universally understood.

288. In general, during the on-site visit, the banks showed knowledge to some extent about the existence of the terrorist lists, however, their perception of such lists remained at the level of guidelines issued by the CBM, therefore considering them as lists of higher risk individuals. A full understanding of the purpose of these lists was lacking.

2.4.2 Recommendations and comments

Special Recommendation III

289. The legislative framework in force at the time of the on-site visit remained the same as during the 3rd round mutual evaluation. Under the FATF Methodology, the evaluation team was unable to analyse the draft Law on International Restrictive Measures, considering that at the time of the on-site visit it was not in force and in effect. The rating below is therefore given taking into consideration the deficiencies in place at the time of the visit.

290. It is recommended to the authorities to review the draft law in the light of the UNSCRs and the FATF standards and ensure that the following measures are implemented in line with the international requirements:

- Measures ensuring the automatic freezing of funds as required under S/RES/1267 and 1373 or under procedures initiated by third countries should be put in place;
- Definition of funds and other assets used for these purposes should be compliant with the requirements under SR.III;
- A mechanism should be established to draw up domestic lists;
- Procedures should be put in place for the examination and giving effect to freezing mechanisms of other jurisdictions;
- Effective publicly-known procedures should be established for examining requests for de-listing by the persons concerned, for unfreezing of funds and other assets of de-listed persons and bodies, for unblocking in a timely manner funds and other assets of persons or bodies inadvertently affected by freezing arrangements, after verification that the person or body concerned is not a designated person, and for authorising access to funds and other assets that were frozen and have been determined to be necessary for basic expenses, etc.;
- Ensure that the rights of bona fide third parties are protected within the new regime;
- Introduce a specific and effective system for monitoring compliance with the new regime

291. The definition of funds and other assets under criminal legislation, to which applies the general framework for confiscation and provisional measures, should be brought it in line with the requirements under SR.III.

292. Guidance to the financial sector issued by authorities should contain requirements compatible with the measures taken under the UNSCRs, as well as the authorities should ensure that the reporting entities fully understand the nature and purpose of such measures.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• There are no specific 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 mechanism is in place to draw up a domestic list of terrorists; • No procedures are established to examine and give effect to actions initiated under freezing mechanisms of other jurisdictions; • No publicly-known procedures for de-listing, unfreezing of funds and other assets, as well as for authorising access to funds or other assets (as required by c.III.7-9); • No provisions ensuring the protection of the rights of bona fide third parties; • The guidance provided to financial institutions does not appropriately reflect the requirements of the UNSCRs. **Effectiveness** • Inadequate understanding of the purpose and the requirements of the UNSCRs by reporting entities.

Authorities

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

2.5.1 Description and analysis

Recommendation 26 (rated LC in the 3rd round report)

Summary of 2009 MER factors underlying the rating and developments

293. In the 3rd round MER, the deficiencies regarding R.26 were of a technical as well as an effectiveness nature. Although the LPMLTF empowered the APMLTF (Montenegro FIU) to disseminate STRs to competent law enforcement authorities, the mechanism for the dissemination of STRs was considered inadequate. The evaluators concluded that this could have had a negative impact on the effectiveness of the system. This issue remains unchanged. Furthermore, the evaluators recommended that the APMLTF should consider expanding its direct access to other authorities` databases. The Montenegrin authorities were also advised to issue an updated List of Suspicious Transactions Indicators. The confidentiality provision covering all civil servants and state employees was raised as an issue, as it did not apply to FIU staff indefinitely after termination of employment with the APMLTF. In addition, the evaluators criticized the lack of availability of statistics which made it difficult to assess effectiveness properly. The APMLTF was also recommended to enhance the training for its own staff and for reporting entities in order to increase the awareness and understanding of money laundering and terrorist financing schemes. This issue has been partly addressed.

Legal Framework

- Law on the Prevention of Money Laundering and Terrorist Financing
- Law on Civil Servants and State Employees
- Law on Classified Information

- The Rulebook on Indicators for recognising Suspicious Clients and Transactions (List of indicators)
- The Rulebook on the Manner of Reporting Cash Transactions in the Amount of 15,000 Euro and more and suspicious transactions (FIU - Guidance)

National Centre for receiving, analysing and disseminating disclosures of STRs (c.26.1)

294. Pursuant to Article 47 of the LPMLTF, affairs relating to the detection and prevention of money laundering and terrorist financing as defined in the LPMLTF and other regulations shall be performed by a competent administrative body. Government decrees No. 67/03 of 15th December 2003, No. 26/08 of 18th April 2008 and No. 05/12 of January 2012 (which supersedes the previous two) establish the APMLTF as the competent administrative body for the purposes of the LPMLTF. The APMLTF is an independent body which is supervised by the Ministry of Finance for administrative purposes. The APMLTF collects data from reporting entities, processes and analysis this data and disseminates financial information to the competent state bodies, in particular the Police Administration and the Prosecutor`s Office, for further investigation. In the performance of its functions, the APMLTF may request information from foreign FIUs, reporting entities and other public authorities in Montenegro. Information on the manner in which the APMLTF performs its functions in practice is set out under the section on effectiveness.

Guidance to financial institutions and other reporting parties on reporting STRs (c.26.2)

295. Article 33(6) of the LPMLTF provides the legal basis for issuing guidance on the manner and requirements for reporting. For this purpose, the Rulebook on the Manner of Reporting Cash Transactions in the Amount of 15,000 Euro or more and suspicious transactions was issued by the APMLTF and adopted by the Ministry of Finance in 2008. The rulebook is applicable to all reporting entities. It requires entities to submit STRs on different reporting forms according to the category of financial institution or DNFBP. The FIU pointed out that all reports are filed in these standardised forms, which contain information fields according to the specific sector and are very comprehensive. Reporting entities are to include indicators from the list of indicators in when filing a report. STRs may be submitted by registered mail, personal delivery or courier, on a CD ROM or by secure electronic mail. Specific guidance is provided for submission of STRs by secure mail.

296. Reporting forms are available for the following categories of reporting entities:

- Banks
- Stock exchange
- Brokers & Funds
- Central Depositary Agency (CDA)
- Merchants and intermediaries
- Customs
- Insurance companies
- Other reporting entities which do not fall under one of the above-mentioned categories under Article 4 of the LPMLTF.

Access to information on timely basis by the FIU (c.26.3)

297. Article 50 of the LMPLTF empowers the APMLTF to request state authorities or public power holders[21] to provide data, information and documentation necessary for detecting money laundering or terrorist financing. This power applies not only in relation to the person who is the subject of the FIU analysis but also to those persons in relation to whom there are indications that they have cooperated or participated in transactions or business under analysis. Upon request, the authorities are required to provide the requested data, information or documentation without delay and in any case not later than eight days from the date of the receipt of the request. The law makes provision for direct electronic access to data and information held by authorities and public power holders. However, in practice, the APMLTF does not have direct electronic access to financial, administrative and law enforcement information yet, except for data that is publicly available via internet access, such as the data and information provided by the Central Registry.

298. The evaluation team noted with concern that the number of requests for administrative, law enforcement and financial information was low. The figures provided in the table below would appear to suggest a lack of proactive approach by the APMLTF to seek further information in all cases in the course of its analysis. As indicated in the table, most requests were sent to the Real Estate Administration, while very few requests were sent to law enforcement authorities. No requests have ever been sent to any supervisory authority. The APMLTF was not in a position to provide the number of requests sent between 2009 and 2011. It is to be noted that insufficient measures were taken to implement the third round recommendation to increase the direct access to other authorities' databases.

Table 10: number of requests for information sent by the APMLTF to competent and other state authorities

Requests for additional law enforcement, financial and administrative information from the FIU to…	**2009**	**2010**	**2011**	**2012**	**2013**
Police Directorate	-	-	-	8	12
Customs Directorate	-	-	-	-	3
Tax Administration	-	-	-	1	1
Administration for Games of Chance	-	-	-	-	1
Real Estate Administration	-	-	-	14	48
Administration for Inspection Affairs	-	-	-	-	1

Access to additional information from reporting entities (c.26.4)

299. Articles 48-49 of the LPMLTF empower the APMLTF to request additional information from reporting entities, including lawyers and notaries. Article 48 and 70 in conjunction with Articles 9 and 33 specify which information the APMLTF can request from reporting entities, including, but not limited to, all information obtained by the reporting entity in the performance of its CDD obligations.

[21] Which include those referred to under Article 3 of the Law on State Administration, i.e. local self-government authorities, institutions and other legal persons, which are delegated with responsibilities and entrusted with affairs of state administration.

300. Reporting entities are obliged to provide the APMLTF with all information they are required to maintain according to Articles 9, 10 and 71 of the LPMLTF (CDD and record-keeping). They are obliged to reply without delay and no later than eight days from the day of the receipt of the request. The deadline can be prolonged upon a reasoned request by the reporting entity or reduced to only 24 hours, should the APMLTF deem the request to be urgent.

301. In addition, the APMLTF may request information from any reporting entity and on any person who is linked or thought to be linked in a money laundering or terrorist financing activity under the same conditions as described in Articles 48 and 49. In Articles 48 (5) and 49 (4) it is further stipulated that the APMLTF can require reporting entities, lawyers and notaries to provide data, information and documentation related to the performance of their affairs, as well as other necessary data for monitoring the fulfilment of their obligations according to the LPMLTF.

302. Regarding the implementation of c. 26.4, reference is to be made to the section on 'effectiveness'.

Dissemination of information (c.26.5)

303. Pursuant to Article 55 if the APMLTF evaluates that in relation to a transaction or a person there are reasonable grounds for suspicion of ML/FT, it shall inform the competent authority about the reasons for suspicion in written form together with the necessary documentation. Article 56 LPMLTF obliges the APMLTF to inform competent law enforcement authorities should it, in the course of its analysis, conclude that there are grounds for a suspicion that other criminal acts which are prosecuted ex officio have been committed. In practice, the following competent authorities receive notifications from the APMLTF: the Police, the State Prosecutor's Office, the Tax Administration and the National Security Agency[22]. The State Prosecutor and the Police receive the majority of FIU notifications (see Table 14). The Tax Administration is notified when a case give rise to tax issues. The National Security Agency is notified of cases which may give rise to issues regarding the security of Montenegro, including FT. Individual cases may be sent to one or more competent authority. The authorities indicated that, in theory, the Prosecutor's office should receive all notifications that give rise to the possibility of a criminal investigation, since it is the only body at law which is authorised to initiate such investigation (see details under Recommendation 27), irrespective of which other competent authority is the main recipient. However, from the statistics provided, this does not appear to be the case (see Table 14 below).

304. In its third round evaluation, Montenegro was criticised for not having a formal mechanism in place to determine which competent authorities is most appropriate to receive each individual notification. The situation remains unchanged. The authorities explained that a decision is taken on a case-by-case basis, depending on the facts of the case. Nevertheless, the evaluation team was not provided with a satisfactory explanation as to the purpose of disseminations to the Police, considering that only the Prosecutor's Office may initiate a criminal investigation. It was indicated that prior to 2013 both the Police and the State Prosecutor were empowered to initiate a criminal investigation. This explanation only serves to reinforce the evaluator's view that a formal internal methodology detailing the criteria for dissemination was needed to clearly distinguish between cases to be notified to the Police as opposed to the Prosecutor's Office and ensure that effective action was taken by the most appropriate law enforcement authority in all cases. It was also noted that, post 2013, the statistics indicate that the Police still receives a significant number of notifications from the FIU. No explanation was provided in this regard. This matter raises concern since, as indicated in Recommendation 27, the Police does not appear to be sufficiently trained in dealing with financial investigations and does not fully appreciate the APMLTF`s role and the purpose of its reports. The APMLTF was also not in a position to provide information on the outcome of the notifications sent to the Tax Administration and the National Security Agency. The situation on disseminations therefore remains very unclear.

[22] In one case, the State Audit Institution was the recipient of a FIU notification.

305. Table 13 represents the number of cases opened by the FIU on the basis of suspicions of ML[23], the dissemination of these cases and the outcome of these disseminations. It is not clear how many individual cases were actually disseminated in total, since the authorities did not provide such a breakdown. Moreover, figures on the outcome of these disseminations were only provided for the Prosecution Office. A number of issues may be noted. The number of disseminated cases is relatively low when compared with the number of cases opened by the FIU. This may be an indication of the low quality of STRs submitted (see further details under Recommendation 13). This is also supported by the fact that few criminal investigations have been initiated by the Prosecution. The absence of criminal investigations on the basis of an FIU notification was also attributed to the fact that most cases involve a foreign natural or legal person, which necessitated the assistance of foreign counterparts. It was stated that on many occasions cases could not be taken forward since assistance from foreign counterparts was not always provided in a constructive and timely manner. Despite the authorities' claims, the evaluation team noted that only a portion of the cases forwarded to law enforcement authorities involve a foreign natural or legal person.

306. Article 68 and 69 LPMLTF provide for a feedback mechanism whereby the courts, the prosecutor and other state authorities are required to provide statistics on FIU cases on an annual basis. While the APMLTF receives such feedback on a yearly basis, this does not generally include detailed and qualitative feedback on the outcome of the cases disseminated to competent authorities for further investigation or the quality of their disseminations. The authorities explained to the evaluators that this was not part of their functions but the prosecutors'. This lack of feedback was revealed in the discussions held with the APMLTF as their representatives could not indicate any reasons why their disseminations would not trigger criminal investigations for ML/TF.

Operational independence and autonomy (c.26.6)

307. According to Government decrees No. 67/03 of 15th December 2003 and No. 26/08 of 18th April 2008, the APMLTF is an independent administration body whose administrative work is supervised by the Ministry of Finance.

308. The APMLTF proposes its annual budget to the Minister of Finance who has the power to amend and ultimately adopt it. As soon as the budget is adopted, the Head of the APMLTF is bound by the agreed budgetary conditions.

309. The Head and Deputy Head of the APMLTF are appointed by the Minister of Finance, upon a submission of a list of potential candidates by the Human Resources Management Authority according to Article 57 of the Law on Civil Servants and State employees. Article 55 of the same law stipulates that the appointment is restricted to a period of five years, which can be renewed for another five year period.

310. According to Article 56 of the Law on Civil Servants and State Employees, the term of office of senior management staff can be terminated upon the following reasons:

- By expiration of the term of office
- Upon personal request
- By termination of employment in accordance with Article 123 (retirement)
- in cases referred to in Article 133 (governmental reorganization)
- By revocation (conviction to criminal offence).

[23] No FT STRs have ever been received by the FIU, nor has the FIU ever initiated an FT case on the basis of other information.

311. The Head of the APMLTF is empowered to take all executive decisions in fulfilment of the functions of the FIU, such as sending requests for information, disseminating notifications to law enforcement authorities and entering into MoUs with foreign FIUs. Nothing in the LPMLTF or other laws governing the activities and administration of the APMLTF appears to impinge on the FIU's operational independence and autonomy.

Protection of information held by the FIU (c.26.7)

312. The APMLTF`s premises appear to be appropriately secured both in terms of physical protection and authorised access. The database is kept in a separate IT room within the premises with only authorised personnel having access to it. All the data is backed up on a separate server in a separate room, though all the IT devices shown on-site seemed to be out of date and should be updated.

313. The legal framework governing the protection of data received by the APMLTF is set out under Chapter VII of the LPMLTF 'Records, Saving and Protecting Data'. Article 80 provides that all data, information and documentation collected by the APMLTF shall be designated the appropriate degree of confidentiality and must not be made available to third parties. Additionally, the APMLTF is not obliged to confirm or deny the existence of confidential data. Pursuant to Article 82, the APMLTF may only use data, information and documentation it has received for the purposes provided for by the law. Every employee of the FIU is required to sign a statement upon their appointment, binding themselves to keep confidential all information that comes to their knowledge in the course of their functions.

Publication of periodic reports (c.26.8)

314. According to Article 64 (6) of the LPMLTF, the APMLTF is obliged to publish statistical data related to money laundering and terrorist financing at least once a year and to notify the public on the phenomenon of money laundering and terrorist financing.

315. The APMLTF meets this obligation by publishing an annual report that contains information on the tasks and fields of activities of the APMLTF, including the presentation of statistics on STRs and CTRs. However, neither one of the two annual reports made available (2011 and 2012) to the evaluation team contains information on typologies and trends, which constitutes a deficiency and is not in line with criterion 26.8.

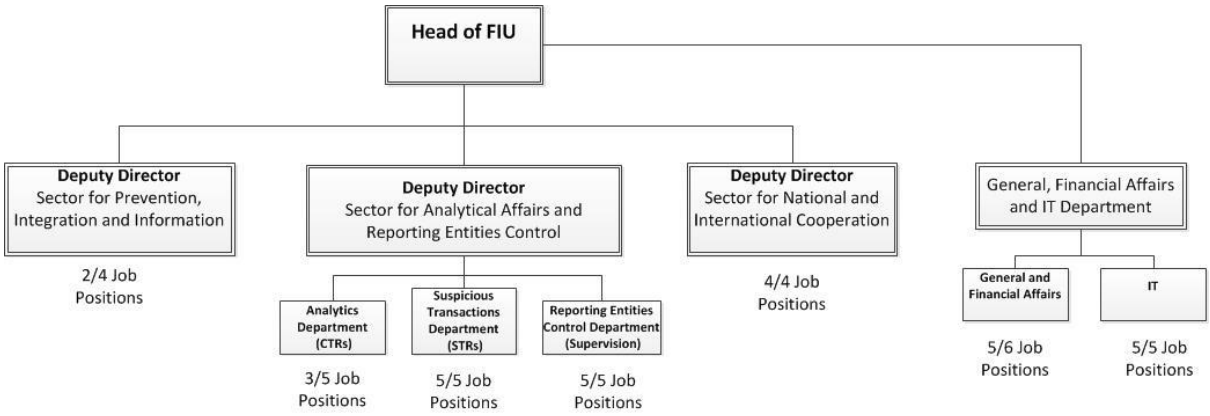
Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

316. The APMLTF has been a full Egmont Group member since July 2005. It has full access to the Egmont Secure Web and uses it regularly for the exchange of information with other Egmont Group member counterparts. The exchange of information is performed solely in accordance with the Egmont Principles. The APMLTF is currently not subject to any compliance procedures within the Egmont Group. Egmont Group Meetings are regularly attended by the APMLTF and it contributes to the work of the Operational Working Group as well as the Outreach Working Group. A more detailed analysis of FIU-to-FIU information exchange is discussed in the analysis of Recommendation 40.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

317. The APMLTF`s budget has significantly decreased since the 3rd round. The evaluators were informed that all state authorities have in general faced budget cuts (due to the financial crisis) and that the APMLTF`s budget has been subject to comparable reductions. A direct consequence has been a general freeze in the employment of new staff, which explains the existing vacant positions within the structure of the FIU. This has remained unchanged since the 3rd round.



33/39 Job Positions in total occupied

318. As shown in the chart, the APMLTF is divided into three sectors and one department for general, financial affairs and IT. The sectors are organised as follows:

- **Sector for Analytical Affairs and Reporting Entities Control**: which comprises the analytical department dealing with CTRs, the STR department as well as the DNFPB supervision department. The head of this sector is also the deputy head of the APMLTF. This sector employs altogether ten staff members, with two job positions vacant at the time of the evaluation.
- **Sector for national and international cooperation**: which has no further sub-departments and employs three staff member with no open job positions. Its head is also one of the deputy heads of the APMLTF.
- **Sector for prevention, integration and information**: which has no further sub-departments and employs one staff member with two open job positions. Its head is also one of the deputy heads of the APMLTF.

319. In total, only 33 out of 39 budgeted positions are occupied. The biggest share of staff members is employed by the general, financial affairs and IT department, with eleven staff members in total and one vacant job position (no Head of Department employed at the time of the on-site visit).

320. Considering that only three staff members have been assigned the responsibility to receive and analyse CTRs, the distribution of human resources within the office does not appear to be appropriate. Furthermore, only four staff members are employed to receive, analyse STRs and request additional information from reporting entities, state authorities and disseminate notifications to competent law enforcement. Hence, in total only eight out of 38 employees are in charge of dealing with the core business of the FIU. In the view of the evaluators, this seems somewhat disproportionate. Furthermore, there does not seem to be a satisfactory justification for the fact that almost a third of all staff work in the Department for general, financial affairs and IT.

321. Looking at the APMLTF`s budget, it appears to adequately reflect its expenses.

Table 11: APMLTF`s budget

Year	2009	2010	2011	2012	2013
Budget in EUR	610,936.20	528,726.31	519,057.62	507,903.90	503,250.40
Change in %	-	*- 13.5*	*- 1.8*	*-2.2*	*- 1.0*
Salaries	*397.108*	*343.671*	*337.387*	*330.136*	*327.112*
per capita and year	*15.884*	*13.747*	*13.495*	*13.205*	*13.084*

322. According to the authorities, the APMLTF`s salaries are rather low, which has resulted in a high turnover of staff. This constitutes a significant problem for the APMLTF as it struggles to maintain trained analysts on-board and to safeguard institutional memory. The evaluators were told on-site that around 65 % of the budget is used for salaries. This figure seems rather sensible and would reflect the local standard of pay levels.

Integrity of FIU authorities (c.30.2)

323. There are strict measures in place to ensure that state authorities require a high standard of integrity from their employees. The evaluators have met all APMLTF`s employees that were present at the premises during the on-site week. All employees appeared to have a high standard of integrity.

324. Article 67 of the Law on Civil Servants and State Employees demands from all state authorities` employees to conduct themselves in a manner which:

- does not diminish their or the authorities` reputation;
- does not compromise their impartiality;
- eliminates suspicion regarding the occurrence and development of corruption.

325. In addition, all civil servants and state employees are obliged:

- to avoid any situations of conflict of interest (Article 69),
- to report potential conflict of interest immediately to their supervisor (Article 70),
- not to receive pecuniary gifts with the exception of smaller material gifts up to the amount of EUR 50.00 that they have to report their supervisor (Article 72),
- to ask for permission to enter employment outside the state authority (Article 74)
- not to act as a chairman or member of management or supervisory body of private business (Article 74)

326. Furthermore, a specific provision dealing with whistleblowing permits staff members to inform their supervisor of instances of suspicion of breaches of official duty or committing of a criminal offence with elements of corruption. The supervisor is then obliged to ensure the anonymity of the staff member making the accusation and also to protect him/her against all forms of discrimination, suspension, and restriction or denial of rights. According to Articles 79 and 80 the burden of proof is then on the state authority to proof that the accusations are in fact false. Articles 81 ff. describe sanctions of disciplinary liability of staff members.

327. According to Article 68 Law on Civil Servants and State Employees, state authorities are obliged to keep an integrity plan and reassess periodically whether it is being complied with by staff members. Each state authority is required to designate one staff member with the responsibility to prepare and implement the integrity plan. Furthermore, state authorities maintain their code of ethics for their staff.

328. On 8 March 2013, the APMLTF designated a staff member to prepare and implement the integrity plan (the integrity manager) (Decision No. KA-93/1-13 dated 8 March 2013) and passed the Decision on establishing a working group for preparing and implementing the integrity plan (Decision No. KA-94/1-13 dated 8 March 2013). According to the Decision No. KA-93/1-13, the integrity manager is responsible for the following:

- Management and participation in the working group for preparing, developing and implementing the integrity plan;
- Participation in preparing the program of developing the integrity plan;
- Collection of necessary documents on functioning of the institution that presents the basis for risk assessment and integrity plan development;
- Supervision of the implementation of measures for enhancing the integrity
- Creation of reports on implementing the integrity plan in cooperation with all organizational units.

329. The Integrity Plan of the APMLTF was adopted on 13 June 2013.

Training of FIU staff (c.30.3)

330. The authorities have provided a very exhaustive list of training activities that have been organized and/or attended by the APMLTF`s staff (see Annex 3). Some of the events listed cannot be counted as training events per se, such as the attendance of plenaries (Moneyval, Egmont Group, etc.) as well as international or regional conferences. Nevertheless, the list shows the commitment of the APMLTF to not only improve their knowledge and skills but also the private sector`s.

331. The number of training events and workshops held is rather significant and commendable. However, the APMLTF should take efforts to ensure that a larger portion of the staff members attend and benefit from these events.

Recommendation 32 (FIU)

332. According to Article 64 of the LPMLTF, the APMLTF shall publish statistical data on ML/FT, including the number of STRs received, the follow-up in relation to such reports, the number of ML/FT investigations, prosecutions and convictions and the amount of property seized or confiscated. In support of this responsibility, Article 68 of LPMLTF requires the courts and state prosecutors, to provide statistical data to the APMLTF.

333. In practice the APMLTF collects data on, *inter alia*, CTRs and STRs filed by reporting entities and domestic authorities, cases opened by the APMLTF, disseminated cases and requests sent and received from foreign FIUs.

334. An assessment on the effectiveness of the analytical function of the APMLTF based on various statistics, especially taking into consideration the limited number of investigations and prosecutions carried out and convictions achieved based on FIU disseminations, has not been carried out.

Table 12 shows the total number of STRs reported to the APMLTF in the last four years:

Year	No. of ML STRs	No. of STRs from banks	% of total

2010	85	63	57 %
2011	65	44	54 %
2012	108	103	95 %
2013	100	97	87 %

335. Accordingly, the APMLTF has analysed and disseminated the following amount of cases to competent law enforcement authorities:

Table 13: number of cases opened by the FIU, by the AMPLTF, number of cases disseminated to law enforcement and the number of prosecutions and investigations resulting therefrom.

Year	**Number of cases (ML)**	**Reporting grounds**		**Dissemination**	**Investigation / Prosecution** **Data from prosecutor office**				
	opened by FIU [24]	STRs[25] (ML/TF)	CTRs[26] (ML/TF)	No. of cases forwarded to law enforcement[27]	Number of cases formed based on the information from FIU	Number of cases in which pre-investigation was led and in which we found that there is no ground for ML offence	Number of cases that are still in pre investigation phase	Number of investigations	Number of prosecutions
2009	**184** (85)	184[28]	/	81	21	18	2	1	1

[24] The figures in bold denote cases opened by the FIU on the basis of STRs and CTRs while the figures in brackets denote other cases which were opened by the FIU following a request by domestic competent authorities pursuant to Article 54 of the LPMLTF (e.g. request by Prosecutor Office /police to analyse a specific bank account identified in the course of an investigation or in relation to which there are reasons to suspect in criminal offence of ML/TF or other criminal offences) and foreign FIUs. The latter cases are not included in the statistics on disseminated cases to law enforcement authorities.

[25] These figures include cases initiated by the FIU on the basis of STRs submitted by reporting entities and competent authorities (e.g. customs)

[26] These figures include cases initiated by the FIU on the basis of CTRs.

[27] These figures do not represent individual cases. They include cases which may have been sent to one or more law enforcement authority. Therefore, the number of individual cases disseminated is lower. The exact figures could not be provided.

[28] The breakdown distinguishing between cases initiated by the FIU on the basis of STRs and CTRs could not be provided for 2009.

2010	**154** (122)	85	69	67	17	15	2		
2011	**143** (125)	65	78	53	14	7	7		
2012	**146** (100)	108	38	50	17	7	6	1	1
2013	**156** (125)	100	56	85	21	-	21	-	-

Table 14: number of notifications forwarded to competent state authorities

Number of cases opened by FIU in 2009	Notifications on STR forwarded to the competent state authorities	Number
184	Police	27
	State prosecutors Office	21
	Tax Administration	15
	National Security Agency	18
	Total	**81**

Number of cases opened by FIU in 2010	Notifications on STR forwarded to the competent state authorities	Number
154	Police	29
	State Prosecutors Office	17
	Tax Administration	12
	National Security Agency	8
	State Audit Institution	1
	Total	**67**

Number of cases opened by FIU in 2011	Notifications on STR forwarded to the competent state authorities	Number
143	Police	13
	State prosecutors Office	21
	Tax Administration	13
	National Security Agency	6
	Total	**53**

Number of cases opened by FIU in 2012	Notifications on STR forwarded to the competent state authorities	Number
146	Police	20
	State prosecutors Office	19
	Tax Administration	3
	National Security Agency	8
	Total	**50**

Number of cases opened by FIU in 2013	Notifications on STR forwarded to the competent state authorities	Number
156	Police	41
	State prosecutors Office	25
	Tax Administration	10
	National Security Agency	9

	Total	**85**

Effectiveness and efficiency

336. The APMLTF plays a pivotal role in the Montenegrin overall AML/CTF regime. Its employees appear to follow a high standard of ethics, are motivated and carry out their duties in a diligent and professional manner. Nevertheless, several deficiencies need to be addressed in order to increase overall effectiveness of the work of the APMLTF and ultimately the overall system.

337. The evaluation team inquired about the following steps the daily operations of the FIU:

- Start of the analytical process when information is received, i.e. CTRs, STRs and other information, be it domestic or foreign;

- Prioritization and decision making (Pre-analysis);

- Opening analytical case and checking available in-house data and information;

- Accessing available administrative, financial and law enforcement information from other authorities and international counterparts as well as relevant additional information from reporting entities to add value to the analytical product;

- Analytical process and conclusions;

- Dissemination procedure;

- Following up the dissemination by requesting feedback from law enforcement and prosecution on a regular and periodical basis (overarching feedback and fostering national cooperation).

Analysis function/ Access to information / Requesting additional information

338. When receiving an STR, usually in written form via post or courier, the report goes first to the Director who informs the Deputy Director (Head of Sector for Analytical Affairs and Reporting Entities Control) or the Head of the Analytics Department. After an initial brief review, the STR is assigned to one of the analysts in charge of pre-analysis depending on every analyst's individual workload and the STR's priority. The STR usually contains all the information according to the law (Article 71 LMPLTF) including a list of indicators that would have prompted the submission of the STR. Reference to possible predicate offences is generally not included.

339. CTRs, on the other hand, are usually received electronically through a secured webline. Though the FIU guidance prescribes that all reports are to be sent by using the standardized reporting forms, the APMLTF`s analysts confirmed that a significant number of CTRs are filed as excel spread sheets, complementing the standardized reporting form.

340. After opening a case, the analyst in charge contacts the reporting entity to confirm the receipt of the STR. Pursuant to Article 57 of the LPMLTF, the APMLTF is also required to notify a reporting entity when a report triggered by an STR is disseminated to law enforcement authorities. Reporting entities met on-site meetings however noted that they are not provided with feedback on the usefulness of their STRs/CTRs. Should an investigation and ultimately a prosecution or conviction result from an STR, reporting entities usually keep themselves updated by following media reports.

341. When the case is opened, the analyst inputs all the data and information provided in the report into the internal database. The internal database contains all the information gathered from STRs and CTRs submitted to the FIU since its establishment. At the time of the on-site visit, the

database had gathered information on approximately 18,000 legal entities (domestic and foreign), as well as around 160,000 natural persons (domestic and foreign) from reports received.

342. When searching the database for matches with natural or legal persons subject to the received STR, the analyst can determine whether or not an STR/CTR has been filed before on the same subject and what the circumstances were, i.e. which analyst was in charge at that time. However, other information submitted by reporting entities in conjunction with that STR is not stored electronically within the database. This information would have to be retrieved manually by the analyst.

343. Furthermore, the database is simply and exclusively a case management database of the APMLTF. It is used as a repository for data and information collected from CTRs and STRs. The APMLTF does not have direct electronic access to any kind of financial, administrative or law enforcement data, information or documentation held by other authorities, apart from the Central Registry Agency, which has a public website. When such information is needed by other authorities it is always requested in written form, subject to an eight day deadline to respond.

344. Table 10 indicates that the APMLTF does not regularly request financial, law enforcement and administrative information from other authorities for analytical purposes. This was confirmed by the APMLTF during the on-site visit. The evaluators are therefore concerned that the APMLTF does not make full use of available and accessible information, in order to analyse incoming reports to their full capacity and determine whether reasonable grounds of suspicion exist.

345. Upon receipt of an STR, the APMLTF automatically sends out requests for additional information on the subject of the STR/CTR to all the banks to determine whether the person under analysis holds business relationships or accounts with other banks. Unless carried out more selectively, this practice may give rise to a number of issues. By contacting all banks indiscriminately, the FIU indirectly discloses the fact that the person in question is under analysis, increasing the risk that the suspect may be inadvertently alerted. Additionally, the banks met on-site expressed their dissatisfaction with this practice, as it is a burdensome and time-consuming exercise. Many indicated that they receive more than a hundred requests per year, the outcome of which is often a nil reply. It also results in a drain on compliance resources, which could otherwise be utilised to identify ML/FT suspicions. Although the APMLTF claimed that the advantages of this practice (i.e. gathering of more information for its database and avoiding overlooking unknown bank accounts) are greater than its disadvantages (i.e. increasing tipping off risks and burdensome practice from the private sector`s perspective), the evaluators were not in a position to assess the effectiveness of this approach.

346. According to the authorities, close to 98 per cent of all CTRs are filed using the secured webline. Another two per cent are filed in written form as well as all the CTRs filed by notaries, which represent in all cases sale and purchase agreements of real estate. Two staff members of the APMLTF deal exclusively with inputting this information into the case management system. With around 40,000 CTRs per year, it is doubtful whether the APMLTF CTR department, which comprises three analysts, is in a position to handle such a large volume of CTRs even if the analysis were to be conducted based on risk. During the on-site visit, the evaluation team took note of the fact that a significant number of reports in paper format were awaiting to be processed. In the view of the evaluators, the lack of a sufficiently suitable analysis software solution the APMLTF is not in a position to make full use of the large number of CTRs reported annually.

347. A number of issues were identified with regards to the analysis of STRs of the APMLTF. The APMLTF does not make use of analysis tools, such as the i2 analyst notebook. It is therefore not always in position to link existing information within its database with cases under analysis and to produce visualisation charts to facilitate the analysis of a case. The analysts met on-site confirmed that the lack of IT tools presents a serious challenge in their everyday work. Analysis is performed through the use of basic software such as Microsoft Powerpoint and Excel spread sheets, which may be sufficient in certain simple cases but is inadequate to perform more complex analyses,

especially when trying to find a concrete link between various suspects, entities or entire cases. The APMLTF`s representative claimed the their current IT solutions do not provide for any possibilities to be re-programmed or amended according to their needs. Therefore, the APMLTF sees a completely new and updated IT system as one of their highest priorities in the near future

348. The evaluation team noted that the analysts met on-site all appeared to be knowledgeable and to have sufficient expertise to properly perform their functions. However, a number of issues were identified following a review of a sanitised analytical report disseminated to the Prosecutor's Office. In this case, the FIU successfully linked information received through STRs filed by two different banks to identify an activity of a suspicious nature. This notwithstanding, it appears that various sources of information were not utilised, which could have provided more context to the case and further strengthened the conclusions made in the analytical report. While it is not possible to draw definitive conclusions from a single sanitised report, these issues do shed some light on the analytical process of the APMLTF and to some extent confirm the assumptions made by the evaluation team on the basis of written information received from the authorities and interviews held on-site that the analytical output is generally not reflecting full use of all available and accessible data and information as well analytical tools and methods. The analytical procedure would greatly benefit from a detailed internal methodology.

Notifications to law enforcement

349. As discussed under criterion 26.5, the practice of disseminations of STRs to law enforcement authorities raises some concerns. In particular, it is unclear why reports are sent to the Police considering that they have no investigative powers and are not sufficiently trained to conduct financial investigations. Moreover, it appears that feedback provided to the APMLTF by law enforcement authorities on the outcome of their notifications is very scarce.

Annual reporting on trends, methods and typologies

350. The annual reports published by the APMLTF do not contain any valuable information on trends, methods and typologies which would serve the reporting entities as a tool to keep them updated in this field and to adapt their priorities, internal procedures and working manner accordingly. Hence, the APMLTF does not fulfil its central role in the field of AML/CTF in this regard. This has also become evident during the private sector interviews as there was a clear lack of awareness and knowledge by their representatives vis-à-vis these issues (i.e. ultimate beneficial owner, legal arrangements, cash-couriers, etc.).

Conclusion

351. The authorities have taken some steps with regard to the implementation of the 3rd round`s recommendations, such as updating the list of indicators as well as increasing the training for their own staff. However, in the view of the evaluation team a number of deficiencies remain, especially from an effectiveness point of view.

2.5.2 Recommendations and comments

Recommendation 26

352. The authorities should:

- Amend Articles 48, 49 and 50 of the LPMLTF to ensure that the AMPLTF is permitted to request information from domestic authorities and reporting entities when it estimates that there are grounds (not reasonable grounds) of an ML/FT suspicion for the purpose of performing its duties under the LPMLTF.
- Determine the reasons for the low number of requests for financial, administrative and law enforcement information and ensure that full use of all accessible data and information is made in the performance of the analysis function.

- Review the practice to automatically send requests for additional information to a large number of reporting entities upon opening an analytical case and consider introducing a more targeted and selective approach when querying reporting entities.
- With a view to enhancing the analysis and dissemination processes, ensure that the APMLTF's internal methodology sets out the procedure to be followed from the moment an STR/CTR/other information is received until the dissemination of an analytical report. The authorities should consider including the following within the methodology: the criteria on the basis of which a case is to be opened following the receipt of an STR/CTR, the manner in which cases are to be prioritised, circumstances in which financial, administrative and law enforcement information is to be sought and additional information from reporting entities is to be requested, the manner in which CTRs are to be utilised for analytical purposes, a detailed methodology for the analysis of STRs/CTRs, the length of time within which the analysis of an STR/CTR is to be conducted, the manner in which a decision to disseminate a case is to be taken and dissemination criteria to determine the most appropriate law enforcement authority in each case.
- Introduce, as soon as possible, a suitable IT system to ensure that:

  - sophisticated analytical and visualisation tools are available for the analytical department (STRs & CTRs) to further enhance the extent of the APMLTF`s analytical output; and

  - all relevant statistics for the upcoming national risk assessment as well as future evaluations and (domestic) assessments of effectiveness of the APMLTF`s work are available and easily accessible.
- Assess whether the analytical function of the APMLTF is effective in practice and establish to the widest extent possible the causes for the lack of effective action being taken by the authorities concerned on the basis of the analytical reports disseminated by the APMLTF.
- Establish a clear feedback mechanism between the APMLTF and law enforcement authorities (including the Prosecutor's Office, the Police, the National Security Agency and the Tax Administration) on the outcome and quality of FIU notifications.
- Consider conducting strategic analysis and publicly release reports on trends and typologies as required under c.26.8.

Recommendation 30

353. The authorities should:

- As a matter of priority, raise the salaries of FIU staff to a competitive level to avoid high fluctuation of staff.
- Increase number of staff to occupy all planned job positions according to the adopted governmental decree and allocate staff more appropriately to better assist the analytical departments (STR & CTR) which perform the core tasks of the APMLTF

Recommendation 32

354. The authorities should;

- Maintain a breakdown of statistics on individual cases disseminated to law enforcement authorities.
- Consider maintaining statistics on requests for information sent to other domestic authorities and reporting entities and action taken by police, national security agency and tax administration on the basis of FIU disseminations.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• The APMLTF does not publicly release reports on trends and typologies; **Effectiveness** • Low number of requests for administrative, financial and law enforcement information undermines the analytical and dissemination process; • The dissemination process does not ensure that effective action is taken by the most appropriate law enforcement authority in all cases; • No review by the FIU to determine whether the analytical output is adequate.

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)

2.6.1 Description and analysis

Recommendation 27 (rated LC in the 3rd round report)

Summary of 2009 MER factors underlying the rating and developments

355. In the 3rd round MER, the identified deficiencies regarding R.27 were predominantly of an effectiveness nature.

- It was recommended that the Prosecution Authority implement a rigorous supervision mechanism in order to avoid excessively returning cases to the Police Administration.
- The lack of final convictions at the time of the last on-site visit raised doubts on the effectiveness of the investigations carried out by law enforcement.
- It was recommended to extend special investigative techniques to all forms of money laundering to ensure a proper investigation.
- The authorities were encouraged to continue strengthening inter-agency AML/CFT training programmes in order to have specialised financial investigators and experts at their disposal, with a view to creating and implementing an international training programme on money laundering and terrorist financing.
- Corruption was perceived as a problem within law enforcement authorities. Concerns with regard to its influence on the effectiveness of the law enforcement joint-investigative capabilities were raised.
- The lack of comprehensive statistics on all aspects of money laundering and terrorist financing as well as the lack of regular analysis of these were criticized.

Legal framework

- CPC of Montenegro
- Law on the State Prosecutor`s Office
- Law on Internal Affairs

- Law on Civil Servant and State Employees

Designation of Authorities ML/FT Investigations (c. 27.1):

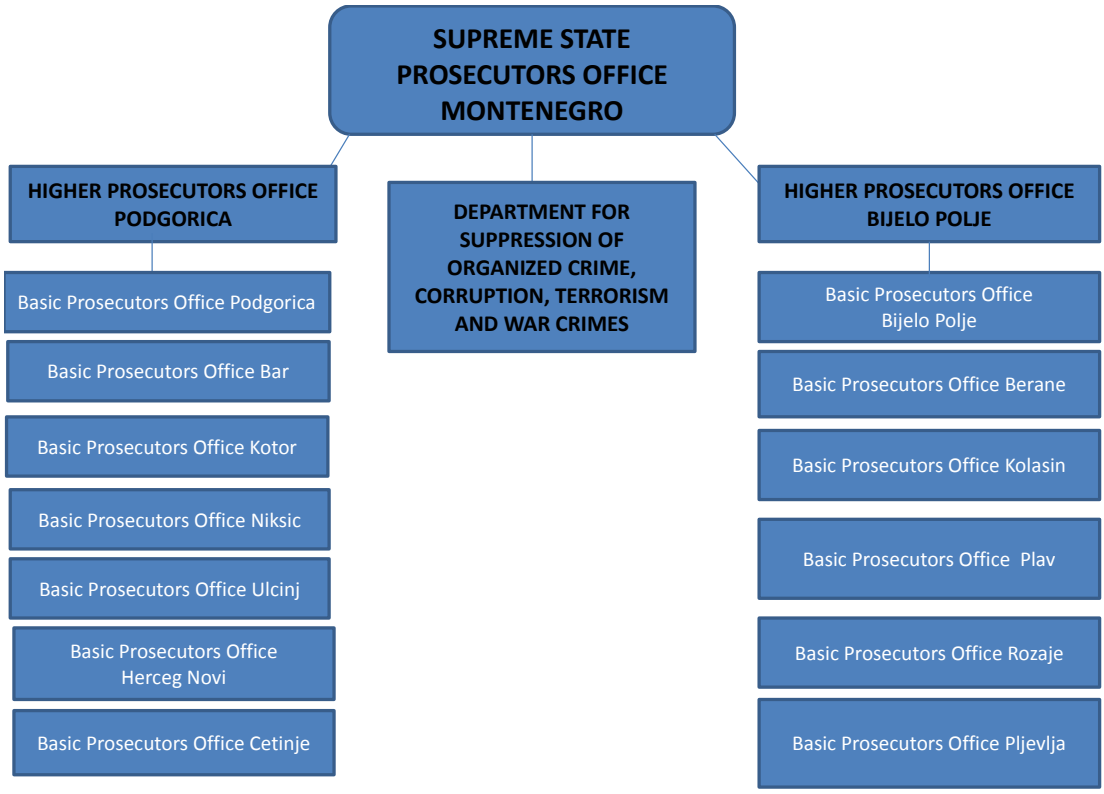
356. The main law enforcement authorities involved in the fight against money laundering and terrorism financing are the Police Administration (preliminary investigation) and the State Prosecutor`s Office (investigation, supervision of preliminary investigation and prosecution). Article 44 of the CPC sets out the responsibilities of the Police and the Prosecution respectively within the investigation process as follows:

> *(1) The basic right and the main duty of the State Prosecutor shall be the prosecution of criminal offenders.*
>
> *(2) For criminal offences prosecuted by virtue of office, the State Prosecutor shall be competent to:*
>
> *(1) issue binding orders or directly manage the activities of the administrative authority competent for police affairs (hereinafter: the police authorities) in the preliminary investigation;*
>
> *(2) render decisions on the postponement of criminal prosecution, when envisaged so by the present Code and reject criminal charges for reasons of fairness;*
>
> *(3) order the investigation to be conducted, conduct the investigation and perform urgent evidentiary actions during the preliminary investigation;*
>
> *(4) conclude agreements on the admission of guilt with accused persons, in line with the present Code, after having collected evidence in line with the present Code;*
>
> *(5) present and represent indictments, i.e. bills of indictment before competent courts;*
>
> *(6) lodge legal remedies against judgments and*
>
> *(7) undertake other actions provided for by this Code.*
>
> *(3) In order to exercise powers referred to in paragraph 2, item 1 of this Article, police and other public authorities shall notify the competent State Prosecutor before taking any action, except in cases of emergency. The police and other public authorities in charge of revealing criminal offences shall proceed upon the request of the competent State Prosecutor.*
>
> *(4) During the investigation the State Prosecutor shall establish with equal attention the facts which are exculpatory and inculpatory for the accused.*

357. The Police Administration has no power to initiate investigations on any criminal act at their own initiative. This power lies solely with the competent Prosecutor`s Office, which can order the Police to conduct a preliminary analysis under its supervision.

The Public Prosecutor`s Office

358. The Prosecution Authority is independent from the executive and legislative branches. The structure, function and operational independence are provided by the Law on State Prosecutor's Office (Articles 13 – 19) as well as the procedure through which prosecutors are appointed (Articles 24 ff.).



359. According to the authorities, organized crime, corruption, terrorism and war crimes fall under the responsibility of the (specialised) Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes within the Supreme State Prosecutor's Office. Any cases of money laundering connected to such crimes and FT are investigated by this Department. Any other cases of ML are investigated by the Higher Prosecutors' Offices. If the case which falls within the competence of the Higher Prosecutors' Offices involves elements of organised crime, corruption, terrorism and war crimes the case will be transferred without delay to the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes in accordance with Article 69 of the Law on State Prosecutor's Office. In practice, this means that only experienced prosecutors will be assigned ML/FT cases.

360. There are eight special prosecutors, comprised of the Chief Special Prosecutor as well as seven deputies. The High State Prosecutor`s office is comprised of two offices, the Podgorica Office as well as the Bijelo Polje Office. The Podgorica Office has one Chief Higher Prosecutor and eleven deputies, whereas the Bijelo Polje Office has one Chief Higher Prosecutor and five deputies. The prosecutors met on-site indicated that the number of prosecutor is enough in order to efficiently deal with their work load.

Police Administration

361. The Department for Fight Against Organized Crime and Corruption and the Department for Suppression of Economic Crime within the Criminal Police Sector are responsible for the preliminary investigation of ML/FT.

362. Article 230 CPC includes further powers for the Police Administration, namely:

- 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;

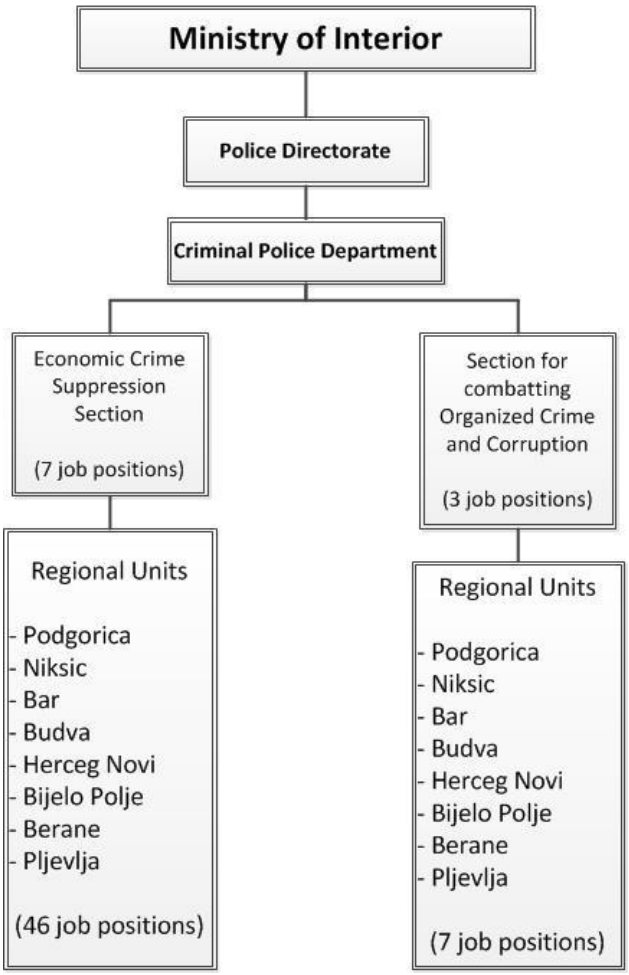
- take a sample for DNA analysis; issue a warrant for a person or warrant for seizure of objects;

-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.

363. A senior police commissioner for the suppression of money laundering and conducting financial investigations was designated to the Department for fight against organized crime and corruption. The mentioned officer coordinates the processing of cases in which there are reasonable grounds for a suspicion that criminal offences of money laundering have been committed and coordinates the procedures of conducting financial investigations. Besides the mentioned working position and position of the Chief of the Department there are two more working positions dedicated to investigating money laundering cases.

364. At the Department for the fight against economic crimes, besides the position of Chief of the Department, there are six more working positions to investigate all types of economic crimes and corruptive criminal offences, including money laundering. Furthermore, their task is to coordinate and to participate in the process of conducting financial investigations.

365. In addition to the mentioned officers involved in investigating money laundering and terrorist financing cases all officers from local police units dealing with investigating economic crime can be consulted in the process of investigations.



Ability to Postpone/Waive Arrest of Suspects or Seizure of Funds (c. 27.2):

366. Montenegro regularly takes 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 Element—Ability to Use Special Investigative Techniques (c. 27.3):

367. If a criminal offence falls under the ones listed in Article 158 of the CPC, which encompasses offences such as:

- All offences on which a prison sentence of at least ten years can be imposed
- Offences with elements of organized crime
- Offences with elements of corruption (including money laundering)
- Offences not falling into a specific category (see Article 158 Para 4 CPC)
- Offences against the security of computer data

Measures of secret surveillance may be ordered, in accordance with Article 157 CPC. Para 1 states that if grounds for suspicion exist that a person has individually or in complicity with others committed, is committing or is preparing to commit any criminal offence listed above and evidence cannot be obtained in another manner or obtaining them would request disproportionate risk or endangering the lives of people, measures of secret surveillance may be ordered.

368. Such measures would include:

- Secret surveillance of any telephone communication held in private or public premises
- Secret photographing and video recording
- Secret supervision and technical recording

369. In cases where circumstances indicate that evidence shall be collected with a minimum violation of the right to privacy, Art 158 para 2 provides for the following secret surveillance measures

- Simulated purchase of objects or persons and simulated giving and taking of a bribe
- Supervision over the transport and delivery of objects related to the criminal offence
- Recording conversations upon previous informing and obtaining the consent of one of the interlocutors
- Use of undercover collaborators and investigators

370. In addition, the measures stipulated in para 1 can also be taken on persons who have conveyed to the perpetrator in any way, such as giving him/her a mobile phone which initiated the commitment of a criminal offence under Article 157 para 1.

371. Article 159 CPC stipulates the competences in issuing such an order. If the measures applied refer to Article 157 para 1 CPC, the order shall be prepared by the investigative judge in written form at the motion of the state prosecutor. If the measures applied refer to Article 157 para 2 the state prosecutor shall prepare a written order at the motion of the police administration.

372. According to Article 159 para 5 CPC secret surveillance measures may last for up to four months, under certain circumstances they can be prolonged for three more months, if necessary.

Additional Element—Use of Special Investigative Techniques for ML/FT (c. 27.4):

373. Secret surveillance measures can also be applied when conducting money laundering (Article 158 para 1 item 3) and terrorist financing (Article 158 para 1 item 1) investigations. However, in practice these techniques are not being used.

Additional Element—Specialized Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5):

374. The competent state prosecutor is in charge of leading investigations including secret surveillance measures. In February 2010, the Supreme State Prosecutor's Office concluded an agreement with the Police Administration, the APMLTF, the Custom Administration and the Tax Administration on forming a joint investigation team which shall consult in the cases of organized crime and serious types of corruptive criminal offences in order to effectively combat high level criminal offences. According to the authorities this particular composition of the joint investigation team has facilitated collecting necessary documents and evidence in order to lead not only criminal but financial investigations as well. However, no information was made available on the action taken by the joint investigation team to specifically target the ML phenomenon.

375. With regard to international cooperation, the Supreme State Prosecutor has signed several MoUs with other countries, based on which direct communication can be established in order to collect and share evidence regarding criminal offences and confiscation orders. MoUs have been signed with

- Serbia
- Albania

- "The former Yugoslav Republic of Macedonia"
- Croatia
- Hungary
- Romania
- and Bosnia and Herzegovina

Additional Elements—Review of ML and TF Trends by Law Enforcement Authorities (c. 27.6):

376. A comprehensive review of money laundering and terrorist financing methods, techniques and trends has not yet been conducted. The authorities explained that this work has only started recently in the margins of beginning drafting the National Risk Assessment.

Recommendation 28 (rated C in the 3rd round report)

Power to compel production of, search persons or premises for and seize and obtain data and information (c.28.1)

377. The provisions in the CPC that empower law enforcement authorities to search persons or premises for and seize and obtain data and information necessary to conclude financial investigations are stipulated in Articles 75 - 84 and 85 - 97. The Law on Internal Affairs stipulates in Articles 37 – 42 that the Police, upon court order, has the power to compel authorities and any legal and natural persons to produce data in specific requested manner if needed in the course of an ongoing investigation.

378. According to Articles 75, 76 and 78 CPC the Police can search persons, property and other premises of accused persons upon requesting the State Prosecutor for a warrant, which is then issued by a competent court. In very urgent cases such warrants can be issued verbally. However, the permission must be taped and kept on record.

379. The powers to seize and obtain such data and information are specified in Articles 85 to 97 CPC. Upon proposal by the Public Prosecutor a competent court can rule that objects as well as data and documents that could serve as evidence in an investigation shall be temporarily seized under the caveat of complying with professional secrecy and data protection regulation (Article 85 Para 5). The provisional seizure may only apply until either:

- a first instance court panel, constituted by three judges, decides, upon complaint by the accused person that the seizure order be revoked. (Articles 24 paragraph 7 and Article 94 paragraph 1 CPC)

- the provisional seizure has been ordered in the phase of preliminary investigation and still not been instituted after a period of six months

- upon a competent court`s decision or a public prosecutor`s request to revoke the provisional seizure order due to its disproportionality in comparison to the gravity of the crime committed or lack of necessity to keep the order up in order to further investigate the case

Power to take witnesses` statements (c. 28.2)

380. The powers to take witnesses` statements are laid out in Articles 107 – 132 CPC. Any person can be summoned as witness if they are likely to provide information on the criminal offence committed or the accused perpetrator itself, except for (Article 108 CPC):

- Persons subject to specific duty regarding data secrecy provisions
- Persons subject to legal privilege duties
- Persons subject to professional secrecy provisions

381. Exempted from the duty to testify are spouses and extra-marital partners, direct blood relatives and relatives up to the third degree including relatives by marriage to the second degree as well as adopted children or adoptive parents of the accused person.

Recommendation 30 (FIU)

Adequacy of resources to Law Enforcement and other AML/CFT investigative or prosecutorial authorities (c.30.1)

382. Neither the Higher State Prosecutor`s Office nor the Supreme Prosecutor`s Office have taken measures to address the strong recommendation expressed in the last round report to increase their number of staff. During the on-site meetings representatives expressed their satisfaction with the current situation with regards to both their budgets as well as human resources. Therefore, the evaluation team does not see a need to re-address the previous recommendation to the authorities.

383. However, representatives from the Police Directorate have expressed their concerns about the lack of personnel. According to them the current number of staff of seven in the Economic Crime Suppression Section and three in the Section for Combatting Organized Crime and Corruption do not constitute enough resources in order to fulfil their obligation to their highest capabilities. The evaluation team concurs with these views and would encourage the authorities to increase staffing for the two police department significantly. On a general note, having ten staff members for the two departments combined seems to be a rather low number for a jurisdiction of Montenegro`s size. As was explained on-site, all the other police officers in the local and regional units may be involved in financial investigations, if necessary. Nevertheless, the lead remains with the headquarters that are in charge of coordinating investigations.

Integrity of competent authorities (c.30.2)

384. According to the Law on the State Prosecutor`s Office, all state prosecutors are obliged to exercise their office without exterior influence and in an independent and impartial manner (Articles 3 and 6). Furthermore, according to Article 7 of the same law public prosecutor shall act according to a code of ethics that is to be adopted by the conference of state prosecutors and supervised by a commission. The evaluators can conclude from the meetings held on-site that all representatives met seem to keep high personal integrity within their offices.

385. Similarly, according to Article 15 of the Law on Internal Affairs the Police Administration is are obliged to act in accordance with a code of ethics. Again, the content of this code has not been specified in the law and the evaluation team has not been provided with a copy of this code.

386. The third round report on Montenegro spoke of reports of corruption observed concerning Montenegro`s law enforcement authorities. These reports keep on emerging and remain very conspicuous in the public media. The representatives met on-site, however, claimed that corruption is no longer as much as a problem as it has been a few years ago; nevertheless adding that it still remains a problem that the authorities have to continue to tackle.

Training for competent authorities (c.30.3)

387. The Supreme State Prosecutor`s Office as well as the High State Prosecutor`s Office both participate in regular training programmes in the field of money laundering and terrorist financing (see Annex 3).

388. On the other hand, it was revealed during the on-site meetings with the Police Directorate that within the Criminal Police Department only their Director had participated and completed all available training programmes in the fields of money laundering, organized crime and terrorist financing. Many other staff member, however not all of them, who are also involved in financial investigation have only been provided with basic training in these fields. The evaluation team is rather concerned about this situation and would strongly encourage the authorities to ensure that

all police officers involved in financial investigations receive proper training programmes as soon as possible.

Additional element—Special training for judges (c.30.4)

389. The evaluation team was not given any specific information on specific training programmes for judges. The authorities assured the evaluation team that such training would regularly take place and that all judges involved in money laundering and terrorist financing cases were well trained in these fields.

Recommendation 32 (FIU)

390. The assessment team was provided with the numbers below in Table 15 regarding the statistics on investigations and prosecutions of ML. All the cases were initiated based on disseminations received from the FIU.

	Investigation / Prosecution **Data from Prosecutor's office**				
Year	Number of cases formed based on the information from FIU	Number of cases in which pre-investigation was led and in which it was found that there is no ground for ML offence	Number of cases that are still in pre investigation phase	Number of criminal investigations	Number of prosecutions
2009	21	18	2	1	1
2010	17	15	2	-	-
2011	14	7	7		
2012	17[29]	7	6	1[30]	1
2013	21	-	21	-	-

Effectiveness and efficiency

391. A concrete law enforcement policy to proactively investigate ML, either in conjunction with predicate offences or as a stand-alone offence, and FT offences, has still not been implemented in Montenegro. This emerged clearly during the meetings with various authorities onsite and from an

[29] This table needs explanation: Prosecutor office have received 17 cases out of which 4 have resulted in one investigation and prosecution, in 6 cases pre investigation is still ongoing and in 7 we have found that there is no ground for the ML offence

[30] Pre investigation was conducted in 4 cases received from the FIU and the result was one investigation against 9 persons for the criminal offence of criminal association from article 401 para 2 and 1 in concurrence with the criminal offence of computer fraud article 352 para 3 and 1 of the Criminal Code of Montenegro. The indictment was raised for all accused and the main hearing is still ongoing.

assessment of the statistical data provided. This is also evident from the absence of coordination between the law enforcement authorities involved. It is the view of the evaluation team that the action taken by law enforcement authorities does not correspond to the ML risks highlighted in Section 1.2 of this report, which include risks emanating from drug and human trafficking committed by organised criminal groups.

392. Table 15 demonstrates that a very low number of ML criminal investigations were initiated (none for FT). Neither the Police nor the Prosecutor`s Office were able to provide a satisfactory explanation in this regard. According to the authorities, almost all ML cases involve foreign natural and legal persons/arrangements. It was stated that on many occasions cases could not be taken forward since assistance from foreign counterparts was not always provided in a constructive and timely manner. Despite the authorities' claims, the evaluation team noted that only a portion of the cases forwarded to law enforcement authorities involve a foreign natural or legal person. This argument is also not supported by the number of MLA requests sent to foreign authorities. It was also noted that no ML investigations were initiated independently of an FIU notification.

393. As discussed under Recommendation 26, in some instances the APMLTF disseminates some notifications to the Police only, despite the fact that the power to initiate a criminal investigation lies with the Prosecutor's Office. This practice raises some concern since the Police, as a result of inadequate expertise and insufficient human resources, may not take the necessary action with respect to these notifications. While the Police Directorate expressed satisfaction with the APMLTF's efforts to deliver adequate financial intelligence, it was indicated that in most cases the information provided was not sufficient to initiate an investigation. Nevertheless, neither the Police Directorate nor the prosecutors could specify what additional information or data they would expect from the APMLTF in order to be able to initiate investigations. It is the view of the evaluation team that there is limited understanding by law enforcement authorities of the FIU's functions and the purpose behind the FIU dissemination procedure.

394. As described in the analysis part of Recommendation 31 a special investigative team, composed of representatives of law enforcement authorities, the APMLTF as well as other authorities has been formed very recently. However, it appears that no specific action has yet been taken to target the offence of ML.

395. The evaluation team remains concerned about the persistent shortage of police personnel in the criminal police departments responsible for the investigation of ML/FT and the lack of well-trained financial crime investigators. The evaluation team would strongly encourage increasing their number of staff as well as introducing a cohesive and broad training programme for all officers involved in financial investigations.

396. As stated in the opening part of this chapter, corruption was perceived as a problem within law enforcement authorities at the time of the third round report. Concerns with regard to its influence on the effectiveness of the law enforcement joint-investigative capabilities were raised. The evaluation team noted corruption related investigations conducted against law enforcement officials were in train. This demonstrates progress by the Montenegrin authorities to continue fighting this phenomenon. It was noted however that corruption allegations against the Police Department were solely being investigated by the Police Department itself rather than by independent bodies.

2.6.2 Recommendations and comments

397. The authorities should:

Recommendation 27

- Set out and implement a concrete law enforcement policy for the proactive (financial) investigation of ML/FT.

- Enhance to the highest degree intra-agency cooperation with regard to financial investigations.
- Conduct a comprehensive in-depth review of the current financial investigation procedure and establish a feedback mechanism to ensure that all involved authorities are aware of the needs and capabilities of their domestic counterparts, especially with regards to the low number of investigation initiated as a result of FIU notifications.
- Ensure that the joint investigation team established in 2010 also adequately targets ML/FT offences.

Recommendation 28

- This Recommendation is fully observed

Recommendation 30

- Significantly increase staffing of the Criminal Police Directorate in both, the Economic Crime Suppression Section and the Section for Combatting Organized Crime and Corruption to the degree necessary to allow officers to dedicate their highest possible efforts to their tasks.
- Introduce a cohesive and broad training programme in the fields of money laundering and terrorist financing for police officers dedicated to investigate financial crime.
- Consider conducting periodic reviews on the influence of corruptive elements in law enforcement authorities and identify a targeted action plan to remedy its negative effects.

Recommendation 32

- Consider introducing an intra-agency database that allows competent authorities to access directly or indirectly law enforcement information in a promptly manner, in order to ensure that all statistics are properly kept and can be double-checked if necessary, in the case that discrepancies occur.

2.6.3 Compliance with Recommendation 27

	Rating	Summary of factors underlying rating
R.27	**PC**	**Effectiveness** • No effective law enforcement policy for the investigation of ML/FT offences; • Very low number of ML/FT investigations; • Limited understanding by law enforcement authorities of purpose of FIU disseminations.
R. 28	**C**	

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

Special Recommendation IX (rated PC in the 3rd round report)

Summary of 2009 MER factors underlying the rating and developments

398. In the 3rd round MER, the identified deficiencies of Special Recommendation IX were of both technical as well as of an effectiveness nature. It was noted that the Montenegrin Customs

Authority had no clear powers to stop and restrain currency in cases apart from smuggling offences, according to Article 265 of the Criminal Code. Therefore, the authorities were recommended to introduce a legal basis to restrain currency in cases of administrative offences. Furthermore, it was recommended that the authorities introduce reports on currency declaration in order to identify money launderers and terrorist financers. In addition, the administrative sanctions for false declarations or non-declared currency were considered to be too low to be sufficiently dissuasive or effective. In order to identify areas of risk the authorities were recommended to retain statistics on customs and currency declarations for review purposes. Effectiveness issues were raised with the number and training of customs` staff. It was recommended that number of specialised staff with adequate training should be increased.

Legal Framework

- Customs Service Law
- Law on Foreign Current and Capital Operations
- Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF)
- Government Decision No 3 of 2014 on border crossing points
- Rulebook on detailed evidence on performed controls of physical entry and exit of means of payment across state border (Rulebook on Border Control)
- Rulebook on the manner of submitting data on the transfer of money to the APMLTF
- Code of Ethics for Customs Officers

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

399. Montenegro has adopted a declaration system. All persons crossing Montenegro`s borders have to declare any assets, cash as well as bearer negotiable instruments, above the threshold of EUR 10,000 when entering through all its borders.

400. Government Decision No.3 of 2014 determines the border crossing points for international maritime, road, air and railway traffic. When crossing the land borders, every person is required to declare any assets, including bearer negotiable instruments[31] to the customs officers in charge at the border. When entering Montenegro on a vessel, persons are obliged to inform the Port of Bar, which is the only commercial port of Montenegro, prior to entering the port on whether or not assets are to be declared. When crossing the Montenegrin border by air, persons are required to make a declaration prior to going through customs at the airport.

401. The assets or bearer negotiable instruments have to be declared by using a standardized form which has the same format and content regardless of the way of crossing borders (land, sea and air).

402. Article 10 of the Law on Foreign Current and Capital Operations stipulates:

"IV Physical Import and Export of Financial Means

Reporting on Physical Import and Export of Financial Means

Article 10

For the purpose of monitoring of the Projection the Balance of Payments of Montenegro, and control against money laundering and terrorism financing, resident and non-resident is obliged to declare physical import and export of means of payment at the point of entry or departure to or from Montenegro.

[31] Article 2 and 3, Rulebook on Border Control

The declaration from paragraph 1 of this Article shall be submitted to administration body in charge of customs affairs at a border crossing point.

The administration body from paragraph 2 of this Article shall perform control over physical import and export of means of payment..

Administration body in charge of customs affairs shall keep records on performed controls.

Ministry of Finance shall determine more specific contents of the records from paragraph 5 of this Article."

403. In case of false disclosure/failure to declare the currency in the amount exceeding the threshold of EUR 10,000, the customs administration can impose a pecuniary fine in accordance with Article 15 of the Law on Foreign Current and Capital Operations.[32]

Request Information on Origin and Use of Currency (c. IX.2):

404. During the on-site meeting the customs authority representatives claimed that they can ask a bearer to reveal the origin and yielded use of the assets or bearer negotiable instruments upon discovering that a person made a false declaration or failed to declare.

405. Article 23 of the Customs Service Law provides for the general power to ask passengers for additional information regarding their identification and perform searches. This power does not cover the requirements under SRIX.2, as Article 23 only refers to those cases where the cash exceeds the permitted threshold. There are no further specific powers under the LMPLTF or the Law on Foreign Current and Capital Operations. The Customs authorities argued that only the Police would have the right to ask for additional information and to hold up the bearer. In practice though, the authorities confirmed that the bearer would just be sanctioned by a pecuniary fine and released .

Restraint of Currency (c. IX.3):

406. The legal framework does not allow the customs authorities to stop or restrain currency or bearer negotiable for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found, regardless of whether the reason for restraining would be a suspicion raised by the customs officers or a false declaration/failure to declare by the bearer.

407. As mentioned in the analysis of Criterion IX.2 the customs authorities claim that only the Police would have such powers. The evaluation team was informed that in such cases the customs authorities would cooperate with the Police in order to investigate the case.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4); Access to Information by FIU (c. IX.5):

408. The Customs Administration submits information to the FIU on every cross-border transport of money, checks and bearer negotiable instruments, precious metal and precious stones, in value exceeding 10,000 Euro, automatically within 3 days following the cross-border transport, pursuant to the Article 66 of the LPMLTF.

409. In accordance with Article 66 LPMLTF, the Customs Administration is obliged to submit information on every cross-border transport of money, checks and bearer negotiable instruments, precious metal and precious stones, in value below 10,000 Euro, to the LPMLTF if there is a suspicion of money laundering or terrorism financing.

[32] Official Gazette of the Republic of Montenegro, No. 45/05, 62//08, 73/10, 40/11

410. The following Table 16 shows the numbers of notifications on declarations above the threshold of EUR 10,000 that were sent to the APMLTF by Customs, including numbers on notifications related to crossing borders into the Montenegrin territory as well as out of it.

411. The numbers provided show that roughly around 400 notifications are sent per annum to the APMLTF on declarations above the threshold of EUR 10,000. In between one to five percent of all incidents Customs had a suspicion of money laundering and in no cases a suspicion of terrorist financing. None of the notifications sent to the APMLTF have led to investigations conducted by competent law enforcement authorities.

The Customs Authority did not provide statistics on the number of false declarations. According to the experience of the representatives of the customs authority not many such cases arise.

Table 16

Cross border transportation of currency and bearer negotiable instruments									
Year	Number of declarations or disclosures				Suspicious cross border incidents			Assets restrained (amount in EUR)	
	Incoming		Outgoing						
	Currency	Bearer negotiable instruments	Currency	Bearer negotiable instruments	Suspicions of ML	Suspicions of FT	False declarations		
2008	204	0	183	0	13	Not provided	Not provided	Not provided	
2009	182	0	162	0	29	Not provided	Not provided	Not provided	
2010	156	1	230	0	15	Not provided	Not provided	Not provided	
2011	162	0	196	0	11	Not provided	Not provided	Not provided	
2012	173	0	224	0	6	Not provided	Not provided	Not provided	
2013	167	0	246	0	3	Not provided	Not provided	Not provided	

412. Information on every cross-border transport of money, checks and bearer negotiable instruments, precious metal and precious stones is submitted by the customs authority to the APML TF using a standardised form which contains – according to the authorities - among other

things, information on reason for doubt on money laundering or terrorism financing, and whether the transport of cash was reported to the customs authorities.

413. Pursuant to the Article 69 LPMLTF, the Customs Administration is obligated to inform the APMLTF on an annual basis, and until the end of January at the latest, on its observations and undertaken activities related to the transactions suspicious of money laundering or terrorism financing. Neither the Customs Administration nor the APMLTF were in a position to further elaborate on these observations or activities undertaken.

414. Articles 74 and 75 LPMLTF stipulates statistics, which the Customs Administration is obligated to keep, as well as its contents. The Customs Administration is obligated to keep those records for 11 years after its collection, and such information is being destroyed after the expiry of that deadline.

415. The Customs Administration and the APMLTF have concluded an agreement on cooperation, signed on 20/10/2004, for the purpose of implementation of the provisions in the LPMLTF, as well as establishing of channels of communication, coordination, cooperation and data exchange, necessary for detecting and preventing money laundering and performing all other obligations stipulated by the law.

Domestic Cooperation between Customs, Immigration, and Related Authorities (c. IX.6):

416. The Customs Administration of Montenegro has signed Memoranda of Understandings with the APMLTF, Tax Administration, Police Administration, Department of Public Revenues, regulating and closely defining mutual cooperation and method of exchange of information and data, covering also money laundering and terrorist financing areas in the context of Special Recommendation IX.

417. It was agreed to establish a joint investigative team with general rules and modus operandi dealing with cases of organized crime and the most serious forms of corruptive criminal offences.

418. According to the authorities the joint investigative team is composed of representatives of the state prosecutors office, police administration, tax administration, APMLTF and customs administration. However, the Customs authorities could not answer how many times this team has already met and on how many cases they have already worked together. Therefore, the evaluators were not in a position to assess the effectiveness and outcome of this foreseen collaboration.

419. The competent authorities, by agreeing on the necessity of improving cooperation in the field of suppression of crime, started the Project ILECUS. This project aims at improving cooperation in the field of suppression of crime in the area of exchange of operational data with elements of foreign nature, related to the suppression of crime in accordance with the national legislation. In the realization of the referred agreement the Ministry of Interior, Ministry of Justice, Police administration, Customs administration, APMLFT and Tax administration are involved. No further details on the nature, use and effectiveness of this system could be explained by the authorities during the meeting on-site.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

420. The customs administration of Montenegro is a member of cooperation initiative in Southeast Europe (former SECI, now SELEC) with regional centre in Bucharest, Romania.

421. The customs administration is presented in the Regional intelligence office for east and central Europe (RILO ECE).

422. The Customs Enforcement Network (CEN, computer system) is located within RILO ECE where all member states enter data on all major seizures of goods.

423. The customs administration exchanges intelligence on cross border crime primarily with countries within the region but also with other countries, international organizations and institutions fighting cross border crime such as OLAF, SELEC, EUROPOL and INTERPOL and is signatory to the 28 bilateral agreements on cooperation and mutual assistance in customs matters with other countries, out of which 12 are EU countries.

424. In the period under review, the authorities indicated that such exchanges have not taken place in relation to ML/FT.

Sanctions for Making False Declarations/Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8; Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):

425. Article 15 of the Law on Foreign Current and Capital Operations ("Official Gazette of the Republic of Montenegro, No. 45/05, 62//08, 73/10, 40/11) stipulates the following fines for false declarations:

426. A pecuniary fine in the amount of EUR 2,500 to 16,500 shall be imposed on a legal entity which does not declare physical import or export of means of payment.

427. A pecuniary fine in the amount of EUR 550 to 2,000 shall be imposed on a responsible person in the legal entity or natural person who does not declare physical import or export of means of payment.

428. A pecuniary fine in the amount of EUR 300 to 6,000 shall be imposed on an entrepreneur who does not declare physical import or export of means of payment.

429. It was confirmed on-site that these penalties cannot be applied to persons carrying currency or bearer negotiable instruments related to money laundering or terrorist financing.

430. During the on-site meeting with the Customs Authority the representatives referred to three cases where bearers failed to declare and/or falsely declared assets above the threshold of EUR 10,000. In all three cases the police was informed who then proceeded to bring action before the Misdemeanours Court against the offenders. The offenders were fined by a rather low pecuniary fine of up to EUR 1,000. In the most recent case the Customs representatives remembered, one bearer was caught with EUR 156,000 which he falsely declared as being much less. The offender was fined with EUR 1,000 by the Misdemeanours Court and released.

431. No investigations were initiated regarding a suspicion of money laundering and terrorist financing. Neither was the Police called to stop and restrain the assets or to commence investigations. According to the authorities this is a common practice when bearers get caught with large amounts of money. In case the offender would refuse to pay the fine immediately his personal data would be taken and the case would be forwarded to court. However, according to the authorities this never happens, as all fines are paid immediately in cash.

432. In the view of the evaluators this is practice raises concern. The Authorities confirmed that this practice should be changed in order to enhance the effectiveness of the system.

433. The fines as stated in Article 15 of the Law on Foreign Current and Capital Operations are not proportionate to the severity of a situation and are clearly not dissuasive enough. This point has been criticized already during Montenegro`s 3rd round evaluation.

Confiscation of Currency Related to ML/TF (applying c. 3.1-3.6 in R.3, c. IX.10; Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11):

434. The seizure and confiscation measures described under Recommendation 3 apply to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML/FT. These measures have never been used in practice in the context of SR IX.

435. The deficiencies described under SR. III apply accordingly. After the on-site visit, the evaluators were informed that the Ministry of Foreign Affairs notifies the Customs Authority of any persons designated on the sanctions lists of the UNSCR and circulated internally among all customs officers. However, the customs representatives met on-site were completely unaware of any sanctions or UN related lists and have never consulted such lists.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

436. As already discussed in the analysis of criterion IX.7 the customs authorities have agreed a variety of cooperation agreements with foreign competent authorities with regard to the exchange of information in customs matters. In accordance with these the Montenegrin customs authority also exchanges information with counter signatory authorities with regard to the physical transport of precious metals and stones.

437. In the period under review, the authorities indicated that such exchanges have not taken place in relation to ML/FT.

Safeguards for Proper Use of Information (c. IX.13):

438. Article 5 para. 1 of the Code of Ethics for Customs Officers stipulates that "*the customs officer shall maintain the documents, files, data and information constituting official secrets accessible to him/her in course of performing his/her duties and tasks, and use them for professional purposes when performing duties*". Consequently, the information is to be kept confidential and not be disclosed unless there is a need to disclose it, i.e. in the course of cooperating with domestic authorities or foreign counterparts within the framework of the cooperation agreement. This Code of Ethics was only introduced on 1 January 2013. Such safeguards have not been implemented prior to that date.

439. However, as already discussed in the analysis to Recommendations 26 and 40 the evaluators also regard the customs authority to be covered by Article 64 of the Law on Civil Servants and State Employees. Hence, the prohibition to disclose secret or personal data is timely restricted to five years after termination of the work relationship. This might have a negative impact on the effectiveness of the system, as stated before.

Training, Data Collection, Enforcement and Targeting Programs (c. IX.14):

440. Training, data collection, enforcement and targeting programmes have not been developed with regard to the customs authority. The Customs Authority stated that the current situation is unsatisfactory to them and should be changed as soon as possible.

Additional Element—Implementation of SR.IX Best Practices (c. IX.16):

441. Montenegro has not yet implemented or considered implementing the measures set out in the Best Practice Paper for SR. IX.

Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.17):

442. As discussed in the analysis of Criterion IX.5 records on cross-border transportation of currency and bearer negotiable instruments are reported to the APMLTF. Competent authorities do not have direct access to the Customs Authority`s database.

Recommendation 30 (Customs)

443. According to the Montenegrin authorities the customs authority lacks an adequate number of staff with specialized training with regard to AML/CTF. No precise figures were provided to the evaluation team. It was stated that due to the economic crises, the Ministry of Finance stopped employing new staff in that field. In the reporting period (2009-2013) only one workshop "Investigations related to money laundering" was held on 19-21 April 2011 which was attended by two customs officers.

444. The customs administration has adopted the Code of Ethics of customs officers and administration employees, determining the ethical standards and code of conduct of customs officers and administration employees, applied as of 1 January 2013. Before that date, there was no such code.

Recommendation 32 (FIU)

445. The table under Criterion IX.4 shows the numbers of notifications on declarations above the threshold of EUR 10,000 that were sent to the APMLTF by Customs, including numbers on notifications related to crossing borders into the Montenegrin territory as well as out of it.

446. The numbers provided show that roughly around 400 notifications are sent per annum to the APMLTF on declarations above the threshold of EUR 10,000. In between one to five percent of all incidents Customs had a suspicion of money laundering and in no cases a suspicion of terrorist financing. None of the notifications sent to the APMLTF have led to investigations conducted by competent law enforcement authorities.

447. The Customs Authority does not keep records on the number of false declarations and therefore the evaluation team was not informed about the actual number. According to the experience of the representatives of the customs authority not many such cases arise.

448. Information on every cross-border transport of money, checks and bearer negotiable instruments, precious metal and precious stones is submitted by the customs authority to the APML TF using a standardized form which contains – according to the authorities - among other things, information on reason for doubt on money laundering or terrorism financing, and whether the transport of cash was reported to the customs authorities.

Effectiveness and efficiency

449. In conclusion, the evaluation team is of the impression that the Customs Authority is generally not aware of potential money laundering and terrorist financing risks being triggered through the transportation of currency or bearer negotiable instruments across the Montenegrin borders. For instance, the Customs Authority was unaware of the phenomenon of cash courier being used.

450. When entering Montenegro by air, the signs explaining the declaration obligation were neither clearly visible nor apparent. The evaluation team is concerned that this might be the general case for border crossing points across Montenegro.

451. The Customs Authority has very limited powers which should be enhanced, especially with regards to obtaining information from the bearer and stopping or restraining currency for a reasonable amount of time. The Customs Officers have not yet received any specific and adequate AML/CTF training and their number of staff is arguably too low in order to fully support all the obligations emerging from Special Recommendation IX.

452. The range of sanctions available is neither proportionate nor dissuasive. The current practice of releasing offender regardless of the undeclared amount of currency or bearer negotiable instruments after paying a rather low pecuniary fine is ineffective.

453. Montenegro has only implemented one of the recommendations made in the 3rd round evaluation report, with several deficiencies (i.e. sanctions, training) remaining outstanding.

2.7.2 Recommendations and comments

Special Recommendation IX

454. Authorities should:

- Consider assessing the risks of money laundering and terrorist financing through transportation of currency and bearer negotiable instruments across borders, especially by sea, air and by cash couriers; ideally, at an inter-institutional level.

- Enhance awareness of the declaration obligation for carriers at all border crossing points, i.e. by land, sea and air.
- Introduce a clear legal basis to empower Customs Authority to obtain further information from the bearer about the origin and intended use in case of false declarations/failure to declare currency and bearer negotiable instruments.
- Introduce a clear legal basis that empowers the Customs Authority 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, in cases, where: (i) there is a suspicion of money laundering or terrorist financing or (ii) there is a false declaration.
- Introduce a clear legal basis which would empower the Customs Authority to retain identification data of the bearer in cases of: (i) a false declaration, (ii) a suspicion of money laundering or terrorist financing.
- Amend the range of sanctions available when imposing a pecuniary fine in a way that the sanction be proportionate to the severity of the situation as well as enough dissuasive by significantly raising the upper range of sanctions (i.e. in proportion to the undeclared/falsely declared amount of cash or bearer negotiable instruments)
- Raise more awareness with regard to UNSCR 1267 and 1373 among customs officers
- Consider implementing the measure set out in the Best Practices Paper for SR. IX
- Consider introducing a computerized database which would allow authorities to exchange data and information more efficiently and furthermore facilitate record keeping

Recommendation 30

455. Authorities should:

- Provide all Customs Officers with adequate training programs related to money laundering and terrorist financing on a regular basis
- Consider raising the number of staff in general to fully support Montenegro`s obligations under Special Recommendation IX

Recommendation 32

456. Authorities should:

- Keep records on discovered false declarations and failures to declare
- Keep records on notifications to foreign competent authorities with regards to unusual cross-border movement of gold, precious metal or precious stones
- Keep records on international exchange of information with foreign counterparts

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• No power to obtain further information from the bearer in case of false declarations/failure to declare; • No power to stop or restrain currency or bearer negotiable instruments; • Sanctions are neither proportionate nor dissuasive; • Deficiencies from R.3 and SR. III apply;

		• Inadequate and insufficient level of training provided to Customs Authority. **<u>Effectiveness</u>** • The limited information available (notifications by Customs to APMLTF) does not enable an adequate assessment of effectiveness; • Sanctions imposed appear to be low; • Lack of understanding of ML/TF risks associated with cross-border transportation of cash.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legal framework and developments since the third evaluation

457. Preventive measures for financial institutions (and also DNFBPs) are established in the LPMLTF (OGM 14/07 (adopted 21 December 2007), 04/08 (adopted 17 January 2008) and 14/12 (adopted 7 March 2012). In August 2014, further amendments were made to this law which have not been analysed in this report.

458. Article 4 of the LPMLTF sets out who is to be subject to such preventative measures (reporting entities), and Article 86 designates which competent supervisory body is to oversee each class of reporting entity's compliance with those measures.

459. A number of changes have been made to the LPMLTF since the third evaluation. In particular:

- The application of CDD measures to occasional transactions has been clarified. Article 9(1) now refers to transactions amounting to €15,000 or more.
- New requirements have been introduced in respect of wire transfers in Article 12a.
- The definition of beneficial owner in Article 19 has been revised in line with Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- Article 17 includes a requirement to verify that an "authorized person" purporting to act on behalf of a customer has the authority to do so at the time that a relationship is established.
- The circumstances in which simplified identification measures may be applied under Article 29 and enhanced measures must be applied under Article 25 have been updated. In addition, the definition of PEP has been extended to include those holding "distinguished" public positions in Montenegro and at an international level.
- Article 12 states that a relationship shall not be established or transaction executed in the event that evidence of a client's identity cannot be obtained.
- Article 33a requires a reporting entity to pay significant attention to unusually large transactions which have no apparent economic or lawful purpose.
- Article 28a now requires banks and other financial institutions to take measures and actions to eliminate money laundering risks that arise from new developing technology that might allow anonymity.

460. In addition, guidelines on the application of a risk-based approach have been published by the APMLTF, Central Bank, SEC and ISA.

Law, regulations and other enforceable means

461. Amongst other matters, requirements for preventive measures are set in the LPMLTF (primary legislation).

462. The LPMLTF provides for Regulations (secondary legislation) to be made under: Article 8(3) (Rulebook on developing risk analysis guidelines with a view to preventing money laundering and terrorist financing); 12a(5) (Rulebook on content and type of payer's data accompanying electronic funds transfer); Article 33(6) (Rulebook on the manner of reporting cash transactions exceeding €15,000 and suspicious transactions to the APMLTF); and Article 40(2) (Rulebook on the manner of work of the Compliance Officer, the manner of conducting the internal control, data keeping and protection, manner of record keeping and employees' professional training).

463. Regulations made under Articles 12a, 33 and 40 are used to set more detailed requirements in support of obligations already established in the LPMLTF. Accordingly, Articles 92 to 96

(penalty provisions) do not make it an offence to comply with these more detailed requirements. The LPMLTF and Regulations made under Articles 12a, 33 and 40 are considered to be "law and regulation" under the assessment methodology.

464. Article 8 of the LPMLTF provides for guidelines on risk analysis to be issued by the competent supervisory bodies listed in Article 86, pursuant to a Regulation adopted in March 2009 by the Ministry of Finance (Rulebook on developing risk analysis guidelines with a view to preventing money laundering and terrorist financing). Reporting entities are required to prepare risk analyses pursuant to these guidelines. Whilst the risk analysis referred to in Article 8(1) must be prepared pursuant to published guidelines, the guidelines themselves are not considered to be "other enforceable means" on the basis that there is no sanction for failing to apply them. In meetings with competent supervisory bodies and industry, it was said that the guidelines explain how reporting entities may comply with legislation, providing a form of "safe harbour": reporting entities should comply with the guidelines or explain why they have not been followed. Notwithstanding this, guidelines published by the ISA are incorrectly expressed as setting mandatory requirements (through use of the term "must"), and some provisions in other guidelines are incorrectly expressed as requiring or prohibiting something.

465. Guidelines on the application of a risk-based approach have been published by four of the five competent supervisory authorities responsible for overseeing compliance by financial institutions with preventive measures, though guidelines published by the ISA do not extend to insurance intermediaries and agents. Guidelines have not been published by the Agency for Telecommunication and Postal Services.

466. Article 46 (Rulebook on indicators for recognising suspicious customers and transactions) also provides for a list of indicators for identifying suspicious customers and transactions to be defined by the Ministry of Finance (Rulebook on indicators for recognising suspicious customers and transactions). Its status is considered in section 3.6.

Scope

467. Article 4(2) of the LPMLTF sets out the business organisations, other legal persons, entrepreneurs and natural persons that are subject to measures for preventing and detecting money laundering and terrorist financing. These are listed below (against the activities or operations covered by the FATF's definition of financial institution).

468. Article 4 of the LPMLTF also provides that a Regulation can define reporting entities additional to those listed in Article 4(2) that shall be subject to measures for preventing and detecting money laundering and terrorist financing where there is a more significant risk. Conversely, a Regulation may provide that reporting entities do not need to undertake measures prescribed in the LPMLTF. The assessors understand that no Regulations have been made under Article 4.

Table 17 Number of financial institutions and details about the supervisory authority

Financial institutions	*Article 4 of LPMLTF – numbers registered in brackets (with supervisor)*
Acceptance of deposits and other repayable funds from the public	Banks (11 - CB) and foreign banks' branches Savings banks and savings and loan institutions – see note 1
Lending	Banks (11 - CB) and foreign banks' branches and other financial institutions (MFIs) (6 - CB) Savings banks and savings and loan institutions

Financial institutions	*Article 4 of LPMLTF – numbers registered in brackets (with supervisor)*
	– see note 1 Those engaged in sale and purchase of claims Those engaged in factoring (2 - APMLTF) Those engaged in crediting Those engaged in granting loans and brokerage in loan negotiation affairs
Financial leasing	Banks and foreign banks' branches and other financial institutions Those engaged in financial leasing (4 - APMLTF)
The transfer of money or value	Banks (11 - CB) and foreign banks' branches Organizations performing payment transactions – see note 2 Post offices (as agents of Western Union) – number not provided
Issuing and managing means of payment	Banks (10 - CB) and foreign banks' branches Institutions for issuing electronic money – see note 3 Those engaged in issuing and performing operations with payment and credit cards
Financial guarantees and commitments	Banks and foreign banks' branches and other financial institutions Those engaged in issuing warranties and other guarantees
Trading in: Money market instruments Foreign exchange Exchange, interest rate and index instruments Transferable securities Commodity future trading	Banks and foreign banks' branches and other financial institutions – trading in foreign payment funds and financial derivatives Stockbrokers (11 – SEC) and branches of foreign stockbrokers - trading in: o Money market instruments o Transferable securities
Participation in securities issues and the provision of financial services related to such	Companies for managing investment funds (5 - SEC) and branches of foreign companies for

Financial institutions	*Article 4 of LPMLTF – numbers registered in brackets (with supervisor)*
issues	managing investment funds
Individual and collective portfolio management Otherwise investing, administering or managing funds or money on behalf of other persons	Companies for managing investment funds (5 - SEC) and branches of foreign companies for managing investment funds Companies for managing pension funds (2 - SEC) and branches of foreign companies for managing pension funds – see note 4 Those engaged in third person property management
Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks (9 – SEC) and foreign banks' branches and other financial institutions Those engaged in safekeeping
Underwriting and placement of life insurance and other investment related insurance	Insurance companies (6 – ISA) and branches of foreign insurance companies dealing with life insurance, insurance intermediaries (None - ISA) and insurance agents and brokers (8- ISA) – see note 5
Money and currency changing	Banks (11 – CB) and foreign banks' branches and other financial institutions Exchange offices – see note 6

469. Note 1 – Whilst Article 4 of the LPMLTF provides for savings banks, savings and loan institutions, to be subject to preventative measures, Montenegrin legislation does not, in fact, otherwise recognise such persons.

470. Note 2 – Whilst Article 4 of the LPMLTF provides for organisations performing payments transactions to be subject to preventative measures, Montenegrin legislation does not, in fact, directly regulate such entities[33]. Instead:

- Article 4 of the Law on National Payments Operations anticipates that banks, foreign banks and "other legal entities licenced or approved by the Central Bank" to execute transfers will transfer funds, but no offence is committed under the Law on National Payments Operations where a person operates without the approval of the Central Bank. Further, the Law on National Payments Operations does not provide a basis for regulating or supervising such legal entities.
- Article 4 of the Law on Foreign Current and Capital Operations anticipates that banks and "other payment services providers that are issued approval by the Central Bank" to perform foreign payment operations will execute such payments, but no offence is committed under the Law on Foreign Current and Capital Operations where a person operates without the

[33] With effect from January 2015, organizations performing payment transactions are regulated by the Payment System Law (OGM 62/13).

approval of the Central Bank. Further, the Law on Foreign Current and Capital Operations does not provide a basis for regulating or supervising other payment services providers.

471. Note 3 – Whilst Article 4 of the LPMLTF provides for institutions issuing electronic money to be subject to preventative measures, Montenegrin legislation does not, in fact, otherwise recognise such persons[34].

472. Note 4 – Whilst Article 4 of the LPMLTF provides for branches of foreign companies managing pension funds to be subject to preventative measures, the authorities have explained that the effect of Article 8 of the Law on Voluntary Pension Funds is to prevent such branches carrying on the management of pension funds in Montenegro.

473. Note 5 – Whereas it is possible for insurance entrepreneurs to carry on life activities in Montenegro, these individuals are not subject to the LPMLTF.

474. Note 6 – Article 8 of the Law on Foreign Current and Capital Operations anticipates that exchange operations may be performed by legal entities and entrepreneurs which have a contract with a bank and which are registered for performing exchange operations, but no offence is committed under the Law on Foreign Current and Capital Operations where a person operates without the approval of the Central Bank. Further, the Law on Foreign Current and Capital Operations does not provide a basis for regulating or supervising such entities and entrepreneurs.

475. On the basis of the above summary, it appears that, whereas the following activities are subject to preventive measures, there is no legislation in place to permit supervision of implementation of those measures by: legal entities licenced or approved by the Central Bank to execute transfers; other payment services providers that are issued approval by the Central Bank to perform foreign payment operations; and legal entities and entrepreneurs which have a contract with a bank and which are registered for performing exchange operations. The Central Bank has explained that such activities would fall to be supervised under general banking legislation.

476. Further, it appears that the following activities or operations covered by the FATF's definition of financial institution would not be subject to preventive measures under the LPMLTF if lawfully conducted in Montenegro:

- The transfer of money or value that does not concern a payment, other than when carried out by a bank, foreign bank branch, or post office.
- Issuing and managing means of payment, e.g. travellers' cheques, money orders, bankers' drafts, other than when carried out by a bank or foreign bank branch.
- Trading in: foreign exchange; exchange, interest rate and index instruments; and commodity futures trading, other than when carried out by a bank or foreign bank branch.
- Participation in securities issues and the provision of financial services related to such issues, other than when carried out in the course of management of an investment fund.
- Management of investment funds by foreign companies carrying on management other than through a branch in Montenegro. Article 106 of the Law on Investment Funds anticipates that a foreign company may carry on such an activity directly in Montenegro (rather than through a branch). It seems that such an activity, where carried on directly, will not be subject to preventive measures under the LPMLTF. Currently, there is no foreign company carrying on investment company activities directly in Montenegro.
- Administration of cash or liquid securities on behalf of other persons.
- Otherwise administering or managing funds or money on behalf of other persons, other than

[34] With effect from January 2015, organizations performing payment transactions are regulated by the Payment System Law (OGM 62/13).

when carried out through an investment management company or pensions' management company.

- Underwriting and placement of life insurance and other investment related insurance by an entrepreneur.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering or terrorist financing

477. Assessors were provided with a copy of Montenegro's strategy for the prevention and detection of terrorism, money laundering and terrorist financing ("national strategy"). Section 4.3 states that, in practice, cases of money laundering are based mainly on drugs and arms trafficking, corruption, abuse of official position, abuse of "authorisations in economy", fraud, counterfeiting of documents, and tax fraud. Potential threats are also listed: creation of fictitious companies; investment in the construction industry; investment in real estate; and investment in privatisation of state entities.

478. In addition to this, a number of threats were identified in the authorities' response to the MEQ that are not highlighted in this strategy: organised crime, illegal gambling, and investment of the proceeds of corruption by non-residents. A quarterly report on corruption published by the Montenegrin authorities provided to assessors also highlights organised criminals operating in areas such as narcotics, illegal migration, and automobile smuggling.

479. Information published by Europol suggests that money is laundered in Montenegro through real estate, casinos, nightclubs, bars, and hotels, and the US INCRS report highlights the presence in the country of criminal organisations and Montenegro's position on narcotics and other contraband transit routes.

480. The APMLTF identified the use of real estate as presenting the greatest money laundering risk in the country. It was suggested that mostly British and Russian nationals are investing in real estate in Montenegro. It was explained that Montenegro is popular with foreign investors because of its lower taxes, improving tourism infrastructure, increasing political stability and the lifting of a pre-2006 ban on non-residents owning property. Accountants and auditors met by the evaluators also identified real estate as presenting a higher risk (on the basis that cash is used extensively).

481. While the police considers that securities trading also presents a high risk, this view is not shared by the SEC. The latter consider that given that any transaction with securities is settled through a bank, that is supervised by the Central Bank, and that capital market participants do not have direct contact with cash of their clients, securities businesses provide a "second line of control" regarding the prevention of money laundering.

482. Notwithstanding the above sources, guidelines on risk analysis published by competent supervisory bodies do not set out steps to be taken by reporting entities to address all of the higher risk areas and threats identified in the national strategy. Instead, guidance (which is quite comprehensive) is provided in more general areas, such as dealing with geographic risk and unexpected activities, though a number of risks and threats are dealt with in the Rulebook on indicators for recognising suspicious customers and transactions.

483. Also, there is no specific reference to drug trafficking in guidelines published by the Central Bank, SEC or the ISA, nor reference in any of the guidelines to domestic corruption.

484. The ISA explained that insurance premium income in 2013 was just €72 million, of which just 15% relates to life assurance. On this basis, it opined that insurance activities in Montenegro are not considered to be highly vulnerable to money laundering. This was confirmed at a meeting with a number of insurance companies.

485. Generally, it appears that there is no great demand by non-residents individuals to establish

relationships in Montenegro. One of the banks visited explained that less than 5% of its retail customer base related to non-residents, a large percentage of which were in Serbia. A second estimated that 80% of its customer base was resident in Montenegro. A third said that domestic customers made up 90% of its customer base. However, it appears to be more common for reporting entities to establish relationships with overseas legal persons. One bank told assessors that just under one third of its corporate customers were non-resident and another said that non-resident entities presented a higher risk. At a meeting with a notary it was suggested that many overseas companies purchase realty in Montenegro.

486. The authorities explained that the World Bank methodology has been selected to assist with the delivery of a National Risk Assessment. The first workshop was scheduled for the end of March 2014.

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

3.2.1 Description and analysis

Recommendation 5 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

487. At the time of the adoption of the third round report, evaluators noted that:

- There was no requirement to undertake CDD in respect of all wire transfers of €1,000 or more.
- There was no requirement to verify that the person acting on behalf of a customer had authority to do so. Additionally, in verifying the legal status of the legal person or arrangement, the LPMLTF did not require reporting entities to obtain documents regulating the power to bind the person or arrangement.
- When establishing the identity of a beneficial owner of a legal person, reporting entities relied solely on a certificate from the Central Business Registry, which was considered to be insufficient to properly identify the beneficial owner. Also, the definition of beneficial ownership did not refer to the "ultimate" beneficial owner.
- It was not a requirement to apply enhanced CDD measures to a number of specified categories of customers, namely those who are non-resident, those that are legal persons or arrangements holding personal assets, those that are companies that have nominee shareholders or shares in bearer form, and those receiving private banking services.
- Reporting entities were not required to make a STR in circumstances where they have been unable to conduct satisfactory CDD, nor required to terminate a business relationship in such circumstances.
- The cash reporting threshold did not include transactions over €15,000.
- Risk guidelines had not yet been issued to the finance sector.

Anonymous accounts and accounts in fictitious names (c.5.1)

488. Article 31 of the LPMLTF provides that a reporting entity may not open or keep an anonymous account or a coded (numbered) or bearer passbook. A legal person shall be fined between €2,500 and €20,000 where it opens, issues or keeps anonymous accounts, coded (numbered) or bearer passbooks.

489. In addition, a reporting entity that is a bank may not provide a service that can directly or indirectly enable the concealment of a customer's identity. The effect of this is that reporting entities that are not banks are not expressly prohibited from keeping accounts in a fictitious name. In practice, the authorities do not consider that this presents additional risks. For example, in the

case of insurance business, it is important for the correct name of an insured person to be used.

490. The Central Bank explained that it had requested a list of anonymous accounts to be provided by all banks at the time that such accounts had been outlawed (prior to the third round report). Nil returns were submitted by nine of the eleven banks in Montenegro, one disclosed two accounts (which were subsequently closed), and one other reported that all such accounts had been closed. As part of its on-site examinations, the Central Bank continues to consider whether banks allow coded (numbered) only or bearer accounts. None have been highlighted.

491. All of the banks visited confirmed that they did not operate anonymous accounts. One of the banks suggested that its correspondent bank would not offer it services if it operated anonymous accounts. Another offered prepaid cards – with a €1,000 limit. It said that the customer's name would always be included on the card and so could not be considered "anonymous".

Customer due diligence

When CDD is required (c.5.2)*

492. Article 9(1) of the LPMLTF sets out the circumstances in which a reporting entity must conduct CDD measures under Article 10. These are:

- when establishing a business relationship with a client;
- in respect of one or more linked transactions amounting to €15,000 or more;
- when there is a suspicion about the accuracy or veracity of the obtained client identification data; and
- when there are reasonable grounds for suspicion of money laundering or terrorist financing related to the transaction or client.

493. As noted in paragraph 393 of the third evaluation report, there is no specific requirement in Article 9 to undertake CDD in respect of wire transfers of €/US$1,000. Whilst Article 12a of the LPMLTF now provides that a reporting entity engaged in payment operations or money transfer shall obtain information on the originator and "identify" the originator by checking a personal identification document issued by a competent authority, no requirement is set to conduct other CDD measures, such as identifying and verifying the beneficial owner of a customer (except in the case of a wire transfer of €15,000 or more). The authorities referred to Article 9(1) which reads as follows: *'A reporting entity shall conduct the appropriate measures from Article 10 of this Law (CDD measures)'* and then continues to give examples of cases where CDD measures are required, such as when establishing a business relationship or conducting a transaction amounting to EUR15, 000 or more. The authorities consider that the general part of Article 9(1) has the effect of requiring financial institutions to conduct CDD measures even in relation to transactions that are wire transfers in the circumstances covered by Article 12a (which implements the requirements under SRVII). Notwithstanding this general provision, the evaluation team considers that since c5.2 is asterisked and in view of the fact that all the other cases under c.5.2 are specifically mentioned in Article 9(1) (the second item of which would appear to be self-contradictory), the LPMLTF should specify precisely that the requirement to apply CDD measures in relation to wire transfers amounting to EUR1.000 or more. The Montenegrin interpretation that the general language used in Article 9(1) requires the application of CDD in relation to all types of transactions does not meet the requirement under c.5.2 c).

494. In the course of an established business relationship, Article 9(2) of the LPMLTF requires a separate set of CDD measures to be conducted where one or more linked transactions amount to €15,000 or more, or where there are reasonable grounds for suspecting money laundering or terrorist financing related to a transaction. In such a case, a reporting entity is required to verify the identity of the customer that carries out a transaction and gather additional information (where there is a transaction) and to obtain evidence on the source of funds and to check that it is

consistent with the customer's business activity or occupation. The Central Bank said that it would expect the following to be used to obtain evidence of source of funds: contracts for purchase and sale of real estate; court decisions for inheritance; and invoices or contracts for trading activities.

495. Accordingly, in the case of an established business relationship, Article 9(2) provides for more limited CDD measures than those required under c.5.2 to be applied where a relationship has been established making use of an exemption in Article 13 or simplified identification measures under Article 29, and where there are subsequently reasonable grounds for suspicion of money laundering or terrorist financing.

496. One bank was asked to explain its application of Article 9(2). It explained that it re-verified the identity of a customer each time that a transaction exceeded €15,000. In most cases it said the customer would be physically present in a branch and so the requirement did not cause any practical difficulties. Where Internet banking is used, it explained that it would use a password or user-name to re-verify identity.

Identification measures and verification sources (c.5.3)*

497. Article 10 of the LPMLTF requires a reporting entity to identify and verify [the identity of] a client. Article 14 of that law explains how the identity of a natural person, individual entrepreneur or natural person performing activities should be established and verified, and Article 15 establishes the methodology for identifying and verifying the identity of a legal person. Both articles are summarised in paragraphs 397 and 398 of Montenegro's 3rd round evaluation report.

498. Whereas Article 10 of the LPMLTF requires a reporting entity to identify and verify [the identity of] its client, Article 14 provides that the legal representative of a client who is a natural person is also to be established and verified. The authorities have explained that this provision is intended to cover the case of a minor who is a customer, where it will also be necessary to establish and verify the identity of that minor's parent or guardian. The provision would also appear to cover a situation where a person acts by virtue of a power of attorney. In all cases, according to Article 14, full identification and verification measures must be applied to the natural persons and their legal representatives.

499. Article 5 of the LPMLTF defines "customer identification". Inter alia, it says that it is a procedure for verifying the identity of a customer on the basis of "reliable, independent and objective sources", if identity has been previously established.

500. Whereas Article 14(1) of the LPMLTF provides for a combination of a personal identification document and other valid official document to be used to verify identity, and Article 14(2) permits a combination of a qualified electronic certificate and personal identification document, there is no overriding requirement in Article 14 for a reliable source to be used to verify identity and there is no clear reference back to the definition of "customer identification" in Article 5. However, the authorities consider that the reference to "verify the identity" in Article 14 is to be understood as a reference to "customer identification" and the evaluator considers that there is a reasonable basis for such a review.

501. Whereas Article 15(1) and (3) of the LPMLTF provides for the identity of a legal person to be verified through an original or certified copy of a document from the Central Business Registry or other appropriate public register, or checking that register, there is no overriding requirement in Article 15 for a reliable source to be used to verify identity and there is no clear reference back to the definition of "customer identification" in Article 5. However, the authorities consider that the reference to "verify the identity" in Article 15 is to be understood as a reference to "customer identification" and the evaluator considers that there is a reasonable basis for such a review. In any event, the evidence that must be requested under Article 15 (a document from the Central Business Registry or other appropriate register) is most likely to be reliable, independent and objective.

502. Article 15(7) of the LPMLTF provides for the identity of a foreign legal person performing activities in Montenegro through a branch to be verified. Again, there is no overriding requirement in Article 15 for a reliable source to be used to verify identity and there is no clear reference back to the definition of "customer identification" in Article 5. However, the authorities consider that the reference to "verify the identity" in Article 15(7) is to be understood as a reference to "customer identification".

503. In support of the authorities' view of this legal requirement, Section 3.1.2 of guidelines published by the SEC states that, before a business relationship is established or transaction executed, a capital market participant shall establish and verify the identity of the client, based on documents, data and information by means of which identity can be reliably and indisputably established. Whilst no similar statements are provided in other guidelines, the Central Bank explained that the term "customer identification" should be understood to require identity to be verified – whenever there is a requirement to do so – using reliable and independent sources.

504. Article 14 of the LPMLTF provides for the identity of a customer to be established on the basis of a "qualified electronic certificate" issued by a certification service provider in accordance with Regulations on electronic signature and electronic business. However, the Central Bank explained that it would not permit a bank to place reliance on such a certificate because this is not permitted by the FATF Recommendations and it was suggested that such reliance would be considered to be covered by former FATF Recommendation 9. In any event, it was explained that certificates are not currently being issued, though the Montenegrin government may do so in the future.

Identification of legal persons or other arrangements (c.5.4)

505. Article 15(1) and (3) of the LPMLTF requires a reporting entity to obtain data from Article 71 of the LPMLTF with reference to data held on the Central Business Registry or other appropriate register. The authorities have explained that, under Articles 21 and 28 (joint stock companies) and 70 (limited liability companies) of the Law on Business Organizations, this information will include the name of the legal representative(s) and persons authorised to represent the company.

506. Articles 16 and 17 of the LPMLTF provide for establishing and verifying the identity of the legal representative of a customer and an "authorized person" of a customer that is a legal person respectively. Article 17 also provides for measures to be taken to verify that an "authorized person" purporting to act on behalf of the customer is so authorised. Both articles are summarised in paragraphs 402 and 403 of the 3rd round MER. Whereas neither Article is expressed as applying at the time that a business relationship is established, occasional transaction carried out, or in the other cases set out in Article 9(1) of the LPMLTF, the effect of item 2 of Article 10(1) (which refers to obtaining other data pursuant to the LPMLTF) will be to require the identity of a legal representative and "authorized person" to be established (but not verified) at these times.

507. Article 11(2) of the Decision on the structure of the transfer execution account and the detailed conditions and manner of account opening and closing also requires a legal entity to provide each act of appointment for an "authorized person" to a reporting entity that is a bank.

508. A legal representative is understood to refer to the executive director of a legal person. In the context of a legal person, an "authorized person" is understood to refer to a person who is authorised by the executive director to act for and on behalf of that legal person (e.g. by a power of attorney).

509. Whilst Article 17(2) of the LPMLTF is understood to require a reporting entity to verify that an "authorized person" who establishes a business relationship on behalf of a legal person is authorised by the legal representative of the legal person to act for that legal person, Article 16 does not include a similar requirement for a legal representative of a legal person. However, the authorities have explained that it will be self-evident: (i) who is the legal representative of a company that is registered in Montenegro - on the basis of information that must be collected

about the company under Article 15(1); and (ii) that the legal representative has capacity to act for the company[35]. However, the same cannot be said for a foreign company. Regardless of the fact that there is no explicit obligation, in practice the CBM explained that banks would always check that the legal representative was authorised to act on behalf of the customer.

510. Whilst the requirement in Article 17(2) to verify that an "authorized person" is authorised to act applies in respect of a business relationship, it does not extend to the case of an occasional transaction with a legal person. However, the authorities have explained that it will be self-evident: (i) who is the "authorized person" of a company that is registered in Montenegro - on the basis of information that must be collected about the company under Article 15(1); and (ii) that the "authorized person" has capacity to act for the company[36]. Whilst this cannot be said for a foreign company, as explained in paragraph 507 above, banks are required to hold acts on appointment of "authorized persons".

511. Whilst Article 17(3) of the LPMLTF establishes a requirement to verify the identity of the "authorized person" in the course of an occasional transaction, it does not appear to apply to a legal person (since there is a reference only to obtaining data in respect of a customer that is a natural person, entrepreneur or natural person performing a business activity). However, the authorities have explained that Article 15(3) requires a reporting entity to obtain data about the "authorized person" by checking originals or certified copies of documents or business files, or directly from the person itself. It is not clear that business files or information obtained directly from the "authorized person" would always be reliable, independent source documents.

512. Article 15 of the LPMLTF is set out at paragraph 405 of the third evaluation report, and covers the information to be collected where a customer is legal person – by reference to Article 71. However, Article 71 does not provide for the collection of information on directors (other than the executive director) or on provisions regulating the power to bind the legal person. In response, the authorities have explained that both will be self-evident on the basis of information that must be collected about a company under Article 15(1). However, the same cannot be assumed for a foreign company.

513. In support of the explanations provided by the authorities, Section 3.1.3 of guidelines published by the SEC states that when a legal representative or "authorized person" (proxy) establishes a business relationship or undertakes a transaction with a capital market participant, that reporting entity is required to carry out identification of the "authorized person" and obtain a written authorisation – power of attorney certified by a notary, consulate, court or public administration body.

514. Similarly, Article 13 of guidelines published by the ISA states that where a business relationship is established or transaction undertaken by a representative or "authorized person" (proxy), the reporting entity must verify the identity of that person and obtain a written authorization – power of attorney, certified by a notary, consulate, court or a state administration authority.

515. In the case of a relationship or transaction in respect of a limited partnership or legal arrangement (such as a trust), there is no requirement to verify the authority of the person purporting to act on its behalf, to verify the legal status of the limited partnership or legal arrangement, to obtain information concerning its legal form, or to collect information on the

[35] Article 70 of the Law on Business Organization requires information on the executive director (legal representative) be submitted by a limited liability company to the Central Business Registry. Article 21 includes a similar requirement for a joint stock company.

[36] Article 70 of the Law on Business Organization requires information on persons authorised to represent the company ("authorized person") to be submitted by a limited liability company to the Central Business Registry. Article 28 includes a similar requirement for a joint stock company.

provisions regulating the power to bind the partnership or arrangement.

Identification and verification of the identity of the beneficial owner (c.5.5, c.5.5.1 and c.5.5.2)

516. Article 20(4) of the LPMLTF provides that data on beneficial owners of a *legal person* or *entity of foreign legislation* shall be verified to the extent that this ensures a complete and clear insight into the beneficial ownership and managing authority of a customer (taking risk into account). It is understood that the effect of this provision is to require a reporting entity to take reasonable measures to understand the ownership and control structure of the customer. However, since this provision is expressed as applying to legal persons and legal entities, it cannot be considered to apply to a business relationship or occasional transaction in respect of a limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust).

517. Article 10 of the LPMLTF provides that a reporting entity must identify and verify (rather than take reasonable steps to verify) the identity of each beneficial owner, if the client is a *legal person*. However, this provision does not extend to a client that is a legal entity (but not also a legal person) or to a business relationship or occasional transaction in respect of a limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust).

518. Article 20(1) of the LPMLTF states that a reporting entity shall be bound to establish (find out the identity of) the beneficial owner of a customer who is a *legal person* by obtaining data set out in Article 71 item 15. In line with Article 20(2) and (3), data may be obtained from the Central Business Registry (or other appropriate public registry) or, where unavailable from such a source, from the legal representative or "authorized person" of the customer. However, Article 20(1) does not extend to a client that is a legal entity (but not also a legal person) or to a business relationship or occasional transaction in respect of a limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust).

519. Article 19 of the LPMLTF explains that a beneficial owner is a natural person who ultimately owns or controls the client and/ or the natural person on whose behalf a transaction is being conducted, as well as the person who ultimately exercises control over a legal entity or legal arrangement. Whilst Article 19 does extend to legal entities and legal arrangements, it does not set CDD requirements independently of Articles 10 and 20: its purpose is only to define the term "beneficial owner".

520. Article 19 provides that a beneficial owner of a legal person will be:

- a natural person who: indirectly or directly owns at least 25% of the shares, voting rights and other rights, on the basis of which he/she participates in the management; or owns at least 25% share of the capital; or has a dominating influence in the assets management of the business organization (taken to include a director); or
- a natural person who indirectly ensures or is ensuring funds to a business organization or legal entity and on that basis has the right to influence significantly the decision-making process of the managing body of the business organization or legal entity when decisions concerning financing and business are made.

521. Article 19 also provides that a beneficial owner of an entity of foreign legislation that receives, manages or allocates assets for certain purposes shall be considered:

- a natural person, that indirectly or directly controls at least 25% of a legal person's asset or of an entity of foreign legislation; or
- a natural person, determined or determinable as a beneficiary of at least 25% of the income from property that is being managed."

522. All four of the banks visited advised that a customer who is a legal person would be requested

to provide information on beneficial owners at the time of applying to open an account. For domestic companies, all said that information provided would be compared to information held in the Central Business Registry (and other public registers) and three also to information available on the Internet. Two of the banks said that they followed a similar approach for non-resident legal persons, and a third bank (whose domestic customer base accounts for 90% of accounts) highlighted difficulty accessing data for foreign legal persons.

523. Discussions with a number of securities companies confirmed that a similar approach is followed in that sector. A list of shareholders would be requested in respect of a customer that is a legal person and compared to information held in the Central Business Registry.

524. The Central Bank expects reporting entities to request information on beneficial owners, and to verify this information through the Central Business Registry and Internet. Where a customer is owned by another legal person, then the Central Bank's view is that a reporting entity must establish the beneficial owner of that other legal person by reference to data held about that other person in the Central Business Registry until finally establishing the beneficial owner who is a natural person according to the definition of beneficial owner in Article 19 of the LPMLTF. Where a customer is owned by a non-resident legal person, then this presents more difficulties. The Central Bank was clear that a reporting entity should not open an account where it was not satisfied that it understood ownership and control.

525. There is no overriding requirement in Article 10 of the LPMLTF for a reliable source to be used to verify the identity of the beneficial owner of a legal person (such that a relevant person is satisfied that it knows who the beneficial owner is) and there is no clear reference back to the definition of "customer identification" in Article 5. However, the authorities consider that the reference to "verify the identity" in Article 10 is to be understood as a reference to "customer identification" and the evaluator considers that there is a reasonable basis for such a review.

526. In support of the authorities' view, Section 3.1.2 of guidelines published by the SEC states that, before a business relationship is established or transaction executed, a capital market participant shall establish and verify the identity of the beneficial owner of a client, based on documents, data and information by means of which identity can be reliably and indisputably established.

527. The definition of beneficial owner in Article 19 of the LPMLTF does not include a beneficiary of a policy for life or other investment-linked insurance, whose identity must be established and verified in line with c.5.5. However, this is covered by Article 11(3) of the LPMLTF, which provides that a beneficiary of an insurance contract must be identified and verified no later than the time that the beneficiary can exercise rights under the policy.

Information on purpose and nature of business relationship (c.5.6)

528. Article 10(2) of the LPMLTF requires a reporting entity to obtain data on the purpose and nature of a business relationship or transaction.

529. Article 15(4) also requires a reporting entity to obtain data under Article 71. Items 7 and 11 respectively require information on the purpose and presumed nature of a business relationship, including information on the customer's business, and purpose of a transaction to be kept and processed.

530. This information is collected by reporting entities as part of account opening formalities.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

531. Article 10 of the LPMLTF requires a reporting entity to monitor regularly the business activities that a client undertakes (taken to include transactions) and to check that they are consistent with the nature of the business relationship and the usual scope and type of a client's affairs. The combined effect of monitoring and checking is considered to have the same effect as

scrutinising something.

532. In addition, Article 22 of the LPMLTF provides that a reporting entity shall monitor a customer's business activities, including source of funds. This article is set out at paragraph 411 of the third evaluation report, and, inter alia, makes provision for verifying that a customer's activities are consistent with the "nature and purpose" of the relationship and scope of his or her affairs. Given the requirement to consider money laundering and terrorist financing risk for each customer, the authorities have explained that monitoring must necessarily consider whether a customer's activities are consistent with its risk profile.

533. A combination of Article 10 and Article 22(1) and (2) (items 1 and 2) are considered to have the effect of requiring scrutiny of transactions to consider whether transactions conducted are consistent with a customer's business and risk profile.

534. Section 3.6 of guidelines published by the Central Bank states than a bank is obliged to *continuously* perform appropriate measures to detect unusual or suspicious activities based on a list of indicators. In addition to this, Section 3.6 states that a bank will periodically review customer business activities. In the case of a high risk customer, this will be every month. The application of such an approach was confirmed at a meeting with the Banking Association.

535. Section 3.4 of guidelines published by the SEC states that a capital market participant is required to *continuously* supervise the accounts and transactions of clients. In addition to this, Section 3.4 explains that a capital market participant will periodically review customer accounts. In the case of high risk clients, this will be not less than quarterly.

536. Article 8 of guidelines published by the ISA provides that, as part of the process of monitoring a business relationship, a reporting entity will review its risk assessment. In the case of a high risk client, this will be at least once a year.

537. Guidelines published by the APMLTF explain on page 28 the importance of regular monitoring of customer business activities. On page 31, it is explained that the scope and intensity of business activity monitoring will depend on risk. In the case of a high risk customer, it is said that monitoring measures of a customer's business activities will be applied at least annually. In the case of a medium risk customer, it is said that that monitoring measures will be applied at least once every three years. In the case of a low risk customer, there is no reference to monitoring measures. In all cases, "repeated yearly customer analysis" is referred to when required by the LPMLTF. However, with the exception of the requirement to apply "repeated annual control" to a foreign legal person, it is not clear what legal provisions are being referred to here.

538. Whereas some guidance is provided on *ways* of scrutinising transactions in guidelines published by the APMLTF, no similar guidance is published by the CBM or SEC. Two of the banks visited explained that they used automated software to highlight transactions to be reviewed by its authorised person. One of those banks explained that transactions were highlighted on the basis of 27 different scenarios (e.g. dormant to active account status, higher risk status, multiple payments). It was further noted that whilst examination procedures adopted by the Central Bank appeared very comprehensive, they did not specifically address how effectively banks scrutinise transactions.

539. The Central Bank looks for evidence that accounts are monitored during visits. It seems that not all banks have automated monitoring systems to assist with the identification of STRs and some rely upon an end of day (manual) review of transactions exceeding €15,000 (and connected transactions) and countries that funds are transferred to. Where transactions are monitored manually, reliance is also placed on branch offices to review account activity.

540. Article 22 of the LPMLTF also requires a reporting entity to monitor and regularly update documents and data on a customer, including additional measures to be taken in the case of a

customer who is a foreign legal person. The "dynamics" of this requirement must reflect the risk of money laundering or terrorist financing.

541. The Central Bank has explained that section 3.6 of its guidelines cover ongoing due diligence (c.5.7.1) and keeping documents, data or information up-to-date (c.5.7.2). Accordingly, it expects each bank to ensure that documents, data or information are checked on a monthly basis for high risk accounts, quarterly basis for "middle risk" accounts, and six-monthly basis for low risk accounts. One of the banks visited confirmed that it reviewed account information annually, a second that it reviewed accounts with legal persons every three months, and a third that information held for non-residents was reviewed at least once per annum (in line with its customer risk assessment). This suggests that, in practice, reporting entities are keeping documents, data and information up to date and relevant, though not necessarily in line with Central Bank guidance.

542. Section 3.6 of the guidelines is based on Article 11 of the Decision on the structure of transfer execution accounts and detailed conditions and manner of account opening and closing which requires a client to inform a bank of any change of information (including information on beneficial ownership) with regard to an account within three days of the change. Whilst that Decision is made under Article 77 of the Central Bank of Montenegro Law and Article 11 of the Law on National Payment Operations, neither law appears to provide for an offence to be committed where a client fails to notify their bank of a change. The authorities have said that the requirement to provide notification of a change is also contained in every contract on the opening and maintenance of accounts entered into between banks and their customers.

543. Page 30 of guidelines published by the APMLTF states that there will be an annual analysis of a customer's documents and data.

544. No similar provisions are contained in guidelines published by the SEC and ISA.

Risk – enhanced due diligence for higher risk customers (c.5.8)

545. Article 25(1) of the LPMLTF requires a reporting entity to conduct enhanced CDD in cases where it estimates that there is a high risk of money laundering or terrorist financing.

546. Similarly, Article 25(3) requires a reporting entity to apply enhanced CDD in cases when, in accordance with Article 8, a reporting entity "estimates that regarding the nature of a business relationship, the form and manner of executing a transaction, business profile of the client or other circumstances related to the client, there is or there could be a high risk of money laundering or terrorist financing".

547. This is not quite aligned to c.5.8, which requires a financial institution to perform enhanced CDD for *higher* risk categories of customer, business relationship or transaction (and not only in circumstances where risk is high).

548. Whilst examples of high risk categories are not presented in the LPMLTF, in accordance with the Rulebook on developing risk analysis guidelines published by the Ministry of Finance under Article 8 of the LPMLTF, the following cases must always be covered in guidance issued by the competent supervisory bodies:

- The country of origin of a customer or beneficial owner of a customer is a country listed by the FATF as non-cooperative, is designated as an "offshore zone", or is otherwise considered to present a higher risk.
- The customer or beneficial owner of a customer is a person from a country against which measures have been taken by the UN Security Council.
- The customer is a person listed in a resolution of the UN Security Council.
- The source of a client's assets is unknown or unclear, or source cannot be proven.

- There is suspicion that a customer acts by direction of a third person.
- A transaction route is unusual.
- There is suspicion of money laundering or terrorist financing.
- The customer is a PEP.
- The customer's accounts are connected to higher risk customers.

549. Article 25(2) of the LPMLTF also provides for enhanced measures to be applied when opening a correspondent banking relationship, when a customer is a PEP, or where a customer is not present at the time that identity is verified.

550. In addition, Article 23 of the LPMLTF requires a reporting entity to conduct "repeated annual control" of a foreign legal person at least once per annum.

551. However, as mentioned at paragraph 482 above, guidelines on risk analysis published by competent supervisory bodies do not to address all of the higher risk areas and threats identified in the national strategy and response to the MEQ. Instead, guidance (which is quite comprehensive) is provided in more general areas, such as dealing with geographic risk and unexpected activities.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

552. Article 29(1) of the LPMLTF states that, unless there are reasonable grounds for suspecting money laundering or terrorist financing, in relation to a customer or transaction described in Article 9(1) items 1 and 2, a reporting entity can apply simplified verification measures to a customer who is a:

- A reporting entity that is a bank, branch of a foreign bank, or other financial institution, savings bank or savings and loan institution, post office, company for managing investment or pension funds (or branch of a foreign company), insurance company (or branch of a foreign company), insurance intermediary or similar, organiser of lotteries and special games of chance, or other "appropriate institution" that has a registered office in the EU or state from a list of countries applying international AML/CFT standards at the same or higher level than the EU.
- State body or local government body and other legal persons exercising public powers.
- An organisation whose securities are traded on an organised market or stock exchange in an EU Member State or other states where international standards are applied at the same or higher level than the EU.

553. Article 29(2) of the LPMLTF adds that a list of states that apply international AML/CFT standards at the same or higher level than the EU shall be published by the competent authority. This list was last updated on 9 April 2012 and covers EU Member States and FATF members, such as Argentina, which was until recently subject to the FATF's on-going global AML/CFT compliance process.

554. In addition, the authorities have said that countries that are members of Egmont and MONEYVAL are generally considered to sufficiently apply AML/CFT standards. They have explained, however, that this does not exclude the basis to apply a risk-based approach.

555. Whereas risk may be considered to be lower where EU Directives are implemented in a Member State, application of the Third Money Laundering Directive in domestic legislation in Member States may not be consistent or in line with the Directive. On this basis, it is not clear why it might be assumed under item 1 of Article 29(1) that risk should always be lower.

556. The Central Bank has explained that Article 29 of the LPMLTF allows reporting entities, in relation to certain clients or transactions, to apply simplified customer verification, unless there

are reasonable grounds for suspecting money laundering or terrorist financing. They say that cases set out in items 1, 2, and 3 of Article 29(1) do not as a rule belong to the low risk category, and that their use is dependent upon the reporting entity's risk assessment of its customer. However, this explanation is at odds with section 3.3.2 of guidelines on risk analysis published by the Central Bank which state that customers covered by Article 29 of the LPMLTF will present an "insignificant risk".

557. Also, the authorities have not explained why organisers of lotteries and special games of chance may be considered to present a lower risk (item 1) or which international standards are to be considered when determining whether simplified measures might be applied to a customer whose securities are traded (item 3).

558. Article 30 of the LPMLTF sets out the simplified identification measures that are to be applied to a customer who is a legal person where Article 29 applies. In the context of a business relationship, Article 30 provides that it will be necessary only to obtain data on the customer, legal representative and "authorized person" and on the purpose, nature and date that the relationship was established. It also explains how this data is to be obtained: where possible by reference to information held at the Central Business Registry or other appropriate register. It follows that it is not necessary to find out who is the beneficial owner of a customer, or to verify the identity of the customer's legal representative or "authorized person".

559. This conclusion is supported by guidelines issued by the Central Bank and discussions with securities companies. Guidelines published by the Central Bank say that, in a case when the client has an insignificant risk of money laundering and terrorist financing (i.e. in a case covered by Article 29), a bank will not be obliged to "verify the client, nor is it necessary to establish the beneficiary owner". At a meeting with securities companies, it was explained that stockbrokers may operate "pooled" accounts, where the bank would not hold information on the stockbrokers' underlying customers. The Central Bank later clarified that it would expect a bank to identify each third party for which such a broker acts (including the case of "pooled" accounts).

560. This approach to simplification of identification measures does not appear to be in line with c.5.9, which provides that customers will be subject to the full range of CDD measures, albeit those measures may be simplified or reduced. So, for example, it may be possible to limit the extent to which information on beneficial ownership is obtained and verified, but not possible to avoid applying any measures at all (which is the effect of Article 29 and 30 of the LPMLTF).

561. Notwithstanding the possibility of applying simplified identification measures under Articles 29 and 30 of the LPMLTF, the Central Bank has explained that, in practice, banks apply full CDD measures.

562. In addition to Article 29 of the LPMLTF, Article 13 of the LPMLTF sets out cases where there is no requirement to conduct CDD measures (as distinct from simplified measures). Article 13 does not apply to cases when, in relation to a transaction or client, there is suspicion of money laundering or terrorist financing.

563. Article 13 provides that insurance companies conducting life assurance business and business units of foreign insurance companies licensed to conduct life assurance business in Montenegro, founders and managers of pension funds, and legal and natural persons performing representation and brokerage activities are not obliged to conduct CDD measures when conducing life assurance contracts when:

- Entering into contracts where an individual instalment of premium or multiple instalments of premia payable in one calendar year do not exceed €1,000, or were the payment of a single premium does not exceed € 2,500; and
- 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 credit or

borrowing, or a conclusion of a collective insurance contract ensuring the right to a pension.

564. Also under Article 13, companies and business units of foreign companies that issue electronic money do not need to conduct CDD measures when:

- 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
- 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, does not exceed € 2,500, unless the holder of electronic money cashes the amount of at least €1,000 in a calendar year.

565. This approach to simplification of identification measures does not appear to be in line with c.5.9, which provides that customers will be subject to the full range of CDD measures, albeit those measures may be simplified or reduced. So, for example, it may be possible to limit the extent to which information on beneficial ownership is obtained and verified, but not possible to avoid applying any measures at all (which is the effect of Article 13 of the LPMLTF).

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

566. As explained above, Article 13 of the LPMLTF sets out cases where there is no requirement to conduct CDD measures and Article 29 sets out cases where measures may be simplified.

567. In the absence of guidance on which international standards are to be considered when determining whether simplified measures might be applied to a customer whose securities are traded under Article 29(1) item 3, it is possible that a customer may be resident in a country that does not comply with, or has not effectively implemented, the FATF Recommendations.

568. As a matter of law, it appears that measures in Articles 13 and 29(1) item 3 may be applied to any customer that meets the criteria that are listed, and their application is not limited to customers resident in countries that are in compliance with, and have effectively implemented, the FATF Recommendations.

Risk – simplified / reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

569. Whereas Articles 13 and 29 of the LPMLTF may not be applied where there is suspicion of money laundering or terrorist financing, there is no explicit provision in the LPMLTF to prevent the application of exemptions or simplified measures in scenarios where higher risks apply.

570. Despite this, section 3 of guidelines published by the APMLTF states that simplified CDD is not allowed when a customer is categorised as a high risk customer. The Central Bank also said that it considered that a reporting entity must first consider the risk in applying a concession in the LPMLTF.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

571. Article 8(1) of the LPMLTF provides that a reporting entity shall analyse risk for the purpose of determining its risk assessment for a particular client, a group of clients, business relationship, transaction or product, related to the possibility of misuse for the purpose of money laundering or terrorist financing.

572. The analysis referred to in Article 8(1) shall be prepared pursuant to guidelines on risk analysis which shall be determined by the competent supervisory bodies listed in Article 86 of the LPMLTF, pursuant to a Regulation adopted by the Ministry of Finance. This Regulation shall determine more specific criteria for guidelines development (reporting entity's size and composition, scope and type of affairs, customers, or products and the like).

573. Pursuant to Article 8, a Regulation has been made by the Ministry of Finance, and guidelines

on the application of a risk-based approach have been published by the APMLTF, CBM, SEC and ISA. Guidelines have not been published by the Agency for Telecommunication and Postal Services.

574. This risk assessment is also to be taken into account under Article 20 of the LPMLTF (in order to determine measures to be applied to ensure that a reporting entity has a complete and clear insight into who the beneficial owners of a legal person are), Article 22 (monitoring business activities), and Article 25 (application of enhanced measures where risk is high).

575. Meetings with the private sector confirmed that reporting entities are familiar with the guidelines and their content.

Timing of verification of identity – general rule (c.5.13)

576. According to Articles 10 and 11(1) of the LPMLTF, a reporting entity must identify and verify the identity of a customer and its beneficial owner (if a legal person) and obtain data on the purpose and nature of a business relationship *prior* to establishing a business relationship. According to Article 11(2), a reporting entity may identify and verify the identity of a customer and its beneficial owner (if a legal person) and obtain data on the purpose and nature of a business relationship *during* the establishment of a business relationship, where this is necessary and when there is insignificant risk of money laundering or terrorist financing. The authorities were unable to explain the difference between applying measures *prior* to establishing a relationship and *during* the establishment of a relationship (which by its nature must be prior to that relationship being established).

577. According to Articles 10 and 12(1) of the LPMLTF, a reporting entity must identify and verify the identity of a customer and its beneficial owner (if a legal person) and obtain data on the purpose and nature of the transaction *before* executing an occasional transaction.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

578. By way of an exception, Article 11(3) of the LPMLTF provides that an insurance company can verify the beneficiary (of an insurance contract) *after* the conclusion of a life insurance contract, but not later than the time when the beneficiary of the contract can exercise his or her rights.

579. There is no requirement for a reporting entity permitted to utilise the business relationship prior to verification to adopt risk management procedures concerning the conditions in which verification may be delayed.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

580. According to Articles 10 and 11 of the LPMLTF, a reporting entity must identify and verify the identity of a customer and its beneficial owner (if a legal person) and obtain data on the purpose and nature of a business relationship prior to establishing a business relationship. Whilst it must implicitly follow that a reporting entity cannot form a relationship except where these CDD measures have been completed, Article 12(2) explicitly states that, if evidence of identity cannot be obtained, the relationship shall not be established. However, an offence is not committed under Article 12(2) where a relationship is established without CDD measures having been completed.

581. Two of the banks visited said that they had never had cause to refuse to establish a relationship. Another said that it had declined dozens of applications.

582. According to Articles 10 and 12 of the LPMLTF, a reporting entity must identify and verify the identity of a customer and its beneficial owner (if a legal person) before executing an occasional transaction. Whilst it must implicitly follow that a reporting entity cannot execute an occasional transaction until these CDD measures have been completed, Article 12(2) explicitly

states that, if evidence of identity cannot be obtained, the transaction shall not be executed. An offence is committed under Article 12(2) where a transaction is executed without CDD measures having been completed.

583. Where a reporting entity has already established a business relationship but delayed verification of the identity of a beneficiary under Article 11(3), there is no requirement to subsequently terminate that relationship when it is not possible to apply CDD measures. Article 11(4) provides that, if evidence of a client's identity (understood to refer to the identity of the beneficiary of an insurance contract), cannot be obtained after establishing the business relationship, the relationship *can* be terminated (but, it follows, need not be terminated).

584. Otherwise, where a reporting entity has doubts about the veracity or adequacy of previously obtained customer identification information, or during the remediation of CDD for existing customers, and the reporting entity is unable to apply CDD measures, there is no requirement to terminate the business relationship. Indeed one of the banks visited suggested that a provision in law (unidentified) did not allow a reporting entity to terminate a customer relationship without the approval of the customer. Another said that, whilst it had terminated a limited number of customer relationships, where funds remained on an account, it was not possible to close it. A third said that it would "block" an account where information or documentation was not forthcoming. The basis for the block is explained at the time that the account is set up and lasts usually for no more than two weeks (on the basis that customers will need access to their funds). A fourth bank said that it had not had to exit a relationship with a customer on the basis of a refusal to provide information or documentation.

585. Finally, there is no specific requirement to consider making a report of a suspicion in circumstances where it has not been possible to conduct satisfactory CDD although Article 33 of the LPMLTF 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". This is likely to have the same effect.

586. Despite the above, sections 3.1.1 to 3.1.4 of guidelines published by the SEC state that a capital market participant *may* refuse to establish a business relationship with a client or execute a transaction, if the client's identity cannot be determined with sufficient certainty.

587. Similarly, Article 10 of guidelines published by the ISA state that, in a case where identification cannot be determined with certainty, a reporting entity *may* refuse to enter into such transaction.

Application of CDD requirements to existing customers – (c.5.17), Performance of CDD measures on existing customers (c.5.18)

588. Article 98 requires financial institutions to harmonise their business activities with the provisions of the new law, (which entered into force in 2007). This is interpreted to mean that financial institutions are required to update their policies and procedures in accordance with the provisions of the new law and to update CDD measures with respect to existing customers..

589. On-site examinations by the Central Bank, the Insurance Supervisory Agency, the Securities and Exchange Commission and the APMLTF are said to include a review of a sample of files of existing customers. For example, before an on-site visit, the Central Bank requests information on the ten (recently increased to 30) customers with the highest number of debit and credit transactions (who tend to be existing customers). On the basis of this work, it is satisfied that remediation of existing customers is complete.

590. Article 31 of the LPMLTF provides that a reporting entity may not keep an anonymous account, a coded or bearer passbook. In addition, a reporting entity that is a bank may not provide a service that directly or indirectly enables the concealment of a customer's identity. On the basis that there are no transitional provisions for such accounts, there should be no existing customers

who are anonymous or have used use fictitious names (at least for banks). Banks met confirmed that they did not operate anonymous accounts.

Effectiveness and efficiency

591. Whereas guidelines have been published by all competent supervisory bodies, except for the Agency for Telecommunication and Postal Services Guidelines, they do not set out steps to be taken by reporting entities to address all of the higher risk areas and threats identified in the national strategy. Instead, guidance (which is quite comprehensive) is provided in more general areas, such as dealing with geographic risk and unexpected activities.

592. Further, whilst the core content of each of the guidelines addresses the matters referred to in the Regulation adopted in March 2009 by the Minister of Finance, there are some differences in substance and content. For example:

- The basis for determining risk is different in each of the guidelines. The APMLTF provides for "extremely high", "high", "middle (average)" and "low" risk, whereas the CBM provides for "high", "middle level", "low level" and "insignificant" risk. The SEC and ISA provide for "high", "average" and "low" risk.
- The list of risk factors is different.
- The construction of each is different.

593. The effect of this may be quite limited at reporting entity level (except for those reporting entities that are subject to regulation by more than one competent supervisory authority). At country level, the differences suggest that there could be better coordination in the approach to regulation and supervision followed by the authorities. It was further noted that the guidelines had still to be updated to reflect changes made most recently to the LPMLTF. For example, there were still references to Article 7 of the LPMLTF which have been deleted.

594. Whereas lists of higher risk countries and sanctioned individuals are in use, one of the four banks met said that it made no use of subscription databases. It is not clear how a bank might effectively identify higher risk customers under Article 8 of the LPMLTF, in particular where the customer is not resident in Montenegro.

595. Whereas the LPMLTF has been updated to recognise that information on beneficial ownership may not always be available through the Central Business Registry and may need to be collected from the customer itself, it appears that reporting entities are still inclined to assume that information held at the Registry (and other public registries) will always reflect the beneficial ownership of a legal person. This is despite the fact that the national strategy identifies the creation of fictitious companies as a potential threat.

596. To the extent that the information that is provided by the customer matches that held by the Central Business Registry, it seems that some reporting entities will consider that they have done enough to satisfy the requirement set in Article 20(4) to have a "complete and clear insight" into beneficial ownership, whereas information presented to the reporting entity and Central Business Registry may reflect a legal person's legal ownership rather than beneficial ownership. Whilst it is acknowledged that there is only a limited number of ways in which to identify the beneficial owner, what is called for is more professional scepticism. This difficulty is compounded where a legal person is established outside Montenegro, for example to purchase realty in Montenegro. Though one bank said that it was difficult to access data for foreign legal persons, it observed that it had not refused to open any such accounts.

597. The Central Bank has said that it will take action against a bank if an on-site examination finds that evidence of identity is not held. Whilst this is not disputed, it is unlikely that an on-site examination will identify cases where a bank has failed to properly identify the ultimate beneficial owner of a customer who is a legal person.

598. Sections 3.1.1 to 3.1.4 of guidelines published by the SEC state that a capital market participant *may* refuse to establish a business relationship with a client or execute a transaction, if the client's identity cannot be determined with sufficient certainty. Article 10 of the guidelines published by the ISA also states that, in a case where identification cannot be determined with certainty, a reporting entity *may* refuse to enter into a transaction. These provisions could have the effect of undermining the effectiveness of the prohibition in Article 12(2) of the LPMLTF.

599. Guidelines published by the APMLTF explain on page 28 the importance of regular monitoring of customer business activities. On page 31, it is explained that the scope and intensity of business activity monitoring will depend on risk. In the case of a high risk customer, it is said that monitoring measures of a customer's business activities will be applied at least annually. In the case of a medium risk customer, it is said that that monitoring measures will be applied at least once every three years. In the case of a low risk customer, there is no reference to monitoring measures. These provisions could have the effect of undermining the effectiveness of Article 10 and 22 of the LPMLTF.

600. The absence of guidance from the CBM and SEC on *ways* of monitoring a customer's business activities may reduce the effectiveness of requirements in Articles 10 and 22 of the LPMLTF. It was further noted that whilst examination procedures adopted by the Central Bank appeared very comprehensive, they did not consider *how* effectively banks scrutinise transactions. In practice, the Central Bank explained that each on-site examination would consider the procedures applied in daily checks of the clients' executed transactions.

601. More generally, it was noted that two of the four banks visited said that they had never had cause to refuse to establish a relationship on the basis that CDD measures could not be completed. One of the four said that it had not had to exit a relationship with a customer on the basis of a refusal to provide information or documentation. Whilst it may be the case that the experience of these three banks reflects a cooperative dialogue between reporting entities and prospective (and current) clients, it may also suggest that CDD measures are not applied effectively. Certainly, the APMLTF has explained to assessors that it is often difficult to establish the source of funds for foreign transactions, suggesting that there is not always a cooperative dialogue between reporting entities and clients.

Recommendation 6 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

602. Montenegro received a PC rating for Recommendation 6 in the 3rd round report. Reporting entities did not have sufficient awareness of their obligations concerning PEPs. There was a lack of appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP in reporting entities.

Legal Framework

603. The LPMLTF sets out requirements with respect to those individuals who are PEPs. A PEP is defined under Article 27 of the LPMLTF as a natural person who is acting, or has been acting in the preceding year, within a distinguished public position in Montenegro, in another country or on an international level. These include all the different categories of public position holders referred to in the FATF definition. The definition also includes individuals who are immediate family members and close associates. Those who no longer hold a distinguished public position are only considered PEPs for one additional year. Pursuant to Article 27, financial institutions are required to conduct enhanced customer verification in the event that a client is a PEP.

604. The LPMLTF provides that a list of PEPs referred to under Article 27(1) shall be published on the website of the FIU. This would appear to cover domestic, foreign and international PEPs. It is the view of the evaluators that the authorities are not in a position to establish a list of foreign and international PEPs and keep it updated. Additionally, financial institutions may reasonably assume

that they are only required to identify the PEPs included on the list, since the wording of the law appears to indicate that this list would include all the PEPs referred to in the definition under Article 27(1).

Risk management systems (c.6.1)

605. Article 27 (4) of the LPMLTF requires reporting entities to determine the procedure for identifying a PEP in accordance with guidelines issued by a competent supervisory authority. Article 27(4) only refers to measures applicable to the customer and not to the beneficial owner, as required under criterion 6.1 of the Methodology[37]. It is also limited in scope as it does not include any reference to a potential customer of the financial institution. Article 27(4) provides that:

"Within enhanced customer verification from paragraph 1 of this Article, in addition to identification from Article 10 of this Law, a reporting entity 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."*

606. The Central Bank Guidelines on Bank Risk Analyses Aimed at Preventing Money Laundering and Terrorism Financing set out the responsibilities of commercial banks with respect to PEPs.

607. The guidelines provide for three options in order to determine whether a person is a PEP: (1) application form completed and presented by the customer; (2) information-gathering from public sources; and (3) accessing (commercial) databases that include PEP lists.

608. The guidelines issued by the Securities Commission provide more detail on PEP requirements. Article 3.3.1.1 (a) of the Risk Guidelines for analysis of AML/TF in the capital market provides the following:

"…a) Client as a politically exposed person

In order to establish the politically exposed persons and members of their immediate families and close associates within the meaning of the Law, capital market participants may proceed in one of the following manners:

- *by completing a written form by the client;*
- *by gathering information from public sources;*
- *by gathering information based on insight into databases that include lists of politically exposed persons (World Check PEP List, etc.).*

The process of establishing close associates of politically exposed persons shall apply if a relationship with an associate is publicly known or if a capital market participant has reasons to believe that such relationship exists.

Before establishing a business relationship with politically exposed person, a capital market participant is required to:

[37] This requirement is understood to have been included in the new AML/CFT Law, which was adopted and entered into force in August 2014.

- *obtain information about the source of funds and assets that are subject of a business relationship. i.e. transaction, from personal and other documents submitted by the client, and if the required data cannot be obtained from the submitted documents, the same shall be obtained directly from the client's written statement;*
- *obtain the written consent of the person responsible, in accordance with the internal acts of a capital market participant, before establishing a business relationship with the client."*

609. Most of the financial institutions interviewed confirmed that they have internal guidelines and application forms to establish whether a customer is a PEP. All the banks met onsite have in place an application form that is completed by the client before establishing a business relationship.

610. The evaluators were informed that no particular difficulties were encountered in the identification of domestic PEPs since financial institutions have access to the PEP list made publicly available by the FIU. The situation is different with respect to foreign PEPs. With regard to foreign PEPs, financial institutions rely mostly on the customer application forms since not all financial institutions have access to databases which incorporate lists of foreign PEPs.

611. The Commission on Conflict of Interest publishes the list of property owned by politicians, which can also be accessed by financial institutions. In practice, this is the main source of obtaining information on the source of funds of domestic PEPs required under the LPMLTF. With respect to foreign PEPs, however, financial institutions confirmed that it is difficult for them to obtain additional information and they mainly rely on information provided by the client himself or through internet sources. Only one bank confirmed that it made use of commercial databases, which also includes a list of foreign PEPs, family members and close associates. Financial sector representatives stated that in general the number of foreign PEPs is not high and that their client portfolio is mostly dominated by domestic PEPs.

612. It is unlikely that financial institutions are in a position to detect PEPs efficiently, since it appears that few have access to external databases (e.g worldcheck, lexis nexis, etc.) and domestic lists of PEPs are not incorporated with the banking system.

Senior management approval (c.6.2)

613. Article 27(3) requires financial institutions to obtain the written consent of the responsible person, who is considered to be senior management, before establishing a business relationship with a PEP.

614. The CBM Guidelines refer to obligations of banks to undertake enhanced CDD with respect to PEPs and it provides that a bank employee is obliged to: "*provide written consent of complying officer from the bank, before establishing business relationship with a client."* No reference is made to senior management. The same limited obligation is set out in guidance issued by the Securities Commission and the Insurance supervisor.

615. Article 27(4) which sets out the measures to be undertaken where a customer is a PEP includes the obligation to obtain written consent of the person in charge. However, where a change in circumstances takes place and when an existing customer becomes a PEP, there is no obligation for financial institutions under Article 27 to obtain senior management approval to continue the business relationship as required under criterion 6.2.1 of the Methodology.

Requirement to determine source of wealth and funds (c.6.3)

616. Article 27 of the LPMLTF requires financial institutions to obtain data on funds and asset/property sources which are involved in a business relationship or transaction. Data should be gathered from personal or other documents submitted by the customer, and if the documents submitted by the customer do not contain sufficient information, the customer himself is required to submit a signed written statement. The scope of Article 27 does not include obligation to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.

617. Article 27(3) does not clearly cover the requirement to establish the source of wealth since it only refers to funds or assets involved in the business relationship or transaction and not to the overall financial situation of the customer. Indeed, the financial institutions interviewed did not consider that Article 27 of the LPMLTF requires them to establish the source of wealth of a PEP.

618. The same limitation applies within the guidelines issued by Securities Commission. Section 3.3.1.1 of the Guidelines specifically provides:

"Before establishing a business relationship with politically exposed person, a capital market participant is required to obtain information about the source of funds and assets that are subject of a business relationship. i.e. transaction"

619. All the banks and the securities brokers interviewed onsite confirmed that in practice they would only obtain information on the source of funds and not on the source of wealth of PEPs.

620. The securities brokers interviewed stated that they do check whether a person is a PEP and they also have internal applications which are filled in by clients. The securities brokers demonstrated that they do check the source of funds of identified PEPs and they verify the identity based on the Conflict of Interest databases. They also stated that they do not have high number of customers who are PEPs and especially foreign ones. Mostly foreign PEPs would be from the Balkan region.

On-going monitoring (c.6.4)

621. Statutory provisions with respect to on-going monitoring of PEPs are set out in Article 27 of the LPMLTF which states that financial institutions should *"monitor with special attention transactions and other business activities carried out with an institution by a politically exposed person."*

622. The CBM Guidelines on Risk Based Approach state that the bank is obliged along with identification of a client to undertake additional measures:

"Concluding a business relationship or performing transactions from Article 9 paragraph 1 item 2 of these guidelines with a client, who is politically exposed person as defined in Article 29 of this guideline." The Guidelines further state that the bank is obliged to apply measures of enhanced CDD in the event that a client is a PEP and when it assesses that due to the nature of the business relationship, form and manner of performing business transactions, business profile of a client, or other circumstances related to the client, there is or may occur a risk of ML/TF.

623. SEC Guidelines section 3.3.1.1 stipulates that:

"After establishment of a business relationship with politically exposed person, members of his/her immediate family and close associates in accordance with the Law, a capital market participant is obliged to keep separate records on these persons and transactions undertaken on behalf and for the account of these persons."

624. According to section 3.3.1.1, capital market participants have an obligation to monitor with particular attention transactions and other business activities that are carried out by a PEP.

Additional element – domestic PEP-s requirements

625. Article 27 of the LPMLTF covers both foreign and domestic PEPs. Domestic PEPs are identified through the FIU's database.

Additional element – ratification of the Merida Convention

626. Montenegro ratified the UN Convention against Corruption on 23 October 2006.

Effectiveness and efficiency

627. Overall, the financial sector representatives met onsite were aware of PEP requirements. Most

confirmed that they seek to identify whether a customer is a PEP through the customer application form. However, reliance is placed on information provided by the customer with respect to the source of funds. On-site interviews demonstrated that information with respect to foreign PEPs is mainly obtained through the customer or internet. The requirement of senior management approval is not applied in practice.

628. Non-banking financial institutions also confirmed that they use application forms to determine whether a customer is a PEP. Insurance companies interviewed showed limited understanding of PEP requirements.

629. Verification of the source of wealth is not undertaken by financial institutions due to the limited scope of the obligation provided in the LPMLTF.

630. Verification of the source of wealth and the source of funds in case a beneficial owner is a PEP is not conducted by financial institutions as Article 27 does not include such obligation.

Recommendation 8 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

631. Montenegro was rated PC for Recommendation 8 in the 3rd round evaluation report based on the following deficiencies:

- No specific requirement 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.

Misuse of new technology for ML/FT (c.8.1)

632. Article 8 of LPMLTF requires financial institutions to conduct risk analyses to assess the ML/FT risk of an individual client, a group of clients, business relationship, transaction or product. Article 28a specifically obliges banks and other reporting entities to take measures and actions to eliminate money laundering risks that may arise from new developing technologies that might allow anonymity (internet banking, cash dispenser use, phone banking, etc.). Article 28a paragraph one does not cover FT. However, paragraph two of the article further provides that:

"Banks and other financial institutions shall adopt internal procedures for prevention of the new technologies use for the purpose of money laundering and terrorist financing."

633. This issue is further clarified in ALMPLTF Guidelines on Developing Risk Analysis With a View to Preventing Money Laundering and Terrorist Financing:

"A reporting entity shall pay special attention to any risk of money laundering and/or terrorist financing that could result from technological developments (ex. Internet banking) and put in place policies and undertake measures for preventing the use of new technology developments for the purposes of money laundering or terrorist financing. The reporting entities' policies and procedures for the risk related to a business relationship or transaction with customers that are not physically present, are also applied when doing business with customers through new technologies."

634. In addition, the Central Bank adopted the Decision on Minimum Standards for Operational Risk Management in Banks ("Official Gazette of MNE", no. 24/09).

635. Article 2 of this decision defines the obligations of the bank in the process of identification of the source of operational risk, which states: "In the procedure of identifying sources of operational risk, the bank shall identify, in particular, the risks arising from:

4) illegal and inadequate actions by bank employees, such as **fraud, money laundering**, unauthorized approach to client accounts, misuse of confidential client information, giving false or incorrect information about the bank positions, imprecision in performing the operations, errors in data inputs and non-observance of good business practices, etc."

636. Article 8 of this decision further prescribes:

"Subject to the control of the operational risk arising from e-banking services, a bank which offers e-banking services, as a minimum, shall:

1) implement safe and efficient mechanisms as a confirmation of authenticity and authorization of persons, processes and systems;

2) provide corresponding confirmation of its identity on the e-banking distribution channel, thus enabling e-banking users to check bank's identity;

3) secure existence of corresponding operational and system recordings which undisputedly confirm actions related to e-banking".

Risk of non-face-to-face business relationships (c.8.2)

637. In accordance with LPMLTF Article 14, a customer shall be present when a financial institution is checking of identification document of a customer on the stage of customer identification. Article 14 of LPMLTF paragraph one defines that:

"A reporting entity 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."

638. In addition, Article 28 provides that when a customer is not present during the process of identification and verification, financial institutions shall apply enhanced CDD which shall include one or more of the following additional measures:

1. obtain additional documents, data or information, on the basis of which the client's identity is verified;
2. Verify the submitted documents and obtain a certificate from a financial institution or a bank performing payment operations that the client's first payment has been made on the account held with the relevant financial institution.

639. The authorities explained that Article 28 is only applicable when the customer has already established a business relationship and was present during the identification process defined under Article 14. This does not apply to on-going monitoring (c.8.2). The CBS Guideline on Risk Based Approach section 3.7 clarifies that, in case of customers who are absent, the internal procedures of banks should apply while establishing business relationships or when performing the enhanced client verification. In case of insurance sector, authorities have informed evaluators that life insurance policies are always signed at the premises of the insurance company however there is no legally binding requirement for insurance companies.

640. The CBM has issued specific guidelines for commercial banks with respect to risk analyses aimed at preventing money laundering and terrorism financing – section 3.7 defines the obligation of commercial banks regarding risks of non-face to face business relationship:

"For the purpose of adequate risk management in area of prevention of money laundering and terrorism financing, the bank is obliged to decrease exposure to risk which is outcome of new technologies which enable anonymity (electronic or internet banking, electronic money, etc.), and in that sense the policies and procedures issued by the bank shall especially define:

- *identification of a customer using electronic banking;*
- *validity of signed electronic document;*
- *reliable measures against forging documents and signatures on documents;*
- *systems which ensure and enable safe electronic banking;*

other conditions in accordance with positive regulations which regulate the abovementioned area of business activities."

641. The risk of non-face to face business relationship is additionally addressed in the Rules on "Conduct of Business of Licensed Market Participants" issued by the Securities and Exchanges Commission. Namely, Article 22 par.6-9 contains provisions to address non-face to face relationships:

"Client, who gives orders by phone, fax or electronically, may give the same with authorisation by identity code which licensee shall assign to a client when signing a contract. A client is obliged to keep his/her identity code as a secret, and may not make it available to third persons.

Licensee is obliged to check client's identity through identity code, contained in any contract prescribing possibility of submitting orders by phone, fax or electronically or in any other manner which does not imply client's face to face transaction.

When prescribing possibility of electronic submitting of client's orders, licensee is obliged to provide:

- *reliable manner of client identification;*
- *that all necessary elements of an order are stated in the electronic message;*
- *a record of exact time when the order arrived to an e-mail and time of its entry in the order book;*
- *sending of reply to a received order, where the original message of order sender is clearly visible;*

When prescribing possibility of electronic submitting of client's orders, licensee shall retain the right to refuse order execution, if the order is unclear and/or ambiguous, and he/she shall inform a client on that in the same way it accepted an order."

642. In general, financial sector representatives met on-site stated that non-face to face products are not common in Montenegro. A number of financial institutions also confirmed that as a rule the customer must always be present when a business relationship is established. Two banks confirmed that it is not possible to open an account through distance means. However, one bank operates outside Montenegro through representative offices. The bank stated that representative offices are using the same CDD procedures.

Effectiveness and efficiency

New technology products are not well developed in Montenegro. Financial sector representatives met on-site confirmed that new technologies are not common in Montenegro. There is no formal restriction on opening of accounts through distance means. However, all FIs interviewed confirmed that for the commencement of a business relationship or to undertake any transaction in the bank for the first time it is necessary to be present at the bank. One of the banks stated that they have representative offices in two countries however all the CDD process is undertaken in accordance with internal requirements of the bank. Article 34 of the LPMLTF provides that a reporting entity 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 reporting entity, whose registered offices are in other state, if that is in compliance with the legal system of the concerned state. One bank said that it is

possible to conduct non-face to face transactions only to existing clients who have been identified and verified before.

643. Some banks are actually offering services of pre-paid cards (limited in amount) and in one bank it is possible to open accounts through their representative offices.

644. Insurance and securities industry would benefit from additional guidance over risks associated with new technologies.

645. Only one bank confirmed that in accordance with CBS guidelines clients who are not present during identification and verification process should be categorised as posing a higher risk and in respect of whom enhanced due diligence is applicable.

3.2.2 Recommendations and comments

Recommendation 5

646. Guidelines on the application of a risk-based approach published by the ISA should be extended to insurance intermediaries and agents.

647. Guidelines on the application of a risk-based approach should be published by the Agency for Telecommunication and Postal Services in respect of the transfer of money or value.

648. Article 31 of the LPMLTF should be slightly amended to clarify that the prohibition on the use of fictitious names applies to all reporting entities (and not just banks). In particular, the authorities may consider including the word 'including' in the bracketed text. (5.1)

649. Reporting entities should be required to undertake full CDD measures when carrying out occasional transactions that are wire transfers (in addition to those set out in Article 12a of the LPMLTF). (5.2)

650. In the case of a business relationship that has been established making use of exemptions or simplified identification measures, reporting entities should be required to undertake full CDD measures where there are subsequently reasonable grounds for suspicion of money laundering or terrorist financing. (5.2)

651. CDD measures required under Articles 10, 14 and 15 of the LPMLTF should include a clear reference back to Article 5, which defines customer identification. (5.3 and 5.5)

652. Article 10 of the LPMLTF should address the timing of requirements to verify the identity of the legal representative and "authorized person" of a customer that is a legal person (as it currently refers only to obtaining data). (5.4)

653. Article 16 of the LPMLTF should include a clear requirement to verify that a legal representative of a customer who is a legal person is authorised to act on behalf of the customer. Whilst this may be the effect of the requirement in Article 15(1) to establish and verify the identity of a Montenegrin company, the same cannot be said for a foreign company. (5.4)

654. Article 17(2) of the LPMLTF should clearly require a reporting entity to verify that an "authorized person" is authorised to act in the case of an occasional transaction with a legal person (as well as in the course of a continuing business relationship). Whilst this may be the effect of the requirement in Article 15(1) to establish and verify the identity of a Montenegrin company, the same cannot be said for a foreign company.

655. Article 17(3) of the LPMLTF should establish a clear requirement to obtain data on, and verify the identity of, an "authorized person" of a customer that is a legal person when carrying out an occasional transaction under Article 9(1) item 2. (5.4).

656. Article 15 of the LPMLTF should explicitly provide for the collection of information on directors (in addition to the executive director) and include provisions regulating the power to bind the legal person. (5.4)

657. In the case of a relationship or transaction in respect of a limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust), there should be a requirement in the LPMLTF to verify the authority of the person purporting to act on its behalf, to verify the legal status of the limited partnership or legal arrangement, to obtain information concerning its legal form, and to collect information on the provisions regulating the power to bind the limited partnership or legal arrangement. (5.4)

658. Article 20 of the LPMLTF should clearly require a reporting entity to understand the ownership structure of a business relationship or occasional transaction in respect of a legal entity that is not a legal person, limited partnership or legal arrangement and explain what information on beneficial ownership is to be collected (c5.5)

659. Article 10 of the LPMLTF should require a reporting entity to identify the beneficial owner of a legal entity that is not a legal person, limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust), and take reasonable steps to obtain sufficient identification data to verify identity. (c.5.5)

660. Consequential changes should also be made to Article 19 of the LPMLTF, which defines who is to be understood to be the "beneficial owner". (c.5.5)

661. An express provision should be added to Article 22 of the LPMLTF to scrutinise transactions to ensure that they are consistent with the customer's risk profile. (c.5.7)

662. The frequency of monitoring measures explained on page 31 of guidelines published by the APMLTF should be reviewed in order to ensure that they are consistent with the need to regularly monitor customer business activities (which is explained at page 28). (5.7)

663. Guidance should be published by the CBM and SEC on *ways* of monitoring a customer's business activities. (5.7)

664. Article 25(3) of the LPMLTF should require a reporting entity to perform enhanced CDD for higher rather than high risk categories of customer, business relationships or transactions (rather than high). (c.5.8)

665. Guidelines on risk analysis published by the competent supervisory bodies should address all of the higher risk areas and threats identified in the national strategy and response to the MEQ. (5.8)

666. Simplified identification measures applied under Article 29(1) of the LPMLTF should be limited to circumstances where a reporting entity has assessed that there are low risks, which may not be the case for all the customers types listed in that article. (5.9)

667. The list of countries published under Article 29(2) of the LPMLTF should be reviewed in order to ensure that all apply international AML/CFT standards that are at the same level as, or higher than, EU standards. The methodology followed to assess the application of standards overseas should be clarified and published and cover also standards that apply to securities regulation (Article 29(1) – item 3). (c.5.9)

668. Article 29 of the LPMLTF should be amended to exclude customers who are organisers of lotteries and games of chance. (c.5.9)

669. The scope of CDD exemptions set out in Article 13 of the LPMLTF and scope of simplified identification measures under Article 29 of the LPMLTF should be reviewed and revised such that simplified measures are applied across the full range of CDD measures. (c.5.9)

670. Concessions in Articles 13 and 29(1) item 3 of the LPMLTF should not be applied to any customer that is resident in a country that is not in compliance with and has not effectively implemented the FATF Recommendations. (5.10)

671. Concessions in Articles 13 and 29 of the LPMLTF should not be applied in scenarios where

higher risks apply. (5.11)

672. In the very limited circumstances set out in Article 11(3) of the LPMLTF, there should be a requirement for a reporting entity permitted to utilise a business relationship prior to verification to adopt risk management procedures concerning the conditions in which verification may be delayed. (5.14)

673. It should be an offence under Article 12(2) of the LPMLTF to establish a relationship in a case where evidence of identity cannot be obtained (in the same way that an offence is committed where evidence of identity cannot be obtained for an occasional transaction). (5.15)

674. Guidelines published by the SEC and ISA should be revised to reflect the prohibition in Article 12 of the LPMLTF on establishing a relationship or executing an occasional transaction when evidence of the client's identity cannot be obtained. (5.15).

675. Where a reporting entity has already established a business relationship but delayed verification of the identity of a beneficiary (under an insurance contract) under Article 11(3) of the LPMLTF, there should be a requirement to subsequently terminate that relationship when it is not possible to apply CDD measures. (5.16)

676. There should be a requirement to terminate an existing business relationship where a reporting entity has doubts about the veracity or adequacy of previously obtained customer identification information, or during the remediation of CDD for existing customers, or where the reporting entity is unable to apply CDD measures. (5.16)

Recommendation 6

677. Authorities should further broaden the scope of Article 27(4) to encompass requirement of identifying whether a potential customer and a beneficial owner is a PEP or not.

678. There should be requirement to obtain approval from senior management to continue a business relationship when an existing customer becomes a PEP.

679. A clear requirement to establish the source of wealth of PEP should be introduced in the LPMLTF.

680. Requirement to establish the source of wealth and source of funds in case a beneficial owner is a PEP should be introduced in LPMLTF.

681. The definition of a PEP should apply to those persons who cease to hold a prominent public function beyond the one year period.

Recommendation 8

682. Authorities should require financial institutions to have policies and procedures aimed at addressing risks associated with non-face to face customer relationships.

683. Authorities should provide more guidance to insurance and securities market participants regarding policies and procedures necessary to address potential risks of misuse of technological developments in ML/TF.

684. The non face-to-face requirements should also apply when conducting ongoing due diligence.

685. Authorities should ensure clarifying the applicability of Article 28 of LPMLTF to ensure that the same CDD measures and procedures are applicable for opening of accounts through distance means e.g. representative offices.

3.2.3 Compliance with Recommendations 5, 6 and 8

	Rating	Summary of factors underlying rating

R.5	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF if lawfully conducted in Montenegro; • Reporting entities are not required to undertake full CDD measures when carrying out occasional transactions that are wire transfers (c.5.2); • For customers that are foreign legal persons, reporting entities are not required to verify that any person purporting to act on behalf of the customer is so authorised, or to obtain information on directors or provisions regulating the power to bind the legal person (c.5.4); • For customers that are legal persons, reporting entities are not always required to verify the identity of persons purporting to act on behalf of such customers (c.5.4); • For customers that are limited partnerships, legal entities (but not persons) or legal arrangements, reporting entities are not required to verify that any person purporting to act is so authorised, to verify the legal status, to obtain information concerning legal form, or to collect information on provisions regulating the power to bind (c.5.4); • Reporting entities are not required to take reasonable measures to understand the ownership and control structure for customers that are limited partnerships or legal arrangements, or to determine who are the natural persons that are the ultimate owners or controllers of limited partnerships, legal entities (but not persons) or legal arrangements (c.5.5); • Simplified measures can be applied in cases where risks are not lower (c.5.9); • Where simplified measures can be applied, customers are not subject to the full range of CDD measures (c.5.9); • The application of simplified CDD measures is not limited to countries that are in compliance with and which have effectively implemented the FATF Recommendations (c.5.10); • Simplified CDD measures may be applied to a customer notwithstanding that there may be specific higher risks. (5.11); • Where a reporting entity is unable to apply required CDD measures, it does not commit an offence where it subsequently establishes a relationship (c.5.15); • Where a reporting entity has already commenced a business relationship and is unable to comply with required CDD measures, it is not required to terminate the business relationship (c. 5.16). **<u>Effectiveness</u>** • Reporting entities are still inclined to assume that information held at the Registry (and other public registries) will always reflect the beneficial ownership of a legal person. (5.4);

		• Whereas simplified identification measures may be applied by a reporting entity in a case where a customer is an organisation whose securities are traded on an organised market or stock exchange in a state where international standards are applied at the same or higher level than the EU, there is no explanation of which standards are to be considered (5.9); • While the law requires reporting entities to refuse to establish a business relationship with a client or execute a transaction, if the client's identity cannot be determined with sufficient certainty, the guidelines published by the SEC and ISA state that reporting entities *may* refuse to establish a business relationship which may give rise to ambiguity (5.15); • Banks highlighted possible barriers to the termination of existing business relationships. One cited the need for the prior approval of a customer and a second said that there would be problems where funds remained on an account (5.16); • Not all banks have refused to establish or terminate a relationship on the basis notwithstanding that it was difficult to establish who the beneficial owner was. Whereas this may reflect cooperative dialogue, it may also suggest that CDD measures are not applied effectively (5.15 and 5.16).
R.6	**PC**	• Requirement to adopt appropriate risk management systems does not include determination of whether a potential customer or a beneficial owner represent a PEP; • No requirement to obtain senior management approval once a customer becomes a PEP to continue business relationship; • No clear requirement to establish the source of wealth of a PEP. No formal requirement to establish the source of wealth and source of funds of a beneficial owner who is a PEP. **Effectiveness** • Excessive reliance on information submitted by the customer to determine whether the customer is a PEP; • Insufficient information obtained on the source of wealth and funds of PEPs; • Senior management approval not obtained when establishing business relationships or conducting transactions with PEPs; • Insurance companies interviewed showed limited understanding of PEP requirements.
R.8	**C**	

3.3 Financial institution secrecy or confidentiality (R.4)

3.3.1 Description and analysis

Recommendation 4 (rated C in the 3rd round report)

Summary of 2009 factors underlying the rating

686. Recommendation 4 was rated C in the 3rd round report where it was stated that the requirements of Recommendation 4 are adequately covered.

Legal framework

687. Secrecy and confidentiality exemptions are provided in the LPMLTF. Article 81 defines the list of exemptions when reporting entity, lawyer, or notary and their employees do not have the obligation to observe secrecy requirements. Furthermore, secrecy provisions are envisaged in relevant sectoral laws governing activities of banking, securities, and insurance.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

688. Article 81 of the LPMLTF defines exceptions to the secrecy requirements. The provision enables reporting entities, lawyers and notaries to present information subject to secrecy requirements to the competent administration body.

689. Article 81(1) defines that the obligation to observe business secrecy, bank secrecy, professional and official secrecy is not applicable in the event information and documentation is provided to the APMLTF in accordance with the LPMLTF. Article 81(2) further defines:

„Reporting entity, 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*

Reporting entity'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."*

690. In accordance with Article 82 of the LPMLTF, the administrative bodies receiving information subject to secrecy requirements have the obligation to use data, information, and documentation only for the purposes they were provided.

With respect to the banking sector, Article 84 of the Banking Law defines the term banking secret. It means information about: the account holders and their account numbers opened in a bank; information on individual deposit accounts and transactions at the individual accounts of legal persons and natural persons opened in a bank; other information on a client which the bank has on the basis of providing services to its client. The provision also states that banking secret represents a business secret. Article 85 defines the responsibility of Members of the Board of Directors, shareholders, bank employees, and other persons to keep banking secrecy and not to disclose it to any third party. Paragraph 2 of the provision specifies exemptions where bank secrecy protection is not applicable. The provision requires banks to disclose information subject to secrecy requirement at the request of:. - *the Central Bank,*

- *to the competent judicial authority;*

- other parties, based on explicit written approval of a client.

691. According to Article 85, law enforcement authorities may receive information subject to secrecy protection only in the event of the client's written approval or through judicial authority.

692. Article 85(2) further states that based on the requirements of the LPMLTF, the APMLTF is authorized to receive information, including information subject to banking secrecy:

"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;"

693. Article 125 (reporting at the request of the regulatory authority) of Insurance Law defines the power of the Insurance Supervisory Agency to request information from insurance companies. The provision provides that the Agency is authorised to request other reports, information and data important for the supervisory activities of insurance companies.

694. The power of the Securities Commission to request and receive information from licensed entities is provided under Article 108 of the Securities Law. This Article enables the Securities Commission, by notice in writing, to require licence holders 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 108 also defines the powers of the Commission to request specific information regarding transactions.

Sharing of information between competent authorities, either domestically or internationally

695. Article 58 of the LPMLTF sets out the authority of the competent administrative body to conclude agreements on financial and intelligence data, information and documentation exchange with foreign counterparts and international organizations. The provision directly refers to international cooperation. Furthermore, the LPMLTF contains specific provisions on providing data and information on the request of the competent authority of a foreign state. Article 61 empowers the APMLTF to spontaneously provide data, information and documentation on a customer or transaction in the event there are reasonable grounds for suspicion of ML/TF to the foreign competent authority. With respect to domestic cooperation and information sharing, Article 68 obliges the competent court, the state prosecutor and other state authorities to provide relevant data to the competent administration body concerning misdemeanor and criminal offences related to money laundering and terrorist financing. There are no secrecy provisions which restrict the APMLTF in the sharing information domestically or internationally..

696. The authority of the Central bank to share information with its foreign counterparts is envisaged in Article 107 of the Banking Law. The law specifically provides that the Central Bank, in performing its supervisory function, shall cooperate with representatives of foreign institutions within the limits cooperation and confidentiality agreements concluded between the authorities. Paragraph 2 of this article provides that the exchange of information referred to in paragraph 1 shall not be considered as revealing a banking secret.

697. Article 107 of the Banking Law refers particularly to cooperation with foreign authorities and institutions responsible for the *supervision of financial operations*. This provision is not broad enough to include all competent authorities of Montenegro, as required under Recommendation 4. In addition, Article 84 of the Central Bank Law authorises the Central Bank to share information with competent authorities when it represents the provision of assistance for the purpose of enforcing the law and also when it receives a court order. Additionally, Article 9 of the Central Bank of Montenegro Law provides that:

"The Central Bank may cooperate with other central banks, international financial institutions and organisations (hereinafter: international financial institutions), which scope of activities is related to the objectives and functions of the Central Bank, and it may be a member of international institutions and participate in their work."

698. Article 8 of the Central Bank of Montenegro Law grants authority to the Central Bank to cooperate, on a domestic level, with the government and other government bodies and organisations, and take actions within its authority to promote this cooperation.

699. Article 105 of the Payment System Law provides grounds for the exchange of information between the Central bank and other competent authorities of Member states and European Central Bank. Paragraph 2 of Article 105 states that the submission of the information and notifications shall not constitute a violation of confidentiality.

700. The specific authority of the Securities Commission to share information with domestic or foreign counterparts is envisaged in Article 18a of the Securities Law:

"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."

701. The rules on supervision of securities operations stipulate that the Commission is authorized to conduct on-site inspections of the supervised entity also upon request of the foreign supervisory body. Paragraph 3 of the provision states:

"The Commission may supervise operations of persons referred to in Article 1 of these Rules also on based on proposals of a foreign authority responsible for supervision over the securities market and shall be responsible for submission of the report on supervision over operations of these persons to a foreign authority responsible for the supervision of the securities market at whose request supervision was exercised."

702. As regards the insurance sector, in accordance with Article 128 of the Insurance Law, the Insurance Supervisory Agency has the authority to cooperate with other supervisory and regulatory authorities. Article 128 provides that:

"The regulatory authority shall cooperate with other supervisory and regulatory authorities, in order to carry out its supervisory and regulatory role efficiently, with the objective to encourage a harmonised development of a network for supervision of financial institutions, in accordance with agreements concluded.

Supervisory or regulatory authorities may convey information obtained from the regulatory authority to other regulatory authority only upon prior approval of the regulatory authority.

Exchange of information in accordance with concluded agreements referred to in paragraph 1 of this Article, in the process of cooperation of the regulatory authority with other supervisory and regulatory authorities shall not be considered as disclosure of confidential information. "

703. Moreover, Article 115 of the Insurance Law provides that in cases when another supervisory authority is responsible for supervising legal entities related to insurance company, the Insurance Supervisory Agency is able to exercise its supervisory power to conduct on-site inspection in collaboration with the relevant supervisory authority.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

704. In the area of sharing information in correspondent banking relationships, Article 26 para. 6 provides that the respondent institution is obliged to provide a written statement with respect to payable-through accounts. The respondent institution is obliged to state that it has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant data from the CDD procedure. This provision satisfies the requirements of criterion 7.5. However, there is no specific provision in the law that enables financial institutions to share information subject to secrecy requirements with foreign counterparts. Article 85 of the Banking Law states that the

exclusion of bank secrecy does not apply to other financial institutions, which are not envisaged in the list. The provision refers that any other party will be able to receive such information only on the basis of the written approval of the client. Additionally, there is no provision that enables financial institutions to share information on STRs.

705. In the case of information related to wire transfers, Article 12a of the LPMLTF in its relevant part states the obligation of reporting entities to obtain accurate and complete information on the originator in case of payment operations or money transfer services. Paragraph 2 specifies that information presented in paragraph 1 shall accompany the fund transfers through the payment chain. Therefore, Article 12a requires financial institutions to identify, verify record, or transmit originator information as required under SRVII. It is however not clear whether the provision encompasses both internal and international wire transfers, as far as payment operation services and money transfer services are not separately defined for these purposes. In accordance with the Rulebook on the content and type of payer's data accompanying electronic funds, article 2 states that the Rulebook shall be applied on electronic fund transfers executed within the country and internationally. It is not clear whether Article 85 of the Banking law is overridden by Article 12a of the LPMLTF. The LPMLTF does not state that its provisions with respect to sharing CDD information are prevalent. Article 93 of the LPMLTF envisages pecuniary penalty for not obtaining accurate and complete information on the originator of wire transfers. Also, the penalty is defined in the event the information is not included in the message related to the wire transfer.

Sharing information with domestic financial institutions

706. Neither the bank secrecy provisions nor LPMLTF explicitly permit financial institutions to share information.

707. Information sharing between financial institutions is only possible with a written consent of the client.

Sharing information with foreign financial institutions

708. During the on-site visit, the evaluators were informed that banks do not in practice have payable-through accounts. The LPMLTF contains a provision according to which a commercial bank in Montenegro is obliged in the course of establishing correspondent relationship to request information whether the respondent institution will be able to share its own CDD information on clients. There is no explicit provision enabling financial institutions to share CDD information on clients with their foreign counterparts. Neither article 85 of the Banking law nor LPMLTF permit financial institutions to share information for these purposes.

Effectiveness and efficiency

709. During the on-site visit, the Central Bank confirmed that there were no cases of request of information sharing from foreign counterparts. Mainly, requests are related to joint on-site inspection of commercial banks being branches of a foreign commercial bank. During the on-site visit, evaluators were told that the Central Bank has concluded MOUs with its foreign counterparts however detailed information on number of MOUs concluded and list by relevant authority were not provided to the evaluation team. The representatives of the Central Bank informed the evaluators that there was one instance when the Central Bank referred to the foreign counterpart with respect to checking information on foreign beneficial owners of the financial institution. Regardless of the fact that explicit reference of the Insurance Supervisory Agency to request confidential information is not defined in the Insurance Law, the authority to obtain information including confidential information is envisaged in the ISA's powers to conduct on-site examination of an insurance company. In particular, the Insurance Law provides as follows:

> ***"Control Procedure***
>
> ***Article 120***

In carrying out on-site insurance supervision, the authorized person shall have right to:

1) inspect general acts, business policies and procedures acts and business books of the company, as well as to inspect all other acts, documentation and data relating to the company's operations;

2) demand from members of the board of directors. internal auditor, authorised actuary and person with special authorizations to give information and explanations within their scope of work regarding operations of the company;

3) temporarily revoke documents that indicate the existence of actions having the characteristics of a criminal offence, commercial violation or minor offence.

Obligations of Insurance Company

Article 121

An insurance company shall be obliged to provide the following to the authorized person upon his/her request:

1) enable supervision of the company's operations in its head office and other premises in which the company, or other person under its authorization, performs the business activity and operations supervised by the regulatory authority;

2) enable examination of business and other documents, accuracy and correctness of business and other books and other records, accuracy and correctness in compiling financial reports and annual reports on the company's operations, as well as reports and notifications submitted to the regulatory authority;

3) provide access to accounting and other documents, business books or parts of business books and other records;

4) data extracts on a media chosen by the authorized person, as well as enable full access to the electronic data processing system for accounting records."

710. Moreover, the evaluators were informed that the Agency did not have any difficulties obtaining confidential information from insurance companies. The Insurance Supervisory Agency has concluded MOUs with insurance regulators from other countries. Also, for AML/CFT purposes, the Agency has concluded MOUs with the Ministry of finance, the Ministry for internal affairs, the APMLTF, the CBM and SEC. The authorities stated that in the insurance sector, 10 out of 12 companies are a part of a foreign group (Austria and Slovenia) while all intermediaries (insurance brokers and agents) have domestic ownership. The evaluation team was informed that there were no instances of sharing of information on the grounds of the established MOUs.

711. Sharing of information for the purpose of payment systems has not yet taken place due to the fact that the new Payment System law is still not effective.

712. During the on-site visit, the evaluation team was informed that the Securities Commission did not have instances of sharing information on AML/CFT issues either domestically or internationally.

713. The financial institutions met onsite expressed concerns regarding sharing of information subject to the banking secrecy with correspondent banks. Financial institutions considered that there are doubts whether they are authorized to share identification data on clients considering the requirements of the Data Protection Act. The same concern applies to sharing of information in case of wire transfers. One institution stated that it provides information to the respondent institution even if it faces the legal risk of breaching data protection requirements. Other

institutions stated they do provide all the necessary information in case of wire transfers and in the course of correspondent relationship. One institution considered that they are only authorized to share information subject to banking secrecy in case of written approval of the client. Evaluators were also informed that there was a court proceeding in this regard where the court upheld the position that identification documents shall not be kept without the consent of the client and be forwarded to any third party. An official written description of court proceedings was not provided to the evaluators. The authorities consider that this issue is now resolved due to the new regulations of the Data Protection Act which requires stamping the ID document where the stamp states that this is for the specific purpose. The evaluators hold the view that it is not clear what the position is with respect to copies of ID documents by financial institutions made before this new regulation and whether they might be subject to appeal.

3.3.2 Recommendations and comments

714. The authorities should ensure that Data Protection requirements do not impede information sharing obligations under the LPMLTF and relevant sectoral laws.

715. Include explicit exemption from banking secrecy requirement with respect to information exchange for the purpose of sharing information with correspondent banks.

716. For the purpose of ensuring full compliance with FATF recommendation 4, it is recommended to amend Article 85 of the Banking law which defines exceptions to the banking secrecy protection to enable financial institution share information for the purpose of R7, R9 and SRVII.

3.3.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• There is no clear provision that financial institutions are authorized to share information on identification/verification information of their clients for the purpose of Recommendation 7, 9 and SR. VII. **Effectiveness** • Requirements of Data Protection Act might jeopardize information sharing as required under FATF recommendation.

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

3.4.1 Description and analysis

Recommendation 10 (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

717. At the time of adoption of the third round report, evaluators observed that there was no requirement that transaction records should be sufficient to permit a reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

718. Article 21(2) of the LPMLTF provides for a reporting entity to obtain and keep records from Article 71 – items 1 (details on customer that is a legal person), 2, 3, 4 (details of customer who is a natural person), 5, 9 (date and time of executing a transaction), 10 (amount and currency of transaction), 11 (purpose of transaction and details on beneficiary of transaction), 12 (method of executing transaction), 13 and 15. However, there is no explicit requirement in the LPMLTF to record or keep the type and identifying number of any account involved in a transaction. The Central Bank has explained that, under Article 12 of the Law on National Payment Operations,

banks are required to provide it with information on accounts, but it is has not explained what information is collected or kept.

719. Article 70 of the LPMLTF also states that a reporting entity shall keep records on business relationships and transactions (linked transactions amounting to €15,000 or more) referred to in Article 9 of the law.

720. In support of these earlier provisions, Article 83 of the LPMLTF requires that relevant records as defined in the law (including those obtained under Article 21) and related documentation shall be kept for ten years after the termination of an executed transaction. However, there is no provision allowing a competent authority to request records on transactions to be held for a period longer than ten years.

721. Articles 70, 71 and 83 of the LPMLTF require each reporting entity to keep certain records. Notwithstanding this, and as noted in paragraph 473 of the third evaluation report, there is no explicit requirement that transactions records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for a prosecution of criminal activity in accordance with the requirements of c.10.1.1.

722. In practice, the Central Bank has observed that banks, using new technology, are able to reconstruct transactions for investigating and judicial bodies.

Record Keeping of Identification Data, Files and Correspondence (c.10.2)

723. Article 70 of the LPMLTF states that a reporting entity shall keep records on customers and business relationships referred to in Article 9 of the Law.

724. In support of this earlier provision, Article 83 of the LPMLTF requires that relevant records as defined in the law (including those obtained under Articles 9 (CDD measures), 14 (establishing and verifying a customer who is a natural person), 15 (establishing and verifying the identity of a legal person), 16 (establishing and verifying the identity of a legal representative of a legal person), 17 (establishing and verifying the identity of an authorized person), 18, 19, 20 (establishment of a beneficial owner of a legal person), 22 (monitoring business activities), 23, 26, 27 and 30) and related documentation shall be kept for ten years after the termination of a business relationship. However, there is no provision allowing a competent authority to request records of identification data to be held for a period longer than ten years. Again, the Central Bank has pointed to provisions in Article 3 of the Bank Bankruptcy and Liquidation Law (see paragraph 720 above). However, the scope of this provision is necessarily limited to those banks in bankruptcy or liquidation proceedings.

725. There is not a clear requirement in the LPMLTF to require reporting entities to keep account files and business correspondence, though it has been suggested that the reference to "related documentation" (documentation that is related to CDD measures) captures such files and correspondence. The authorities have advised that a Law on Archive Business requires all legal entities in Montenegro which produce records to keep those records for an appropriate period of time, according to consent given by the State Archive Office. The State Archive Office monitors compliance with this law and provides advice as to the minimum retention period for certain categories of documentation. However, it is not clear whether the effect of this legislation is to require account files and business correspondence to be kept for at least five years following the termination of a business relationship. Nor does it seem that the requirement applies to natural persons. It is the view of the authorities that the record-keeping period would apply under the LPMLTF mainly by virtue of Article 70 and 83.

Availability of records to competent authorities in a timely manner (c.10.3)

726. Article 48 of the LPMLTF requires that a reporting entity shall provide certain data, information and documentation to the APMLTF without delay - and no later than eight days after the day of receiving a request for such information to be provided.

727. No similar provision is in place for other authorities specified in Article 86 of the LPMLTF or law enforcement authorities to ensure that all customer and transaction records and information can be made available to them on a timely basis in accordance with c.10.3. However, a combination of powers provided in other legislation, which allow competent supervisory authorities to require records and information to be provided, are considered to have the same effect. . Again, the Central Bank has pointed to provisions in Article 3 of the Bank Bankruptcy and Liquidation Law. However, the scope of this provision is necessarily limited to those banks in bankruptcy or liquidation proceedings.

728. Article 32 of the Liquidation Law provides that the liquidator nominated by the Commercial Court has all the powers and obligations of the legal entity that is being liquidated. The effect of this is that a reporting entity that is a legal person and which has been liquidated continues (through its liquidator) to maintain records for the remainder of the ten year period that applies.

729. The Central Bank advised that it considers record-keeping during on-site examinations. In 2011, it said that misdemeanour proceedings were taken against two banks for having failed to hold on to records for the necessary period. In 2012, it said that action was taken against one bank.

730. As described in paragraph 475, there is no legislation in place to permit supervision of legal entities licenced or approved by the Central Bank to execute transfers; other payment services providers that are issued approval by the Central Bank to perform foreign payment operations; branches of foreign companies managing pension funds; and legal entities and entrepreneurs which have a contract with a bank and which are registered for performing exchange operations.

731. Further, it is unclear on what basis the Agency for Telecommunication and Postal Services could access customer and transaction records and information.

Effectiveness and efficiency

732. Discussions with the private sector highlighted that, whilst there was not a legal requirement (at the time) to take copies of a person's identification document, some reporting entities believed that data protection legislation prevented copies of identification documents being taken. This follows the use of stolen photocopied documents between 2005 and 2011 to fraudulently secure loans. It was later explained that, in line with an order of the Personal Data Protection Agency, documentation may be copied and held, so long as the copy document is stamped by the bank and clearly identified as being held for the purpose of complying with the LPMLTF and cannot be used for any other purpose. The Central Bank has explained that the LPMLTF has since been revised to require a reporting entity to obtain and keep a copy of a client's identification document.

733. Whilst there is no provision allowing a competent authority to request records to be held for a period that is longer than ten years, c10.1 and c10.2 require records to be held for no more than 5 years. In practice, this mitigates the deficiency to a greater or lesser extent.

Special Recommendation VII (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

734. At the time of adoption of the third round report, evaluators observed that the requirements of Special Recommendation VII had not been incorporated into legislation.

Legal Framework

735. Article 12a places requirements on a reporting entity engaged in payment operations or money transfer services. Article 12a(5) of the LPMLTF provides that the content and type of data to be obtained, other obligations of the providers of payment operations or money transfer services, and exceptions from data gathering requirements when transferring funds that present insignificant

risk of money laundering and terrorist financing, shall be more specifically regulated by a Regulation of the Ministry.

736. In accordance with this, the Rulebook on content and type of payer's data accompanying electronic funds transfers ("Wire Transfer Rulebook") was adopted by the Minister of Finance on 27 November 2012.

Obtain Originator Information for Wire Transfers (c.VII.1)

737. Article 12a of the LPMLTF requires a reporting entity engaged in payment operations services or money transfer services (referred to as a "service provider") to obtain accurate and complete information on the originator of a wire transfer. It is understood that Article 16 of the Law on National Payment Operations obliges a reporting entity to archive documentation on executed transfer and store them for five years, and keep electronic data on executed transfers for ten years from the date of the execution of the transfer. However, these archiving requirements apply only to "performing institutions" (banks, foreign bank branches and other legal entities licensed or approved by the Central Bank to execute transfers) and do not apply to payment services providers that are issued approval by the Central Bank to perform foreign payment operations or to post offices that act as agents for Western Union. Nor does Article 83 of the LPMLTF apply to information collected under Article 12a.

738. Article 4 of the Wire Transfer Rulebook provides that a service provider shall, during the process of providing payment operations or funds transfer services, collect the following:

- the name of a legal person or name and surname of the natural person that is a sender;
- data on the head office of a legal person or address of residence of a natural person that is a sender; and
- an account number.

739. Under Article 4 of the Wire Transfer Rulebook, a service provider shall replace an account number with a unique identifier if the sender does not have an account.

740. If a service provider is not able to collect data on a sender's address, Article 4 of the Wire Transfer Rulebook permits its substitution with: the date and place of birth of a natural person; identification number of a sender; or a single identification number (which will be the registration number of a legal person, or registration/single identification number of a natural person that performs a registered business activity, or registration /single identification number of natural person that does not perform a registered business activity).

741. Article 5 of the Wire Transfer Rulebook provides that a service provider shall, before transferring funds, establish and verify the sender's identity "through insight into sender's personal documentation issued by the competent state authority". However, there is no clear overriding requirement that documentation be either reliable or independent (c.5.3).

742. In the case of transferring funds from an account, a sender's identification shall be considered to have been verified when already conducted during the process of account opening, or where the sender is an "existing customer" where data has been collected and verified under the LPMLTF. In case of a funds transfer that is not carried out from an account, the service provider shall verify data on the sender only if the amount exceeds €1,000 or a transfer is carried out through several linked transactions in the total amount exceeding €1,000. However, Article 5 of the Wire Transfer Regulations provides that a service provider shall establish and verify a sender's identity in any case (regardless of the amount and type of transaction) when there are reasons for suspicion of money laundering or terrorist financing.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2), Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3), Maintenance of Originator Information (c.VII.4)

743. Article 4 of the Wire Transfer Rulebook provides that data collected under paragraph 1 shall accompany the funds transfer through the payment chain. However, paragraph 1 does not apply to individual transfers bundled together in a batch, provided that the batch file contains accurate and complete information and individual transfers carry the sender's account number or a unique identifier.

744. Article 12a(2) of the LPMLTF requires the data collected under paragraph 1 to accompany the funds transfer through the payment chain. Article 12a(3) of the LPMLTF adds that a service provider that is an intermediary or the beneficiary shall refuse to transfer the funds unless the originator's data is complete or shall require the originator's data to be completed within the shortest time possible.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

745. Article 12a(3) of the LPMLTF provides that a service provider that is the beneficiary shall refuse to transfer the funds unless the originator's data is complete or shall require the originator's data to be completed within the shortest time possible.

746. Article 6 of the Wire Transfer Rulebook requires the recipient's service provider to detect whether all data on the sender from Article 4(1) of the Rulebook is entered into a form or message accompanying the electronic funds transfer. In line with Article 12a, it provides that the recipient's service provider shall refuse a transfer that does not contain the data on the sender from Article 4(1) or shall require from the sender's service provider to complete the sender's data within three days.

747. If the sender's service provider does not provide this data within the prescribed deadline then Article 6 of the Wire Transfer Rulebook requires the recipient's service provider to refuse to carry out the funds transfer or terminate its business relationship with the sender's service provider. However, Article 93 of the LPMLTF does not make it an offence to fail to terminate a business relationship.

748. In line with Article 6 of the Rulebook, the recipient's service provider is required to inform the APMLTF, without delay, when it considers that, due to the lack of accurate or complete data on the sender, there is a suspicion of money laundering or terrorist financing. However, Article 93 of the LPMLTF does not make it an offence to fail to make such a report. A more general reporting requirement in Article 33 of the LPMLTF that requires a reporting entity to provide data to the APMLTF without delay when there are reasonable grounds for suspicion of money laundering or terrorist financing covers this omission.

749. Article 12a(3) of the LPMLTF and Article 6 of the Wire Transfer Rulebook appear to have the effect of requiring a beneficiary service provider to identify all transfers that are not accompanied by complete originator information, as opposed to adopting risk-based procedures for identifying and handling transfers that are not accompanied by complete information on the sender.

The Central Bank expects authorised persons of reporting entities to monitor incoming transfers through SWIFT and Western Union and covers this during on-site examinations. The authorised person is also expected to review a list of persons that receive funds through Western Union. The Central Bank has explained that compliance with wire transfers provisions is considered during onsite inspections and that no deficiencies have been observed.

In support of this, one of the banks visited said that it received around 20 wire transfers each day and manually checks all of them to ensure that information is provided on the originator. However, another explained that it did not check that incoming wire transfers included the name, address and account number of the originator. Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

750. As described in paragraph 475, there is no legislation in place to permit supervision of legal entities licenced or approved by the Central Bank to execute transfers (that are not banks) or other payment services providers that are issued approval by the Central Bank to perform foreign payment operations (that are not banks).

751. Further, it is not clear what legal basis the Agency for Telecommunication and Postal Services has to monitor compliance by post offices (agents for Western Union) with Article 12a of the LPMLTF, nor what sanctions are available to deal with a failure to comply with this Article.

752. Article 93(1) items 3and 4 of the LPMLTF provides that a legal person shall be fined an amount between €2,500 and €15,000 (between €500 and €6,000 for an entrepreneur) if: it does not obtain accurate and complete information on the originator of a wire transfer and does not enter that information into the form or message related to the wire transfers (Article 12a paragraph 1 item); or it does not refuse to transfer the funds if the originator's data is not complete or does not require the data to be supplemented within the shortest time possible (Article 12a paragraph 3 item). The responsible person in a legal entity may be fined an amount between €300 and €1,000.

753. However, Article 93 of the LPMLTF does not make it an offence to fail to terminate a business relationship. Nor does it make it an offence to fail to make a report.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

754. Article 6(2) of the Wire Transfer Rulebook says that the payment service provider of the payee shall refuse to transfer funds that do not contain the data set out in Article 4(1) on the payer. This will include incoming cross border transfers below €1,000.

755. Article 12a(1) states that a reporting entity shall obtain accurate and complete information on the originator and enter it into the form or message related to the wire transfer sent. This includes outgoing cross-border wire transfers below €1,000.

Effectiveness and efficiency

756. Article 12a(3) of the LPMLTF and Article 6 of the Wire Transfer Rulebook appear to have the effect of requiring a beneficiary service provider to identify all transfers that are not accompanied by complete originator information, as opposed to adopting risk-based procedures for identifying and handling transfers that are not accompanied by complete information on the sender. If correct, it is difficult to see how such a requirement could be effectively implemented in reporting entities that receive a large numbers of wire transfers.

757. One of the banks visited said that it did not perform any checks on incoming transfers at all. It relied on other banks involved in the transfer to detect missing information.

758. At a meeting with Western Union's agent in Montenegro, it was explained that most transactions are made through Montenegro Post. No information has been provided by the Agency for Telecommunication and Postal Services about its legal basis for supervising compliance with the LPMLTF or about how it monitors implementation of requirements.

3.4.2 Recommendation and comments

Recommendation 10

759. The authorities should consider amending the LPMLTF to explicitly require the type and identifying number of any account involved in a transaction to be recorded and kept. (10.1)

760. The authorities should consider amending Article 83 of the LPMLTF to allow competent authorities to request records on transactions and identification data to be held for a period longer than ten years. (10.1 and 10.2)

761. The authorities should consider amending the LPMLTF to explicitly require transactions records to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. (10.1)

762. The authorities should consider amending the LPMLTF to make it clearer that reporting entities are required keep account files and business correspondence for at least five years following the termination of an account or business relationship. This recommendation is being made since the requirement appears to be covered, albeit in a fragmented fashion within various provisions in the LPMLTF and Law on Archive Business. (10.2)

763. The authorities should consider amending the LPMLTF to require reporting entities to ensure that, when requested under established jurisdiction, records and information can be made available to competent bodies on a timely basis. (10.3)

Special Recommendation VII

764. Record-keeping requirements in Articles 21 and 70 should extend to wire transfers regulated by Article 12a of the LPMLTF. (VII.1)

765. Identification measures required under Article 12a of the LPMLTF should include a clear reference back to Article 5, which defines customer identification. (VII.1)

766. Article 93 of the LPMLTF should include an offence for failing to make a report when a reporting entity considers that there is suspicion of money laundering or terrorist financing due to lack of accurate or complete data on the sender of a wire transfer. (VII.5)

767. Legislation should permit supervision of all organizations performing payment transactions. (VII.6)

3.4.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**C**	
SR.VII	**PC**	• Record-keeping requirements in Articles 21 and 70 do not extend to wire transfers regulated by Article 12a of the LPMLTF (VII.1); • There is no overriding requirement to verify an originator's identity using documentation that is reliable and independent (VII.1); • Legislation is not in place to permit supervision of all organizations able to perform payment transactions (VII.6); • It is not clear what legal basis the Agency for Telecommunication and Postal Services has to monitor compliance by post offices (agents for Western Union) with Article 12a of the LPMLTF, nor what sanctions are available to deal with a failure to comply with wire transfer requirements (VII.6); **Effectiveness** • The requirement to perform checks on incoming wire transfers did not appear to be understood by one of the banks visited during the onsite visit.

Unusual and Suspicious transactions

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

3.5.1 Description and analysis[38]

Recommendation 11 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

768. In the third round, R11 was rated partially compliant due to the following deficiencies:

- 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 findings 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.

769. A new provision was introduced in LPMLTF intended to address the above deficiencies.

Legal framework

770. Since the 3rd round evaluation of Montenegro the requirement to analyse all unusually large transactions which have no apparent economic or lawful purpose for reporting entities was introduced in the LPMLTF.

Special attention to complex, unusual large transactions (c.11.1)

771. Article 33a provides that a reporting entity shall analyse all unusually large transactions which have no apparent economic or visible lawful purpose. The requirement to pay special attention all complex transactions or unusual patters of transactions is not included. Paragraph 4 of Article 33a establishes that Ministry of Finance shall issue Guidelines on transactions that are considered as unusual.

Examination of complex and unusual transactions (c.11.2)

772. There are no obligations for financial institutions to examine as far as possible the background and purpose of such transactions as required under criterion 11.2 of methodology. There is also no further guidance provided to the financial sector in this regard.

773. In accordance with Article 33a, reporting entities shall determine in accordance with their own internal acts the criteria for recognizing unusual transactions.

774. Further guidance provided by SEC to capital market participants defines unusual types of transactions as transactions associated with clients who are classified into high risk categories. Relating the determination of unusual transactions with high risk category customers is a very narrow approach which limits the whole range of transactions to be examined to only those transactions which are designated as high risk.

775. The financial institutions interviewed expressed the need for further guidance regarding unusual transactions. Also, almost all financial sector representatives confirmed that it is very difficult to differentiate between unusual transactions and suspicious transactions. This can also be explained by the fact that "Rulebook on Indicators for recognizing suspicious customers and transactions" actually in many instances refers to unusual transaction types.

776. Interviews with representatives of FIs demonstrated that unusual transactions are actually reported as suspicious transactions. It was also evident that banks have more understanding of the

[38] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

notion of unusual transactions and associated obligations compared to insurance and securities sector.

Record-keeping of finding of examination (c.11.3)

777. Article 33a paragraph 3 determines that reporting entities are obliged to record in writing the analyses undertaken in accordance with paragraph 1 of Article 33a. However, this provision does not provide for the record-keeping period (5 years according to c 11.3). Also, Article 83 which generally determines record-keeping obligations of reporting entities does not refer to obligations of reporting entities to keep records provided in Article 33a for ten years after the termination of business relationship as it is required in other instances provided by the law. Due to the fact that record-keeping obligations defined under Article 83 specifically refer to documents defined in various provisions of the law, without clear reference to Article 33a, the obligations established under Article 83 are not applicable to the findings on unusual transactions. There is no obligation to make examinations of such transactions available to external auditors.

Recommendation 21 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

778. At the time of adoption of the third round report, evaluators noted that there were 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. Further, there were no enforceable requirements to examine as far as possible, the background and purpose of such business relationships and transactions, to set forth the findings of such examinations and to keep such findings available for competent authorities and auditors for at least five years.

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1)

779. Article 8 of the LPMLTF provides for guidelines on risk analysis to be issued by the competent supervisory bodies listed in Article 86, pursuant to a Regulation adopted in March 2009 by the Ministry of Finance. Reporting entities are required to prepare risk analyses of clients pursuant to these guidelines.

780. Article 2 of that Regulation (the Rulebook on developing risk analysis guidelines with a view to preventing money laundering and terrorist financing) prescribes that, inter alia, the guidelines must define "the manner of establishing client`s acceptability".

781. Article 3 of that Regulation (the Rulebook on developing risk analysis guidelines with a view to preventing money laundering and terrorist financing) requires guidelines published by competent supervisory bodies to address the risk that is present if the "country of origin" of a customer or beneficial owner of a customer is on the FATF list of non-cooperative countries. Article 3 does not define what is meant by "country of origin", though it may be argued that it covers those from, or in, such a country.

782. Guidelines published by the CBM, SEC, ISA and APMLTF under Article 8 of the LPMLTF on risk analysis all provide for a connection with a country on a list issued by the FATF to be considered to present a higher risk. The effect of this will be to require enhanced CDD to be applied under Article 24 of the LPMLTF. Section 3.2 of guidelines published by the Central Bank also prescribe that a bank shall define reasons to reject entering into business relationship with a client if the state of origin of the client or the client's beneficial owner is on the list of non-cooperative countries issued by the FATF.

783. However, the guidelines – all of which are expressed in different ways - cannot be considered to set requirements and so may not have the effect of requiring special attention to be given to business relationships and transactions with persons from, or in, countries which do not, or insufficiently apply, the FATF Recommendations.

784. Further, when establishing reasonable grounds for suspicion of money laundering or terrorist financing and other circumstances related to suspicion, Article 46 of the LPMLTF requires a reporting entity to use a list of indicators for identifying suspicious customers and transactions published in a Rulebook adopted by the Ministry of Finance. General indicators in the Rulebook refer to customers attempting or executing transactions for residents that "do not apply regulations from the prevention of money laundering and terrorist financing area". Other indicators published for specific reporting entities make similar references to customers with a connection to countries that do not apply AML/CFT standards.

785. However, the purpose of the Rulebook is to assist with recognising suspicious customers and transactions, and may not have the effect of requiring special attention to be given to business relationships and transactions with persons from, or in, countries which do not, or insufficiently apply, the FATF Recommendations.

786. The APMLTF has explained that it continually publishes and updates on its website FATF public statements on high-risk and non-cooperative jurisdictions, together with a document explaining in detail the development of AML/CFT systems in jurisdictions that do not apply, or insufficiently apply, the international AML/CFT standards. In addition, the APMLTF also translates and publishes the FATF document on improving global AML/CFT Compliance: on-going process. It does this under Article 64(1)(4) of the LPMLTF.

787. In addition, the APMLTF has explained that it sends letters to all reporting entities, informing them of the new documents published on its website and *asking* them to pay special attention to persons and transactions related to those countries that are listed as non-cooperative and to undertake the necessary measures and actions.

788. In addition, the Central Bank has explained that it advises banks that they are required to use the list of countries provided on the APMLTF or MONEYVAL websites when performing risk assessments of clients. It has not explained, however, what legal power it uses to set such a requirement.

789. Notwithstanding this explanation, one bank said that FATF public statements were distributed only by the APMLTF and another made reference only to lists produced by OFAC, the Order prohibiting transactions with Iranian institutions, and lists available on the Internet.

Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

790. There is no requirement to examine, as far as possible, the background and purpose of transactions with persons from, or in, countries which do not, or insufficiently, apply the FATF Recommendations which have no apparent economic or visible lawful purpose.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

791. No information has been provided on how counter-measures would be generally applied to reporting entities. Whereas a law on international restrictive measures is proposed, which, inter alia, could require the complete or partial suspension of economic relations with a country, this is not expressly stated as applying to countries which do not, or insufficiently, apply the FATF Recommendations.

792. The Central Bank has referred to an Order on the prohibition of performing financial transactions with the Central Bank of Iran, Iranian financial institutions and their related parties, made under the Central Bank of Montenegro Law pursuant to decisions of relevant international organisations on sanctions to Iran. It appears that this law could be used to prohibit banks performing financial transactions with institutions in countries which do not apply, or insufficiently apply, the FATF Recommendations.

Effectiveness and efficiency

Recommendation 11

793. All FI's interviewed were not clear on the concept of unusual transactions and the obligations regarding such transactions. A number of financial institutions stated that they treat unusual transactions as suspicious transactions. Many stated that there is a need for further guidance in this regard. Only one bank confirmed that they have internal guidelines for the purpose of further determination of unusual transactions.

794. Securities market participants met onsite stated that according to their understanding there are three types of transactions: unusual, questionable and suspicious. This type of determination raises further concerns regarding the ability of securities market participants to adequately determine which transactions should be subject to special examination and which transactions should not be subject to scrutiny.

Recommendation 21

795. Whilst the effect of guidelines will be to require customers connected with a country which does not or insufficiently applies the FATF Recommendations to be treated as a higher risk (with consequential effects), no directly enforceable requirements are in place to require special attention to be given to business relationships or transactions with person from, or in, countries which do not, or insufficiently, apply the FATF Recommendations.

796. Guidelines published by the competent supervisory bodies do not all make reference to "country of origin". Section 3.2.2 of guidelines published by the Central Bank refers to customers with a permanent residence (natural persons) or headquartered (legal persons) in countries which, according to the FATF are non-cooperative. Similarly, Section 6.2.2 of guidelines published by the APMLTF refers to customers with a permanent residence or registered office in a country that is not cooperative. Section 3.2.1.1 of guidelines published by the SEC do not explain what the nexus must be with a country lacking internationally recognised standards for preventing and detecting money laundering and terrorist financing.

797. On the basis of the above, it appears that an individual who is a customer originally from a non-cooperative country but who has a permanent residence in a "cooperative" country (which is used from time to time) will not be considered to present a higher risk. Similarly, a company that is established in a "cooperative" country but which trades extensively in a non-cooperative country, or whose beneficial owner is from or in a country which does not sufficiently apply the FATF Recommendations will not be considered to present a higher risk.

798. Guidelines have not been published by the Agency for Telecommunication and Postal Services.

3.5.2 **Recommendations and comments**

Recommendation 11

799. Authorities should:

- Include reference to all complex and unusual patters of transactions in Article 33a;
- Amend the provision regarding unusual transactions to ensure that FI's are required to examine as far as possible the background and purpose of such transactions.
- Amend record-keeping provision in the Law to clearly refer to the obligation of FI's to keep the records on such transactions.
- Provide further guidance to financial sector regarding the determination, analyses and examination of such transactions.

Recommendation 21

800. There should be directly enforceable requirements for reporting entities to give special attention to business relationships and transactions with persons from, or in, countries which do not apply, or insufficiently apply, the FATF Recommendations.

801. There should be enforceable requirements to examine as far as possible, the background and purpose of transactions with persons from, or in, countries which do not, or insufficiently, apply the FATF Recommendations which have no apparent economic or visible lawful purpose, to set forth in writing the findings of such examinations and to keep such findings available for competent authorities and auditors for at least five years.

802. Counter-measures should be available for application by all reporting entities to a country that continues not to apply, or insufficiently apply, the FATF Recommendations.

3.5.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• Complex and unusual patters of transactions are not covered; • No obligation for financial institutions to examine as far as possible the background and purpose of complex and unusual transactions; • Record-keeping obligations do not extend to findings on unusual transactions. **Effectiveness** • Limited and confusing guidance regarding the definition of unusual transactions and obligations related to such transactions has a direct impact on effectiveness of implementation of requirements established under recommendation 11; • FI's do not seem to differentiate obligations deriving from unusual transactions and suspicious transactions.
R.21	**NC**	• There are no directly enforceable requirements for reporting entities to give special attention to business relationships and transactions with persons from, or in, countries which do not apply, or insufficiently apply, the FATF Recommendations. • There are no enforceable requirements to examine as far as possible, the background and purpose of transactions with persons from, or in, countries which do not, or insufficiently, apply the FATF Recommendations which have no apparent economic or visible lawful purpose, to set forth in writing the findings of such examinations and to keep such findings available for competent authorities and auditors. • With the exception of banks, no information has been provided on what counter-measures could be applied to a country that continues not to apply, or insufficiently apply, the FATF Recommendations.

3.6 Suspicious transaction reports and other reporting (R. 13, and SR.IV)

3.6.1 Description and analysis[39]

[39] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

Recommendation 13 (rated PC in the 3rd round report) & Special Recommendation IV (rated LC in the 3rd round report)

Summary of 2009 MER factors underlying the rating and developments

803. In the previous 3rd round assessment report, the addressed deficiencies regarding Recommendation 13 and Special Recommendation IV were of both technical as well as effectiveness nature. The fact that the legal provision of Article 33 of the LPMLTF dealing with the reporting obligation under criterion 13.1 and IV.1 did not cover an obligation to report suspicious transactions after but only before its execution was perceived as a major deficiency by the evaluators. This observation equally applied to Special Recommendation IV. Furthermore, the Rulebook (FIU – Guidance) was not endorsed into law at that time and therefore did not constitute "other enforceable means" enabling authorities to effectively apply sanctions when breaches with the reporting requirement occurred. From an effectiveness perspective, the number of STRs was assessed as being rather low. This observation was supported by the fact that only a limited number of reporting entities reported to the APMLTF. This also applies to Special Recommendation IV, as no STRs related to the financing of terrorism were made.

Legal Framework

- The Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF)
- Rulebook on the manner of reporting cash transactions in the amount of EUR 15,000 or more and suspicious transactions to the APMLTF (FIU – Guidance)
- Rulebook on Indicators for recognizing suspicious customers and transactions (List of Indicators)
- Rulebook on the Manner of Work of the Compliance Officer, the Manner of Conducting the Internal Control, Data Keeping and Protection, Manner of Record Keeping and Employees' Professional Training Rulebook on Developing Risk Analysis Guidelines with a view to Preventing Money Laundering and Terrorist Financing.
- Rulebook on Content and Type of Payer's Data accompanying Electronic Funds Transfer.

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

804. Reporting entities are defined in Article 4 Para 2 of the LPMLTF and all reporting entities are covered adequately.

805. Pursuant to Article 33 of the LMPLTF, reporting entities are required to submit a report to the FIU without delay when there are reasonable grounds for suspicion of ML/FT related to a transaction (regardless of the amount and type) or customer, before and after the execution of the transaction. The reporting requirement thus only applies an objective test of suspicion. In those cases where the suspicion arises before the execution of a transaction, reporting entities may make an STR via telephone, stating the deadline of the expected transaction. In that case, a written STR must be filed no later than the following working day.

806. The reporting obligation is restricted to ML/FT-related transactions rather than funds that are proceeds of a criminal activity as prescribed by criteria 13.1. Therefore, the reporting obligation would not appear to arise outside the context of a transaction, such as for instance where a customer relationship has not been established yet or if an account remains inactive for a period of time. The reporting entities met on-site confirmed that STR would only be submitted when transactions of any kind were involved.

807. Article 53 of the LPMLTF requires reporting entities to use the list of indicators when establishing reasonable grounds for suspicion. The list of indicators was published by the Ministry of Finance in 2014 pursuant to Article 54 LPMLTF. Reporting entities met onsite confirmed that

they regularly consult this list before reporting an STR to the APMLTF and rely heavily upon the indicators.

808. The list of indicators is categorised according to the different type of reporting entity:

- Banks (Cash transactions, unusual changes of the accounts, behaviour of customers and employees, electronic fund transfer)
- Capital market/ Stock exchange (while opening an account, with regard to conducting the transaction)
- Customs (importer/exporter of goods, traveller/vehicle)
- Tax Administration (Cash contrary to realization, keeping records on supplies, balance sheet, methods of living costs and the method on the net value and deposits in banks, cash, receivables, liabilities to creditors and suppliers, examining turnover in the account, bad debt, travel expenses and entertainment expenses, transactions with connected persons, industry margins, high risk legal activities)
- Leasing companies (general)
- Auditors and accountants (general)
- Lawyers and notaries (general)
- Real estate trade
- General indicators

7. While the reporting requirement covers both suspicions of money laundering and terrorist financing, the list of indicators does not include indicators with regard to terrorist financing. As reporting entities rely heavily on the indicators, the absence of FT indicators may have a negative impact on reporting of FT. The authorities confirmed this particular finding of the evaluation team on-site and see it as a deficiency as well. [40]

8. Additionally, Para 6 Article 33 LPMLTF stipulates that the Ministry shall define the manner and requirements of providing data according to the reporting requirement. This has been defined in the Rulebook issued by the Ministry of Finance in 2008. [41]

809. Article 33 also covers the submission of cash transaction reports (CTRs) above the threshold of EUR 15,000 which shall be conducted in accordance with the Rulebook on the manner of reporting cash transactions. CTRs above the threshold shall be provided regardless of whether there are reasonable grounds of suspicion and no later than three days after their execution.

810. According to the authorities a large majority of CTRs are filed by using the secure electronic mail whereas STRs are generally filed in written form. The received electronic CTRs cannot be easily transferred into the FIU database but have to be typed in by APMLTF`s staff manually, as well as STRs received in written form.

811. Article 71 LPMLTF further stipulates what kind of information are to be kept by reporting entities and ultimately sent to the APMLTF accompanying the STR. In the case of CTRs above the threshold of EUR 15,000 all information according to items *1, 2, 3, 4, 5, 9, 10, 11 and 12* are to be attached to the CTR. In case of STRs all the information according to Article 71 LPMLTF are to be attached. In the case of STRs, according to item 14, the reasons for the suspicion for

[40] The evaluation team was informed after the on-site that the Ministry of Finance has adopted a new list of indicators containing specific indicators related to TF on 16 May 2014.

[41] The Ministry of Finance adopted a new Rulebook with "Official Gazette", no. 49/14 after the on-site.

money laundering have to be attached to the report as well. However, this item does not speak of the reasons for suspicion that the transaction or funds could stem from illicit proceeds.

812. With regard to criterion IV.1, the same deficiency regarding the limited scope of the reporting requirement equally applies. The reporting obligation only refers to "transactions" rather than "funds". Additionally, the TF reporting obligation does not extend to: funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1Hence, criterion IV.1 is also not fully observed.

No Reporting Threshold for STRs (c. 13.3 & c. SR.IV.2)

813. The reporting requirement applies regardless of the amount and type of the transaction. Therefore, there is no threshold for reporting STRs. It is stipulated in para 2 and 3 of Article 33 LPMLTF that STRs are to be submitted regardless of amount and type before and after executing the transaction.

814. Attempted transactions are covered fully by the reporting requirement. Firstly, Para 2 of Article 33 of the LPMLTF obliges reporting entities to make an STR before executing a transaction. This implies also that attempted transactions are covered. Hence, the reporting requirement covers planned/attempted transactions as well regardless of whether money laundering or terrorist financing in any sense are concerned.

815. However, in practice, as observed throughout all numerous meetings with the private sector, reporting entities do not feel obliged to report attempted transactions in all circumstances.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

816. The reporting requirement does not provide for exceptions regarding STRs/CTRs possibly being related to tax matters. This criterion is fully met.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

817. Article 33 LPMLTF does not provide for a requirement to report on reasonable ground of suspicion of all criminal acts. Only money laundering and terrorist financing are covered.

Effectiveness and efficiency R.13/ SR.IV

818. The reporting obligation is not fully in line with the FATF standard. Its scope is unduly limited in scope regarding the "triggers" reporting entities are obliged to report ("transactions" rather than "funds") and in relation to Recommendation 13 also on what grounds report are to be filed ("suspicion of money laundering and terrorist financing" rather than "funds that are proceeds of all offences that are required to be included as predicate offences under Recommendation 1").

819. This deficiency has become apparent during all discussions with the various representatives from all different private sectors. The reporting requirement is understood to only apply when there is a transaction involved. The same applies for attempted transactions, which are only understood in relation to an existing customer. For instance, all private sector representatives were given the same line of scenarios upon which they were to answer whether or not this would constitute a situation to be reported to the APMLTF as prescribed by the reporting obligation.

820. To showcase this, the following two scenarios, amongst many others, were presented during all discussions with the private sector:

- A new client comes to your financial institution and wants to establish a new business relationship. The client provides you with all necessary documentation and during your due diligence procedure and internal checks you notice that the client`s funds might derive from criminal activity. Would you feel obliged to report this client to the APMLTF?

- An existing client`s files are checked in accordance with internal on-going due diligence checks or in the case that access to private databases is provided for an alert on that specific client pops up. The alert leads to several newspaper articles claiming that the client is connected to criminal activity. Would you feel obliged to report this client to the APMLTF?

821. To both above mentioned scenarios the clear answer given every single time was that the questioned representatives from the reporting entities would not feel obliged to report to the APMLTF as no transactions were involved and no indication of money laundering or terrorist financing was evident. Considering the consistent low number of STRs apart from banks the evaluators see this deficiency as having a major negative impact on the reporting regime.

822. Furthermore, during two of the meetings with the authorities (when discussing other, linked Recommendations) the evaluation team was led to the observation that there might be a general misunderstanding of unusual vs. suspicious transactions.[42] One authority even indicated that banks in particular file too many STRs without any connection to money laundering or terrorist financing in the first place.

823. With this notion in mind, the evaluators explicitly asked about the distinction of unusual and suspicious transactions during all discussions with the private sector, when the confusion and non-differentiation between the two became evident. In the opinion of the evaluators this circumstance clearly has a negative impact on the effectiveness of the reporting regime, as it leads inevitably to a lower quality of STRs (i.e. defensive reporting). This outcome was also indicated by representatives of one authority on-site.

824. In addition, although the list of indicators have been proven to be a very helpful tool for the private sector to assess whether or not there are reasonable grounds for suspicion the reporting entities` heavy reliance on it inevitably has an adverse effect on reporting STRs in relation to terrorist financing, as the list of indicators does not mention any indicators for terrorist financing. This view has been shared by the authorities on-site.

825. Moreover, the manner in which financial institutions blindly apply the list of indicators may result in a situation where circumstances which give rise to a suspicion but which are not included in the list escape the attention of the reporting entity and remain unreported.

826. In general, there also seems to be confusion between the requirement to report CTRs and the one on STRs. The CTR regime (which is discussed in more detail under Recommendation 26) is not required by the FATF methodology. Therefore, it should be seen as an add-on to the STR regime. Along with that, during the private sectors meetings the evaluation team was given the impression by their representatives that their focus was much more on the CTRs rather than the STRs. In many cases the impression was given as if the STR reporting requirement was only an add-on to the CTR regime rather than the other way around.

827. As already elaborated on in the analysis with regard to the implementation of criteria 13.1-13.3, the inadequate understanding of the reporting requirement, with regard to funds, the link to criminal activity as well as attempted transactions inevitably have a negative and adverse effect on the reporting manner, the quality and ultimately also the quantity of STRs.

828. In general, Table 18 below shows the consistent under reporting of STRs from financial institutions other than banks in the last four years.

[42] The authorities explained that before 2012 there was no specific provision in the LMPLTF on unusual transactions. Unusual transaction were listed separately as an indicator for ML/TF suspicion on the list of indicators for reporting detecting suspicions of ML/TF. Therefore, up to 2012 many STRs reported actually did not contain any suspicions but rather were simply unusual.

Reporting entity	2010					2011					2012					2013				
	TOTAL STRs	Breakdown of STRs				TOTAL STRs	Breakdown of STRs				TOTAL STRs	Breakdown of STRs				TOTAL STRs	Breakdown of STRs			
		ML	FT	Other criminal offences	Attempted transactions		ML	FT	Other criminal offences	Attempted transactions		ML	FT	Other criminal offences	Attempted transactions		ML	FT	Other criminal offences	Attempted transactions
FINANCIAL INSTITUTIONS																				
Banks	63	63	/	/	/	44	44	/	/	/	103	103		/	2[43]	97	97	/	/	3
Insurance sector	1	63	/	/	/	1	1	/	/	/	/	/								
Securities sector	3	3	/	/	/	4	4	/	/	/	1	1								
Investment firms	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/					
Currency exchange	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/					
Brokers	1	1	/	/	/	/	/	/	/	/	/	/	/	/	/					
DNFBPs																				
Casinos	/	/	/	/	/	/	/	/	/	/										
Real estate agents	/	/	/	/	/	/	/	/	/	/				/	/					
Dealers in precious metals/stones	/	/	/	/	/	/	/	/	/	/				/	/					
Lawyers	/	/	/	/	/	1	1	/	/	/	1	1		/	/					
Notaries	/	/	/	/	/			/	/	/				/	/					
Accountants	/	/	/	/	/			/	/	/				/	/					
Auditors	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/					
Trust and company service providers	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/					
Other professionals	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/					

[43] Out of this number one transaction is carried out and another one is not.

OTHER REPORTING ENTITIES (if applicable)																				
Customs[44]	**15**	**15**	/	/	/	**14**	**14**	/	/	/	**5**			/	/	**5**	**5**			
Tax Administration	**2**	**2**	/	/	/			/	/	/	/			/	/					
APMLTF[45]	**25**	**25**	/	/	/	**17**	**17**	/	/	/	**2**	/	/	/	/					
Other state authorities (a judge)						**1**	**1**	/	/	/		/	/							
TOTAL	**110**	**110**				**82**	**82**	/	/	/	**109**					**112**	**112**			

829. Considering that out of the reported number of CTRs some are also recognized as STRs in the course of the APMLTF`s analysis indicates that there might be a tendency to simply report a CTR when cash transactions above the threshold of EUR 15,000 are dealt with regardless of whether there might be a suspicion of money laundering or not. The number of CTRs identified as STRs cannot be compared between the years 2010-2011 and 2012-2013 as those CTRs than have been identified as STRs by the APMLTF were directly shown in the statistics as STRs by financial institutions. Therefore, one cannot safely say how many CTRs should have been in fact reported as STRs after 2011.

830. Subsequently, after the on-site visit the assessment team was provided with new statistics on the number of CTRs that have been recognised by the APMLTF as STRs and consequently should have been reported as STRs in the first place. As can be seen from these numbers, the two sets of statistic do not add up in that the amounts of such CTRs differ considerably. In Table 18, the numbers indicated in the category "APMLTF" should actually reflect the below mentioned CTRs recognised as STRs, which is not the case.

Table 19 CTRs recognized as STRs by FIU

Year	No. of CTRs in total	No. of CTRs recognized as STRs by FIU
2009	39.334	n/a
2010	38.612	44
2011	36.851	78
2012	38.901	37
2013	43.854	53

[44] Competent state authorities also provide reports on suspicious transactions recorded within their scope of work

[45] This number refers to the STR recognized by APMLTF that are designated as suspicious transactions based on regular reports delivered by banks

831. Having noted that, it seems impossible for the evaluators to conclude how many STRs have actually been filed by reporting entities and how many of those STRs that show up in the statistics as having been reported by reporting entities have actually been reported as CTRs and only later recognised as STRs by the APMLTF.

832. Also considering that the APMLTF is not in a position to analyse the majority of received CTRs, with regards to their link to a suspicion to money laundering and terrorist financing the actual number of unrecognised STRs that should have been filed as such by financial institutions and reporting entities in general could be much higher.

833. The statistics show clearly that financial institutions other than banks report STRs very occasionally. This might be explained in certain instances, such as the insurance sector with its very marginal life sector. However, all the above mentioned deficiencies combined with the inadequate understanding of the reporting requirement (i.e. attempted transactions) certainly add a negative and adverse impact on the effectiveness of system.

834. After the on-site visit, the assessment team was provided with the following Table 20 depicting the number of STRs as well as CTRs sent by banks. Although the authorities did not provide for the percentage of market shares of the individual banks in order to compare whether the five largest banks also contribute mostly to the STR/CTR statistic one might think of taking the number of submitted CTRs as an indicator of the size of the bank, considering the fact that the Montenegrin economy is predominantly cash-based. Interestingly then, the bank that files the second largest amount of STRs has filed, during the same period, only a very marginal number of CTRs, indicating that this bank must be rather small. Whereas, the bank that has filed most STRs has also filed around one quarter of all CTRs and must therefore be considered as a large bank.

835. Adding up the number of CTRs filed by the five banks that have reported the most number of STRs results in app. 22,000 CTRs, which equals around fifty percent of all CTRs filed and around sixty-three percent of all CTRs filed by banks (total around 35,000 in 2013). Hence, one can clearly see from this statistic that the remaining six banks out of the total licenced eleven banks in Montenegro that are responsible for app. 13,000 CTRs per year file a rather marginal number of STRs, if any. Therefore, there seems to be disproportionate STR-reporting within the banking sector, possibly deriving from an uneven understanding of the reporting requirement.

Table 20 The number of STRs as well as CTRs sent by banks

Banks	**No. of STRs per average per year**	**No. of CTRs per average per year**	**Size of the bank by market share**
Bank No. 1	21	11,201	n/a
Bank No. 2	17	875	n/a
Bank No. 3	12	3,969	n/a
Bank No. 4	11	1,886	n/a
Bank No. 5	9	3,968	n/a
Total	70	21,899	n/a

% of total CTRs filed by banks	63%	n/a

836. In conclusion, the authorities were not in a position to explain the general reporting grounds that apply when an STR is filed, i.e. because of internal compliance checks, media reports about clients, investigations conducted against clients, MLA requests concerning clients, warnings issued by the supervisory bodies due to omission of reporting etc. Therefore, the evaluation team was not in a position to draw a conclusion on this particular issue.

3.6.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

837. Authorities should:

- Amend current Article 33 LPMLTF to refer to "funds" rather than "transactions"
- Amend current Article 33 LPMLTF to refer to "criminal activity" rather than only to "suspicions for money laundering or terrorist financing"
- Amend TF reporting obligation to refer to funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1;
- Analogously amend the FIU-Guideline as well as the list of indicators to reflect these amendments in due manner
- Further stipulate in Article 33 LPMLTF how attempted transactions are covered
- Introduce a mechanism of regular awareness raising and training regarding the reporting requirement provided to reporting entities (dealing also with the clear distinction between unusual and suspicious transactions, as well as CTRs and STRs), especially with the non-banking sectors
- Explore why some larger banks file a relatively small amount of STRs in comparison to others
- Expand the list of indicators to include indicators related to terrorist financing
- Consider deleting Article 45 LPMLTF in order to ascertain that reporting entities do not only rely on the list of indicators (which could then only be considered as guidance rather than "law")
- Introduce a clear provision which covers sanctions in cases of non-reporting

3.6.3 Compliance with Recommendations 13 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF and AML/CFT supervision if lawfully conducted in Montenegro; • The reporting requirement only refers to "transactions" rather than funds; • The reporting requirement only refers to "suspicion of money laundering or terrorist financing" rather than " suspicions of funds

		that are the proceeds of a criminal activity" ; • TF reporting obligation does not cover funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism*. **Effectiveness** Several effectiveness issues due to • (1) The low number of STRs filed apart from banks, (2) the disproportionate reporting of STRs throughout the banking sector, (3) the inadequate understanding of the reporting requirement throughout all financial sectors, (4) the number of CTRs identified as STRs by the APMLTF that should have been reported as STRs, (5) quality of STRs called into question; • Attempted transactions are not reported in all circumstances, although technically covered.
SR.IV	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF and AML/CFT supervision if lawfully conducted in Montenegro; • Deficiencies in SR. II apply (in relation to predicate offences); • The reporting requirement only refers to "transactions" rather than funds; • TF reporting obligation does not cover funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism*. **Effectiveness** • Heavy reliance on indicators and non-existence of TF indicators adds to non-reporting on TF; • Attempted transactions would not be reported in all circumstances, although technically covered.

Regulation, supervision, guidance, monitoring and sanctions

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

3.7.1 Description and analysis

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

838. At the time of adoption of the third round report, evaluators noted that although the main supervisory system elements were in place, the "recent establishment" of the SEC (in 2004) and the ISA (in 2007) did not allow them to reach a conclusion as to their effectiveness.

Regulation and Supervision of Financial Institutions (c. 23.1), Designation of Competent Authority (c. 23.2)

Designation

839. Article 86 of the LPMLTF provides for supervision of implementation of the Law and regulations made thereunder to be carried out by:

- the Central Bank in relation to banks (including foreign banks' branches), other financial institutions, savings banks, savings and loan institutions, organisations performing payment transactions, exchange offices and institutions issuing electronic money;
- the SEC in relation to companies managing investment funds (and foreign companies' branches), companies for managing pension funds (and foreign companies' branches), and stockbrokers (and foreign companies' branches);
- the ISA in relation to insurance companies dealing with life assurance (and foreign companies' branches), insurance intermediaries and companies providing services in respect of the activities of insurance agents when they act in respect of life assurance;
- the Agency for Telecommunication and Postal Services in relation to post offices; and
- The APMLTF in relation to others engaged in the business of activities listed in Article 4(1) item 15.

840. It is understood that each of the above authorities is to supervise on the basis of "established jurisdiction". In the case of the Central Bank this will be the Banking Law. In the case of the SEC, this will be the Law on Investment Funds, Law on Voluntary Pension Funds, Securities Law and other rules listed below. In the case of the ISA, this will be the Insurance Law. In the case of the APMLTF this will be the Law on Inspection Supervision. In the case of post offices, it seems that this will be the Postal Services Act, but this does not appear to provide an adequate basis for supervising compliance by sub-agents of Western Union with the LPMLTF. The SEC also supervises under: Rules on detailed conditions, manner and procedure of supervision of the company for management of investment funds and funds in transformation; Rules on detailed requirements, manner and procedure of supervision over functioning of pension fund companies and voluntary pension funds; and Rules on supervision of securities operations.

841. Details of the above laws are provided in paragraphs 547, 550 and 553 of the third evaluation report.

842. However, as noted in paragraphs 470 to 473 above (and further expanded in paragraphs 932 to 9467 below), the legal basis for regulating and supervising reporting entities under the above laws and rules is not fully comprehensive. Further, the Agency for Telecommunication and Postal Services has not sought to exercise any supervision of post offices for compliance with the LPMLTF.

Central Bank

843. The Central Bank plans to cover the AML/CFT compliance of each bank annually (though it did not do so in 2013). Priority is given to banks that have not been visited in the past 12 months and that have the highest and lowest number of STRs, and for which the Central Bank has recorded the highest number of breaches in earlier visits.

844. In order to assist with preparation for supervisory examinations, the Central Bank requests banks to provide certain information and documents in advance. The Central Bank provided evaluators with a summary of information and documents requested ahead of a visit, which covers all elements of preventive measures, e.g. internal documents analysing risk, minutes of board meetings, a summary of clients sorted by risk, copies of STRs, reports on cash transactions, policies and procedures for keeping records, and records of training and education. On visits, Central Bank staff follows a set of examination procedures which, inter alia, require the performance of the compliance officer and adequacy of the compliance programme to be considered, customer identification files

and transactions to be tested, and counter staff interviewed to evaluate their knowledge of the LPMLTF and reporting of suspicious transactions.

845. Three banks were asked about on-site examinations. All confirmed that such examinations were regular and comprehensive and two advised that the visit report had made recommendations for action to be taken.

846. The Central Bank explained that it does not supervise microcredit financial institutions directly. Instead, it checks that each institution holds an account with a bank and then tests the application of identification measures to customers of the institution as part of its on-site examination of the bank.

Securities and Exchange Commission

847. The Commission adopts a general inspection plan each year with the aim of a "rational and cost-effective management of resources (human and material), and achievement of productive results and recognition of certain topics for examinations, based on the risks that may arise in the development of the overall market, and securities market in particular".

848. The Commission has explained that special attention was given during visits in 2013 to the following areas: identifying the authorised person (compliance officer); client identification process; recognition of PEPs; number of STRs; criteria for identifying unusual transactions and level of such transactions; record-keeping; training of staff; and purchase and sale of liquid securities within a short period of time. In 2013, four (out of five) investment fund management companies, all (two) pension fund management companies, and all (eleven) stockbrokers were visited on-site (general supervision combined with AML/CFT). On the basis of these visits, the Commission has concluded that reporting entities have implemented guidelines for risk analysis, adopted internal documents on risk analysis and implemented a professional training programme. Whilst the Commission may be right, it is surprising to note that the securities sector has submitted just eight STRs between 2010 and 2013 (none in 2013).

849. A copy of the Commission's on-site AML/CFT examination plan for 2014 was also provided which is to cover all investment fund management companies, pension fund management companies, and all stockbrokers at least once during the year. The plan also covers the CDA, stock exchange and banks carrying on custody operations and depository operations, notwithstanding the fact that the Commission has no mandate to supervise custody banks under the LPMLTF[46].

850. On visits, employees of the SEC follow an inspection guide (adopted in April 2011). The guide describes inspection principles, as well as a standard methodology for planning, management, enforcement, recording and reporting on the AML/CFT inspection progress. Inter alia, it explains that inspection programmes should take account of risk, consider the quality of management and the decision-making in the reporting entity, assess the nature and degree of risk analysis in the reporting entity, evaluate the risk classification system used, and evaluate systems for monitoring. With the benefit of such a useful guide and comprehensive visit programme, it is perhaps surprising that just one AML/CFT infringement has been identified (in 2012) since the guide was adopted and it may be that, in practice, the focus of on-site examinations is overly focussed on conduct of business matters.

851. The one stockbroker met by evaluators confirmed that it had been visited by the Commission twice in the preceding three month period. Visits were described as comprehensive and recommendations for action to be taken had been made.

852. In 2010, the Commission adopted a decision whereby stock-brokers (and other authorised participants) are required to periodically report to it details of reports made under Article 33 of the LPMLTF (STRs and currency reports). The Commission has explained that periodic reporting for prudential and conduct of business matters also cover AML/CFT

[46] The SEC no longer supervises banks carrying on custody operations.

Insurance Supervision Agency

853. The ISA has supervised insurance companies for compliance with the LPMLTF since April 2011 and agents and brokers since April 2012. The Agency explained to evaluators that on-site examinations in 2012 and 2013 had focussed on AML/CFT policies and procedures, and, on the basis of these visits, it considers that there is a high level of AML/CFT awareness in the insurance sector. Such a view is certainly supported by the low number of infringements (four) identified in examinations to date, though this might also reflect the particular focus of visits and relative infancy of supervision in the sector.

854. A copy of the Agency's monthly plan for 2014 was also provided which is to cover two insurance companies (out of six) and one broker (out of eight agents and brokers offering life insurance). All will consider AML/CFT activities and practice (including, where appropriate, a review of recommendations made in earlier assessments).

855. The size and risks associated with the sector and relatively recent extension of supervision are likely to account for the low number of STRs by the insurance sector (just two STRs since 2010).

Agency for Telecommunication and Postal Services

856. No information has been provided on supervision by the Agency for Telecommunication and Postal Services of post offices that are sub-agents in Montenegro of Western Union.

APMLTF

857. The chief inspector of the Reporting Entities Control Department of the APMLTF selects the reporting entities to be examined based on "those where the greatest effects in the control are expected" (understood to be a risk-based approach). He does so in cooperation with heads of other APMLTF departments. Data held by the APMLTF and in national databases, and information provided by other authorities (domestic and overseas) is referred to in this selection process. Visits may also be carried out at the request of other departments in the APMLTF and other state authorities. Amongst other things, the chief inspector will take account of a reporting entity's business activity, turnover, transaction levels, date of foundation, customer base, and location when setting the Department's on-site examination programme. The APMLTF's supervisory approach is set out in a procedure for processing cases. It is understood that each on-site examination includes a detailed review of transactions over all of a reporting entity's bank accounts (considering the purpose of particular transactions and source of funds), and an assessment of compliance with particular aspects of the LPMLTF.

858. As well as being responsible for the oversight of a limited number of "financial institutions" (those engaged in factoring or leasing), real estate operators (928), dealers in precious metal (60), construction companies (286), travel agents (526), and car dealers (250), the APMLTF is also responsible for the oversight of a large number of non-government organisations.

859. Article 86(2) of the LPMLTF requires each competent supervisory body to inform and consult with the APMLTF (the competent administrative body) on planned supervisory activities ahead of an on-site examination. In addition, the authorities have explained that the APMLTF also coordinates training across the competent supervisory bodies, and that meetings are held at least every six months between competent supervisory bodies in order to discuss findings and emerging patterns.

860. Article 89 also requires competent supervisory bodies to inform the APMLTF of measures taken subsequently to examinations (within eight days of taking measures) and the APMLTF is required to keep details of those measures.

Guidelines

861. In line with the LPMLTF, each supervisor is required to publish guidelines covering risk analysis (under Article 8) and PEPs (under Article 27). Guidelines have been published by the CBM, SEC, ISA and the APMLTF, but not the Agency for Telecommunication and Postal Services.

Recommendation 30 (all supervisory authorities) (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

862. At the time of adoption of the third round report, evaluators noted that the APMLTF was not staffed sufficiently to supervise the very large number of reporting entities that it is charged with overseeing. It was noted also that many of the relevant bodies were still in the process of recruiting and establishing operating practices, and that training needed to be enhanced at the APMLTF and for reporting entities to increase awareness and understanding of money laundering and terrorist financing schemes which may be used.

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

Central Bank

863. The Central Bank of Montenegro Law establishes the Central Bank as an independent body.

864. Article 7 of the Central Bank of Montenegro Law sets out that the Central Bank shall be independent in pursuing its objectives and statutory functions. The Central Bank, members of its bodies and employees may not receive or seek any instruction from government. Similarly, the State may not exert any influence on the performance and decision-making of members of Central Bank bodies. At Government's request, the Central Bank must submit data and information to government necessary for the achievement of the Central Bank's objectives, but not data or information on entities subject to Central Bank supervision.

865. Article 39 of the Central Bank of Montenegro Law requires the Central Bank to submit as needed, but at least annually, and by 30 April each year, a report to parliament on its operations.

866. In line with Articles 46 to 50 of the Central Bank of Montenegro Law, the Central Bank is governed by the Council of the Central Bank and managed by the Governor of the Central Bank. The Council consists of seven members, including the Governor and two Vice-Governors. All members are appointed by parliament for a period of six years and may not serve more than two terms. The appointment of the Governor is proposed by the country's President, appointment of Vice-Governors proposed by the Governor, and appointment of other members proposed by the working body of parliament responsible for financial affairs.

867. In line with Article 51 of the Central Bank of Montenegro Law, a member of the Council must hold a degree, have a recognised professional reputation and have professional experience in economics, banking, finance or law. A member of the Council may not be a member of a political organisation, a member of parliament, a member of the government, or other person designated by parliament or the government. A Council member may not be a member of a body, employee or external associate of a bank, financial institution or other legal person subject to supervision of the Central Bank. Other restrictions are also set out in this Article.

868. Article 52 of the Central Bank of Montenegro Law provides that a Council member should not put personal interests or interests of related parties before those of the Central Bank. Members are required to disclose conflicts to the Council.

869. A member of the Council may be relieved of duty before the expiry of his or her term of office only in cases set out in Article 53 of the Central Bank of Montenegro Law (which sets a high threshold). In such a case, the Council by majority vote shall establish the fulfilment of conditions and immediately request parliament to relieve the member of his or her duty. If parliament has sufficient reason to believe that the Council has failed to determine the existence of conditions for relieving of duty of the Council member, it is required to appoint a commission to consider the matter.

870. A Council member may seek protection before the competent court within 30 days of being relieved of duty.

871. Central Bank activities are funded by fees for issuing licences and granting approvals and based on its supervisory functions. Fees are based on tariffs. The Central Bank may build up a general reserve, but the "remaining distributable profit" becomes part of the State budget. At the end of 2013, reserves stood at €18,116,197. In the period 2008 to 2013, the Central Bank did not record any deficit (excess of expenditure over income).

872. The total number of staff employed by the Central Bank at the end of 2013 was 335, of which 49 are employed in the Banking Supervision Department. This department, in turn, is organised into a number of directorates and divisions, including the division for compliance supervision. This division employs four individuals, all of whom have university degrees and at least 5 years' relevant experience in AML/CFT oversight. Around 90% of the division's time is spent on AML/CFT supervision. The Central Bank oversees 17 reporting entities comprising: 11 banks and 6 microcredit financial institutions.

873. A Rulebook on Internal Organisation and Systematisation (December 2010) sets out in detail the organisational structure of the Central Bank. Inter alia, a Rulebook on the Systemisation of Jobs at the Central Bank (January 2011) provides job descriptions, agrees the number of positions to be filled, covers training and education and performance appraisal.

874. In meetings with the Central Bank, it stated that it had sufficient resources available to it to supervise banks and microcredit financial institutions. It noted, however, that it had cancelled one on-site examination in 2013 following a request from the APMLTF to collect information on a number of transactions made by a particular bank.

875. Details of training provided to Central Bank employees suggest that AML/CFT training is not offered widely within the Central Bank. All of the training provided between 2008 and 2013 was attended by just one or two employees and the amount spent on training compliance department staff in 2013 was €696. Though it is understood that the Central Bank has an education plan, a copy of this plan has not been provided to evaluators.

876. Within the Central Bank, criminal record checks are not routinely performed at the time of employment of staff. However, all employees in the Central Bank sign an Ethical Code under which they are obliged to apply high professional standards, including standards related to keeping "business secrets". The Code also covers the rights and obligations of staff, how staff deal with banks, the prevention of bribery, conflicts of interest and dress code.

877. In addition, Article 84 of the Central Bank of Montenegro Law provides that members of the Council and employees shall be obliged to keep confidential the information and data which are considered "secret" (except where legislation provides otherwise) under the Law on Classified Information. Obligations survive termination of employment. Article 12 of the Law on Classified Information explains that a "secret" classification shall be given to information the disclosure of which could seriously harm the security or interests of Montenegro, a "confidential" classification shall be given to information the disclosure of which could harm the security or interests of Montenegro, and a "restricted" classification shall be given to information the disclosure of which could harm the performance of tasks of the Central Bank. Article 15 of the Law on Classified Information states that the Governor of the Central Bank, or delegate, can decide on the level of classification of information. In practice, Article 2 of an internal rulebook explains that information held by the Central Bank is to be considered to be "confidential".

878. Articles 171 and 280 of the Criminal Code also apply to employees of the Central Bank. Article 171(1) provides that a person who discloses, without authorisation, a "secret" that has come to his knowledge while preforming professional duties shall be punished by a fine or a prison term of up to one year. Article 280 provides that anyone that hands over, or otherwise makes accessible, to another person data classified as a "business secret" shall be punished by a prison term between three months and five years, where done without authorisation. A business secret is considered to include data and documents which were classified as such by a law, or a

regulation or decision issued by a competent authority on the basis of a law (i.e. the Law on Classified Information), and revealing of which would or could cause harmful effects to the business entity or other business enterprise.

879. Central Bank employees are not considered to be civil servants and their rights and obligations arise out of the Labour Law. Otherwise, Article 87 of the Central Bank of Montenegro Law provides that employees of the Central Bank may not perform any activity for another employer, except with the approval of the Governor (provided that it is not contrary to the interests of the Central Bank). Employees may not be guided in their work by political affiliations.

Securities and Exchange Commission

880. The Securities Law establishes the SEC for the purpose of regulating and supervising the issue of any trade in securities.

881. Article 7 of the Securities Law states that the Commission shall be independent and autonomous in the conduct of its activities and shall report to the Parliament.

882. Article 11 of the Securities Law provides that the Commission shall consist of five members: the chairman, the deputy chairman and three members. Each shall be appointed by the Parliament from persons nominated by Government and must have a university education, professional experience of five years or more in law, monetary, economic, or financial systems areas, and must have recognised standing. Inter alia, none of the following are eligible for appointment: persons elected, nominated or employed in government bodies, and shareholders and employees of licensees. Members of the Council are required to behave in a way that does not jeopardise their independence and impartiality.

883. Article 12 of the Securities Law provides that members of the Commission shall be appointed for a term of five years and may be reappointed. Office shall be vacated if a member performs his duties in a negligent and inefficient manner, is incapable of performing his duties, is convicted of an offence (with an unconditional custodial sentence) that makes him unworthy of his position, or is absent from three consecutive meetings. The SEC has explained that Parliament would also terminate the appointment of a member of the Commission in the circumstances prescribed in Article 12.

884. Members of the Commission are required under Article 15 of the Law Securities to comply with the highest professional standards and act in accordance with the Code of Ethics established by the Commission, in order to avoid possible conflicts of interest.

885. Under Article 23 of the Securities Law, the Commission shall, not later than six months after the end of each financial year, prepare a report on its activities and situation of the securities market and submit it to Parliament and to the Government.

886. The Commission is funded by fees and charges that are prescribed by the Commission. In line with Article 20 of the Securities Law, revenues exceeding expenditure are transferred to the State budget and it is not possible for a general reserve to be built up. Notwithstanding this, reserves and capital stood at €1,890,080 at the end of 2013. Deficits (excess of income over expenditure) were recorded in 2008 (€58,541) and 2012 (€452,196). In line with Article 124a of the Securities Law, this arrangement (in effect from 1 January 2013) will apply only until 1 January 2016.

887. Rules on internal organisation and systemisation provide for 42 employees, and 31 staff are in post (including the chairman, deputy chairman, and commissioners). Employees are divided into six departments, including the capital market department (eight staff) and investment and pension funds department (five staff) whose responsibilities include AML/CFT oversight. Most staff holds university degrees, but it is not clear what relevant experience they hold in AML/CFT matters. At the time of the on-site visit, the Commission was responsible for the oversight of 27

reporting entities, consisting of: eleven brokers; seven managers of investment and pension funds; and nine custodian/ depository banks[47].

888. Regulations on Internal Organisation and Systemisation define the internal organisation of the Commission, framework of each unit, and covers job descriptions and qualifications.

889. The Commission has provided details of AML/CFT training delivered to staff in recent years. This includes:

- Training undertaken within the twinning project financed by the European Commission with De Nederlandsche Bank and the Bulgarian National Bank: strengthening regulatory and supervisory capabilities of financial regulators in Montenegro (2010 to 2011) – unspecified number involved; and
- A workshop organised by the OSCE and APMLTF in March 2013 to allow regulators to get acquainted with regional and European regulators' practices and procedures related to the prevention of ML and TF, attended by five employees.

890. In addition, a one-day training seminar was run by the Commission and APMLTF in March 2013 to improve compliance with the LPMLTF which was attended by most employees of the Commission and a large number of participants in the securities market.

891. Also, in cooperation with the Administration for Human Resources, employees (including new starters) participate in wider training, including administrative-judicial proceedings, misdemeanour proceedings and examinations.

892. The 2014 training plan (adopted in September 2013) identifies the topics to be covered in that training, the number of participants, and delivery deadlines. The training plan envisages mandatory training. €11,000 has been set aside for education and training (including AML/CFT).

893. Article 11 of the Regulations on Internal Organisation and Systemisation states that employees cannot have been convicted of an inappropriate crime and rules are in place on the selection and admission of candidates.

894. Commission employees are not considered to be civil servants and their rights and obligations arise out of the Labour Law. In 2011, the Commission adopted a Code of Ethics that sets out standards and professional behaviour expected of staff employed within each unit of the authority (which is published on the Commission's website). In addition, the Commission has signed a MOU with the Commission for Prevention of Conflict of Interest, in order to facilitate the exchange of information about public officials.

895. Article 18 of the Securities Law states that members, former members, employees or former employees of the Commission shall be obliged to keep information obtained during their work in the Commission as a "business secret", except where otherwise provided in a "legal document" of the Commission.

896. Articles 171 and 280 of the Criminal Code also apply to employees of the Commission. Please refer to the explanation provided in this section for the Central Bank.

Insurance Supervision Agency

897. The Insurance Law establishes the ISA.

898. Article 176 of the Insurance Law states that the Agency shall be independent in carrying out activities within its scope of work.

[47] The SEC no longer supervises banks carrying on custody operations. It is now also responsible for oversight of the stock market and central depository.

899. In line with Article 180 of the Insurance Law, the Agency must have a Council and a Director. The President and members of the Council are appointed for a period of five years and may be reappointed (without limit). The Council shall consist of a president and two members all of whom shall be appointed and dismissed by the Parliament. The President and one member of the Council shall be appointed on the basis of a proposal of the working body of the parliament competent for elections and appointments. The other Council member shall be proposed by the Government. Article 180 also provides that the Council shall be responsible for its work to Parliament.

900. Under Article 181 of the Insurance Law, a person to be appointed as President or a member of the Council must hold a university degree, have at least three years professional experience in the field of insurance, law or economics and must not have been a member of a management body of a legal entity in liquidation or bankruptcy. Inter alia, a person cannot be appointed as a member of the Council under Article 182 where he or she is a Member of Parliament or member of a municipal assembly, elected, appointed to or employed in the Government, an official in a political party, has been convicted for certain criminal offences, or has a defined interest in a supervised person.

901. Article 184 of the Insurance Law provides that a member of the Council may be dismissed prior to the end of a term of office "due to permanent loss of working capacity to discharge the office", if certain circumstances occur, or in the event of violation of the requirement to keep data confidential. The "threshold" for dismissal is lower than for the Central Bank.

902. Under Article 187 of the Insurance Law, the Agency's Director shall be appointed by the Council of the Agency based on public competition for a four year period.

903. Article 193 of the Insurance Law provides for reports and statements on conditions of the insurance market and the annual work plan and report on Agency activities to be submitted to Parliament for adoption.

904. The Commission is financed by licence-holders and no deficit has been recorded since 2008 (when the Agency started to regulate). Under Article 190 of the Insurance Law, any excess of revenue over expenditure becomes the revenue of the State and it is not possible for a general reserve to be built up. In 2013, €46,000 was transferred to the state. In line with Article 210a, this arrangement (in effect from 1 January 2013) will apply only until 1 January 2016.

905. A total of 20 staff are employed by the Agency, the majority of which are economists or lawyers. Three Deputy Directors head departments in the Agency and report to the Director. There are departments for insurance market supervision (9 employees), research, cooperation and development (6 employees), and regulation, licensing and common affairs (5 employees). All employees of the department for insurance market supervision may be involved in AML/CFT oversight and it is not clear what relevant experience they hold in AML/CFT matters.

906. The Agency oversees 14 reporting entities for AML/CFT purposes comprising: six life insurance companies, six agency companies and two brokerage companies.

907. Training was provided to staff on two separate occasions in 2013:

- In March, two members of staff attended a two day workshop in Budva organised by the OSCE and APMLTF to allow regulators to get acquainted with regional and European regulators' practices and procedures related to the prevention of ML and TF; and
- In November, one member of staff attended a day-long training session held in Belgrade covering general AML/CFT compliance and recognition of suspicious transactions.

908. In earlier years (except 2012 when there was no AML/CFT training), training was provided to similar numbers of staff on AML/CFT requirements, supervisory practice and increasing public awareness.

909. Details of training provided to Agency employees suggest that all supervision staff have not received AML/CFT training: six members of staff had received training between 2010 and 2013[48]. The Agency has explained that most of the cost of the AML/CFT training provided has been covered by overseas bodies as part of technical assistance.

910. Inter alia, all employees must have a university degree, have passed a public official examination, have a clean record for convictions that would make a person unsuitable for employment, and have previous work experience.

911. Under the Agency's Statute, Codes of Ethics that are applicable to civil servants also apply to Agency employees. Employees are also required to comply with rules on personal data protection. At the time that an employment agreement is signed, a person must also sign a statement on keeping professional secrets. Rules on data protection establish an on-going obligation to keep professional secrets after termination of employment.

912. In addition, the President and members of the Council, Director and employees are obliged under Article 189 of the Insurance Law to keep as confidential data on persons over which the Agency exercises supervision, as well as other data in accordance with the Insurance Law and the Agency's Statute (except for data which is disclosed according to the provisions of the Insurance Law and which is available for review by interested parties). Confidential data is considered to be, inter alia, data from the supervision procedure and data on imposed supervision measures under the Insurance Law. However, confidentiality continues only for a period of three years after a person terminates employment with the Agency.

913. Articles 171 and 280 of the Criminal Code also apply to employees of the Agency. Please refer to the explanation provided in this section for the Central Bank.

914. Agency employees are not considered to be civil servants and their rights and obligations arise out of the Labour Law, other relevant regulations and rules, regulations and procedures established by the Agency. Basic provisions are also established by Articles 20 and 21 of the Agency's Statute.

Agency for Telecommunication and Postal Services

915. The Agency for Telecommunication and Postal Services derives its powers from the Postal Services Act.

916. The regulator employs two members of staff. The Agency is required to oversee the activities of Western Union that are carried on through post offices, as well as payment facilities provided through an agency agreement with a bank (supervised by the Central Bank), bill payment facilities (on behalf of national utility companies), and pension payment facilities (as agent for the Government).

917. It is understood that the regulator's manager has participated in training provided by the Central Bank and APMLTF, but no additional information has been provided.

918. Articles 171 and 280 of the Criminal Code also apply to employees of the Agency. Please refer to the explanation provided in this section for the Central Bank.

919. No further information has been provided.

APMLTF

920. The APMLTF is established under Article 28 of the Decree on state administration organization and manner of work as an "independent administration body". Article 30 states that the APMLTF shall conduct administrative affairs with regard to detecting and preventing money

[48] In 2014, training on the application of AML/CFT procedures in life insurance business was attended by 5 employees. As a result, 11 members of staff have now participated in AML/CFT training.

laundering and terrorist financing, including supervision over the enforcement of the LPMLTF within the scope of the competences set out. Otherwise, the Decree does not explain the relationship between the APMLTF, Government, and Parliament (including accountability arrangements).

921. The appointment of officers is regulated by the Law on Civil Servants and State Employees. Further information may be found above in Section 2.5.1 (c.26.6).

922. Government funding for the APMLTF has fallen, in line with government departments. Further information may be found above in Section 2.5.1 (c.30.1).

923. In June 2013, a new "Rulebook on internal organisation and systematisation" was adopted for the APMLTF. The APMLTF now consists of three "sectors": (i) Sector for Analytical Affairs and Reporting Entities Control; (ii) Sector for National and International Cooperation; and (iii) Sector for Prevention, Integration and Information. In addition, there is a Unit for General Affairs, Finance and IT. There are five staff in the Reporting Entities Control Department: a head of department (chief inspector) and four inspectors, all of which hold university degrees. The chief inspector reports to the Director of the APMLTF and Director's Assistant.

924. As explained at paragraph 859, the APMLTF is responsible for overseeing a large number of entities.

925. The APMLTF has a small budget for training, and is able to rely on funding from external bodies such as TAIEX. Details of training provided to employees suggest that AML/CFT training tends to be focussed on the APMLTF's activities as a financial intelligence unit, rather than supervisor. Nevertheless, the APMLTF has identified seven separate occasions on which training has been provided to staff in the Reporting Entities Control Department since 2009, relevant to their oversight responsibilities. On the basis of the information provided, it has not been possible for assessors to determine how widely training has been provided to supervisory staff in the Reporting Entities Control Department.

926. Article 32 of the Law on Civil Servants and State Employees provides that a person may enter employment if, inter alia, they hold required qualifications, have not been convicted of a criminal offence making them unworthy to work, or are the subject of pending criminal proceedings. The APMLTF has explained that, as part of the process of applying for any position, candidates are required to provide a court certificate stating that he/ she is not subject to criminal proceedings.

927. A number of other provisions in the Law on Civil Servants and State Employees address the maintenance of high professional standards. See section 2.5.1 (c.30.2).

928. For protection of information held by the APMLTF see section 2.5.1 (c.26.7).

929. Articles 171 and 280 of the Criminal Code also apply to employees of the APMLTF. Please refer to the explanation provided in this section for the Central Bank.

Commission for Prevention of Conflicts of Interest

930. The Commission for Prevention of Conflict of Interest exists to ensure impartiality in the exercise of public office, raise levels of trust, spread a democratic political culture, encourage adherence to ethical norms and codes of conduct. It is understood that all decisions on the existence of conflicts of interest are published on its website (and in the media).

Authorities' powers and sanctions

Recommendation 29 (rated C in the 3rd round report)

Summary of 2009 factors underlying the rating

931. At the time of adoption of the third round report, evaluators noted that powers of the CBM, SEC and ISA to monitor and ensure compliance with requirements to combat money laundering and terrorist financing derived clearly from Article 86 of the LPMLTF and also from the respective laws that govern the regulators. They concluded that the laws that govern the regulators provided them with the authority to conduct on-site examinations and to obtain all the necessary data and documents necessary to the role without restriction.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

Central Bank

932. Under Article 86 of the LPMLTF, the Central Bank is to supervise implementation of the LPMLTF and regulations passed thereunder by the following reporting entities within "established jurisdiction": banks and foreign banks' branches, and other financial institutions; savings banks, and savings and loan institutions; organisations performing payment transactions; exchange offices; and institutions for issuing electronic money.

933. Articles 1, 105 and 106 of the Banking Law provide the Central Bank with the function of supervising banks, foreign bank branches, and microcredit financial institutions, credit unions and parties pursuing credit-guarantee operations (referred to as financial institutions in Article 2 of the Central Bank of Montenegro Law) with a view to establishing and maintaining a sound banking system and protecting depositors and other creditors. However, there is no mention in these articles of the Banking Law – which provide the Central Bank with its statutory basis for AML/CFT supervision - of the role that the Central Bank must play (and does play) in combatting money laundering or terrorist financing.

934. As highlighted in paragraphs 469 and 471 above, whilst Article 4 of the LPMLTF provides for savings banks, savings and loan institutions, and institutions issuing electronic money to be subject to preventive measures, Montenegrin legislation does not, in fact, separately recognise such persons (though, in the case of the latter, it has done so from 9 January 2015). In the case of savings banks and savings and loan institutions, such banks and institutions will be subject to the Banking Law (as the receipt of deposits and granting of loans is an integral part of the activities of such banks and institutions). In the case of institutions issuing electronic money, whilst no legislation is in force to give the Central Bank powers to monitor and ensure compliance, the Payment System Law has been applied from 9 January 2015 to address this gap.

935. As highlighted in paragraphs 470 and 474 above, there is no legislation in place to give supervisors powers to monitor and ensure compliance with preventive measures by: legal entities licenced or approved by the Central Bank to execute transfers (which are not banks); other payment services providers that are issued approval by the Central Bank to perform foreign payment operations (which are not banks); or legal entities and entrepreneurs which have a contract with a bank and which are registered for performing exchange operations. In the case of the latter, the bank is held accountable for the operations of such legal entities and entrepreneurs.

Securities and Exchange Commission

936. Under Article 86 of the LPMLTF, the SEC is to supervise implementation of the LPMLTF and regulations passed thereunder by the following reporting entities within "established jurisdiction": companies for managing investment funds and branches of foreign companies for managing investment funds; companies for managing pension funds and branches of foreign companies for managing pension funds; and stock-brokers and branches of foreign stock-brokers.

937. Article 141(1) of the Law on Investment Funds provides the SEC with the function of supervising investment management companies (and also funds). Article 2 of the Rules on detailed conditions, manner and procedure of supervision of the company for management of investment funds and funds in transformation made under Article 190 of the Law on Investment Funds ("**Investment Management Company Rules**") explains that, inter alia, supervision covers

implementation of laws and other regulations. However, there is no mention in the Investment Management Company Rules – which provide the Commission with its statutory basis for AML/CFT supervision - to the role that the Commission must play (and does play) in combatting money laundering or terrorist financing.

938. Whereas Articles 100 and 113 of the Law on Investment Funds state that the Commission shall perform supervision of business operations of a management company branch office established in Montenegro, it does not specify what powers may be used. However, the Commission has explained that it would use the same powers that are available for investment management companies. As an alternative, the Commission could request the home supervisor of the foreign management company to oversee the operations of the Montenegrin branch. The Commission has explained that no branch of a foreign investment company currently operates in Montenegro.

939. As referred to at paragraph 476 above, Article 106 of the Law on Investment Funds anticipates that a foreign company may carry on a management activity directly in Montenegro (rather than through a branch). It seems that such an activity, where carried on directly, will not be subject to preventative measures under the LPMLTF. Currently, there is no foreign company carrying on investment company activities directly in Montenegro.

940. Article 6 of the Law on Voluntary Pension Funds provides the SEC with the function of supervising the foundation and operation of management companies and pension funds. Article 55 provides that the Commission shall supervise the management company by "giving approval to their regulations and performing control of their operations". However, as highlighted in paragraph 472 above, the Law on Voluntary Pension Funds does not extend to branches of foreign companies for managing pension funds.

941. Article 2 of the Rules on detailed requirements, manner and procedure of supervision over functioning of pension fund companies and voluntary pension funds made under Article 59 of the Law on Voluntary Pension Funds ("**Pension Management Company Rules**") explains that, inter alia, supervision covers the "application of the Laws and other regulations" (but does not say which). Article 8 provides for the Commission to determine the legality of the functioning of management companies and funds. However, there is no mention in the Pension Management Company Rules – which provide the Commission with its statutory basis for AML/CFT supervision - of the role that the Commission must play (and does play) in combatting money laundering or terrorist financing.

942. Article 1 of the Securities Law regulates trade in securities, rights and obligations of entities on the securities market. This covers "securities business" which includes brokerage in purchase and sale of securities upon the order of the client. Article 8 of the Securities Law provides the SEC with the function of taking all steps to suppress illegal practices in relation to dealings in securities. However, there is no mention in the Securities Law – which provides the Commission with its statutory basis for AML/CFT supervision - of the role that the Commission must play (and does play) in combatting money laundering or terrorist financing.

943. Rules on supervision of securities operations made under Articles 8(11) and 110 of the Securities Law cover: monitoring and enforcing Rules for the conduct of business; and compliance with provisions or requirements of the Securities Law, Rules made thereunder and terms and conditions of licences. Whilst the Rules themselves make reference to supervision of implementation of laws and rules (generally), this would appear to be ultra vires.

944. Under Article 77b of the Securities Law, foreign legal persons authorised by foreign authorities to carry out transactions with securities (including stock brokers) may establish a branch office on the basis of a license issued by the Commission. Provisions of the Securities Law regarding licensees also apply to branch offices.

Insurance Supervision Agency

Under Article 86 of the LPMLTF, the ISA is to supervise implementation of the LPMLTF and regulations passed thereunder by the following reporting entities within "established jurisdiction": insurance companies and branches of foreign insurance companies and insurance intermediaries (comprising agents and brokers) when they act in respect of life assurance.

945. Article 115 of the Insurance Law provides the ISA with the function of supervising the operations of insurance companies, branches of foreign insurance companies, insurance brokerage companies and insurance agency companies (understood to be the insurance intermediaries referred to in Article 86 of the LPMLTF), entrepreneurs-insurance agents, and ancillary insurance service providers (understood to be companies providing services in respect of the activities of insurance agents referred to in Article 86 of the LPMLTF). Article 117 explains that supervision of an insurance company's operations shall include a control of: compliance of general acts and business policies and procedures acts with law and other regulations; and legality of work. However, there is no mention in this article of the Insurance Law of the role that the Agency must play (and does play) combatting money laundering or terrorist financing.

946. Article 147 of the Insurance Law explains that provisions dealing with supervision of insurance companies shall apply also to insurance brokerage companies, insurance agency companies and entrepreneurs.

947. As referred to at paragraph 476 above, it is possible for insurance entrepreneurs to carry on life activities in Montenegro. It seems that such an activity will not be subject to preventative measures under the LPMLTF. Currently, there are no entrepreneurs carrying on such activities.

Agency for Telecommunication and Postal Services

948. Under Article 86 of the LPMLTF, the Agency for Telecommunication and Postal Services is to supervise implementation of the LPMLTF and regulations passed thereunder by post offices within "established jurisdiction".

949. Article 106 of the Postal Services Act states that inspection supervision over implementation of the Act and other rules regulating the provision of postal services shall be carried out by the state administration authority in charge of postal activity, or another relevant administration authority. Expert supervision over implementation of the Act shall be carried out by an independent regulatory authority (the Agency).

950. Article 109 of the Postal Services Act states that the Agency shall carry out expert supervision over implementation of the Act, regulations passed based on the Act and "the general terms and conditions of postal service provider, regulating provision of postal services, quality of universal postal services, network access, prices, accounting of postal service provider, acting within given authorizations and supervision over implementation of individual acts passed within its competence". The Agency may carry out expert supervision only over legal and natural persons listed in the register of postal operators.

951. Article 110 of the Postal Services Act says that the form and content of the authorization and the procedure of expert supervision, as well as other matters relating to expert supervision shall be regulated by the relevant body of the Agency.

952. There is no mention in the Postal Services Act to combatting money laundering or terrorist financing. Nor is it clear what powers the Agency has to supervise non-postal activities such as making and receiving transfers of funds, as sub-agent in Montenegro for Western Union.

APMLTF

953. Under Article 86 of the LPMLTF, the APMLTF is to supervise implementation of the LPMLTF and regulations passed thereunder in accordance with the Law on Inspection Supervision.

954. It is responsible for supervising implementation of reporting entities listed in Article 4(1) items 14 and 15 of the LPMLTF, including some that are considered "financial institutions" by the FATF.

Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2)

Central Bank

955. Articles 109 and 111 of the Banking Law say that, inter alia, the Central Bank shall analyse reports, information and data (off-site) and supervise by direct review of business books, accounting and other documentation in banks (and counterparts) (on-site examinations).

956. The same powers apply to foreign banks as a result of Article 148 of the Banking Law, to microcredit financial institutions as a result of Articles 157 and 163 of the Banking Law, and to credit unions as a result of Articles 157 and 163 of the Banking Law - except where a Regulation of the Central Bank specifies otherwise. The Central Bank has confirmed that no such Regulation has been made on the basis that no credit unions have been registered.

957. Article 13 of the Decision on Conditions for Performing Credit Guarantee Operations (made by the Central Bank under Article 164 of the Banking Law) says that the Central Bank shall analyse reports, information and data (off-site) and supervise by review of business books, accounting and other records (on-site examinations). So far, no guarantee funds have been established.

Securities and Exchange Commission

958. Article 9 of the Investment Management Company Rules provides that the Commission shall carry out off-site supervision and on-site supervision of companies for managing investment funds. It explains that off-site supervision will be carried out through a review of reports of operations and obtaining information.

959. Article 13 of the Investment Management Company Rules provides that the Commission shall visit premises of the management company or another person where it reasonably expects to obtain information and facts relating to supervision, records, books and other documents.

960. Article 9 of the Pension Management Company Rules provides that the Commission shall carry out off-site supervision (indirect control) and on-site supervision (direct control) of companies for managing pension funds.

961. Article 13 of the Pension Management Company Rules provides that the Commission shall visit premises of the management company or another person where it reasonably expects to obtain information and facts relating to supervision, records, books and other documents.

962. Article 110 of the Securities Law allows the Commission to inspect a licensee or former licensee – for the purpose of ascertaining whether that person is complying with any provision or requirement under the Securities Law, Rules made thereunder or the terms and conditions of its licence.

963. Rules on Supervision of Securities Operations provide substantial detail about off-site and on-site supervision of securities businesses, e.g. Article 3. However, these Rules are made under Articles 8(11) and 110 of the Securities Law which (respectively) cover: monitoring and enforcing Rules for the conduct of business; and compliance with provisions or requirements of the Securities Law, Rules made thereunder and terms and conditions of licences. Whilst the Rules themselves make reference to supervision of implementation of laws and rules (generally), this would appear to be ultra vires.

964. On the basis of provisions set out in Article 110 of the Securities Law and Rules made thereunder, it is not clear that the Commission has the authority to conduct examinations of stock-brokers for AML/CFT purposes.

Insurance Supervision Agency

965. Article 118 of the Insurance Law explains that supervision of insurance companies shall be performed, inter alia, by: collecting, monitoring and analysing reports, data and notices that the insurance company is obliged to submit to the regulatory authority by operation of law; and on-site examination of the operations of the insurance company.

Agency for Telecommunication and Postal Services

966. It is not clear what authority the Agency has to conduct examinations of non-postal activities of post offices, such as making and receiving transfers of funds, as sub-agent in Montenegro for Western Union.

APMLTF

967. Article 21 of the Law on Inspection Supervision establishes an obligation for a controlled entity to provide the inspector free access for examination control, to give information and submit documentation for examination.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

Central Bank

968. Inter alia, Article 112 of the Banking Law requires banks to allow the Central Bank free insight into business books, other business documentation and records (and to take copies of such records). The same powers apply to foreign banks as a result of Article 148 of the Banking Law, to microcredit financial institutions as a result of Articles 157 and 163 of the Banking Law, and to credit unions as a result of Article 157 and 163 of the Banking Law.

969. Similar powers are available to monitor and ensure compliance by parties pursuing credit-guarantee operations under Article 14 of the Decision on Conditions for Performing Credit Guarantee Operations (made by the Central Bank under Article 164 of the Banking Law). So far, no guarantee funds have been established.

970. However, there is no power to require questions to be answered, and documents, business books, records and other documentation of a former bank that has surrendered its licence may not be examined (since the powers in Articles 109 and 111 are expressed as applying to entities subject to supervision). The Central Bank has pointed to provisions in Article 3 of the Bank Bankruptcy and Liquidation Law which require the Central Bank to act as liquidator and which give the Central Bank indefinite access to all information and documentation. However, the scope of this provision is necessarily limited to those banks involved in bankruptcy or liquidation proceedings.

971. Whilst a bank does not commit an offence under the Banking Law, or credit guarantee operator under the Decision on Conditions for Performing Credit Guarantee Operations, where it fails to provide books, other business documentation and records to the Central Bank, Article 282 of the Criminal Code prescribes that those who prevent a control authority from examining business books or other records or who prevent an examination or other authority from examining the "objects, premises or other facilities" shall be punished by a fine or a prison term up to one year.

Securities and Exchange Commission

972. Article 141(3) of the Law on Investment Funds allows the Commission, without limitation, to examine documents, business books, records and other documentation of the management company regarding operations of the company and the investment fund. This is supported by Article 6 of the Investment Management Company Rules which allow the Commission to set out the manner and timeframe in which business books and other documents are to be examined.

973. Article 13 of the Investment Company Management Rules (which covers on-site supervision) states that the Commission shall have the right, without limitation, to copy or temporarily seize original business books, financial and other reports, notifications and other documents, as well as to use and temporarily confiscate electronic and other means of communication installed within the entity supervised.

974. Article 13 of the Investment Company Management Rules also allows the Commission to ask for necessary explanations to be taken from persons employed in the management company, as well as others who the Commission considers to have relevant information. However, Articles 191 to 196 of the Law on Investment Funds (penalty provisions) do not refer to Article 190(6) which provides the legal basis for these rules to be issued. Accordingly, it appears that no offence is committed where a person employed in the management company or other person with relevant information fails to provide the necessary explanations.

975. An investment management company does not commit an offence under the Law on Investment Funds where it fails to provide documents, business books, records and other documentation, though Article 14 of the Investment Management Company Rules allows the Commission to suspend a management company's licence where it is obstructed in its work. However, Article 282 of the Criminal Code prescribes that those who prevent a control authority from examining business books or other records or who prevent an examination or other authority from examining the "objects, premises or other facilities" shall be punished by a fine or a prison term up to one year.

976. Article 55 of the Law on Voluntary Pension Funds states that the Commission may, with no limitation, review regulations, business books, documents and other material of the management company related to the operation of the company and the pension fund. This is supported by Article 6 of the Pension Management Company Rules which allow the Commission to set out the manner and timeframe in which business books and other documents are to be examined.

977. Article 13 of the Pension Management Company Rules (which covers direct control) states that the Commission shall have the right, without limitation, to copy or temporarily seize original business books, financial and other reports, announcements and other documentation as well as to use and temporarily seize electronic and other means of communication installed within the entity supervised.

978. Article 13 of the Pension Company Management Rules also allows the Commission to ask for necessary explanations to be taken from persons employed in the management company, as well as others who the Commission considers to have relevant information. However, Articles 65 to 67 of the Law on Voluntary Pension Funds (penalty provisions) do not refer to Article 59(3) which provides the legal basis for these rules to be issued. Accordingly, it appears that no offence is committed where a person employed in the management company or other person with relevant information fails to provide the necessary explanations.

979. A pension management company does not commit an offence where it fails to provide books, documents and other material, though Article 60 of the Law on Voluntary Pension Funds and Article 14 of the Pension Management Company Rules allow the Commission to suspend a management company's licence where it is obstructed in its work. However, Article 282 of the Criminal Code prescribes that those who prevent a control authority from examining business books or other records or who prevent an examination or other authority from examining the "objects, premises or other facilities" shall be punished by a fine or a prison term up to one year.

980. Article 72 of the Securities Law requires an authorised participant to provide periodic reports to the Commission and other data, information and reports as determined by the Commission. Article 86 also allows the Commission to appoint an auditor to examine, audit and report, either generally or in relation to any matter on the books, accounts and records of the licensee.

981. Article 108 provides that the Commission may require licensees to furnish it with such information as it may reasonably require for the exercise of its functions under the law within such reasonable time, and verified in such manner as it may specify. However unlike for other laws administered by the Commission, it may not ask for necessary explanations to be taken from persons employed by the authorised participant, as well as others who the Commission considers to have relevant information.

982. Under Article 111, the Commission may appoint an investigator where, inter alia, it believes that an offence has been committed under the Securities Law or Rules made thereunder, or a person may have committed a breach of trust, fraud or misconduct in dealing in securities. There is a requirement to cooperate with the investigator.

983. A fine shall be imposed in a case where a legal person obstructs the Commission or investigator under Articles 110 and 111. A responsible person of that legal person shall also be liable to a fine and may be banned from dealing with securities for a period of time. In addition, Article 282 of the Criminal Code prescribes that those who prevent a control authority from examining business books or other records or who prevent an examination or other authority from examining the "objects, premises or other facilities" shall be punished by a fine or a prison term up to one year.

Insurance Supervision Agency

984. Article 115 of the Insurance Law provides for the ISA to inspect business records of legal persons 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 considered necessary in order to supervise an insurance company's operations.

985. Article 120 of the Insurance Law allows the ISA to inspect all documentation and data relating to the company's operations. It may also demand information and explanations from certain individuals.

986. Under Article 121 of the Insurance Law, an insurance company shall be obliged to provide the following to the ISA: access to head office and other premises in which the company, or other person under its authorization, performs business activity and operations; and access to documents, business books and other records.

987. A fine shall be imposed in a case where a legal person or entrepreneur fails to enable the ISA to perform its supervisory activities under Article 121. The fine will be between €2,500 and €20,000 for a legal person and between €550 and €6,000 for an entrepreneur. A responsible person of a legal person shall also be liable to a fine (between €550 and €2,000). In addition, Article 282 of the Criminal Code prescribes that those who prevent a control authority from examining business books or other records or who prevent an examination or other authority from examining the "objects, premises or other facilities" shall be punished by a fine or a prison term up to one year.

Agency for Telecommunication and Postal Services

988. It is not clear what powers the Agency has to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance with non-postal activities of post offices, such as making and receiving transfers of funds, as sub-agent in Montenegro for Western Union.

APMLTF

989. Article 4 of the Law on Inspection Supervision explains that an examination shall be performed by an inspector (an officer with special authorisation and responsibilities). Article 14 explains that an inspector shall have the right to examine business books, records and other business documentation, and to take statements from the entity subject to supervision and other

entities. This article also provides for documentation to be taken off-site. Article 24 of the Law on Inspection Supervision extends this requirement to any other person when there is "reasonable doubt that in the facility or premises there is activity or objects subject to supervision". The APMLTF has explained that this allows it to take statements and collect books and records from persons other than the supervised entity, where it is appropriate to do so.

990. Article 21 of the Law on Inspection Supervision establishes an obligation for an entity subject to supervision to provide the inspector free access for examination, to give information and submit papers necessary for examination.

991. Article 73 provides that a supervised entity that is a legal person shall be fined in the amount of between 10 and 300 "minimal salaries" where it fails to enable the APMLTF to perform its supervisory activities. A controlled entity (or other person) that is a private person shall be fined in the amount of one-half to twenty "minimal salaries". In addition, Article 282 of the Criminal Code prescribes that those who prevent a control authority from examining business books or other records or who prevent an examination or other authority from examining the "objects, premises or other facilities" shall be punished by a fine or a prison term up to one year.

Powers of Enforcement & Sanction (c. 29.4)

992. Power of enforcement and sanction are considered under Recommendation 17. See paragraphs 1116 to 1044 below.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

993. The legal basis for regulating reporting entities and monitoring compliance with the LPMLTF is not complete. Whilst the majority of "gaps" noted may not present significant ML/FT risks, on the basis that a particular activity is not carried on in Montenegro (or extensively carried on), it is nevertheless the case that:

- Some organisations performing payment transactions or currency changing cannot be supervised for compliance with the LPMLTF.
- Electronic money issuers could not be supervised for compliance with the LPMLTF until January 2015.
- Foreign investment management companies may carry on activities directly in Montenegro without regulation and cannot be supervised for compliance with the LPMLTF.
- Insurance entrepreneurs (individuals carrying on insurance activities) are not subject to the LPMLTF.
- The Postal Services Act does not provide a clear basis for supervising sub-agents of Western Union for compliance with the LPMLTF (and it is not clear whether the Agency for Telecommunication and Postal Services supervises such activities in practice).

994. Where there are powers to supervise compliance, not all activities have been subject to AML/CFT oversight. For example: (i) the Central Bank does not directly supervise microcredit financial institutions (though it suggests that it does so indirectly); and (ii) the ISA, which has had responsibility for oversight of life insurance agents and brokers since 2012, visited its first broker in 2014. On the other hand, the SEC has supervised compliance of banks carrying on custody and depository operations with the LPMLTF, notwithstanding that it has no mandate to do so under Article 86 of the LPMLTF.

995. Whereas the SEC regularly visits reporting entities and has published a useful examination guide for staff, the securities sector has submitted just eight STRs between 2010 and 2013. This must inevitably raise some concern about the effectiveness of AML/CFT oversight by the Commission, particularly given the risk highlighted by the Police Department (see paragraph 481). Whereas money laundering and terrorist financing risk may be lower in the insurance

sector, the number of STRs made by the insurance sector (just two since 2010) also appears to be low. It may be that since the examination role of supervisors is much greater than AML/CFT, the aspect of anti-money laundering is not seen as a priority.

996. Whilst AML/CFT training is delivered by all supervisors, it does not appear to be offered widely to staff. For example, it appears that just one or two employees were provided with training by the Central Bank between 2008 and 2013 and, whereas all staff in the department for insurance market supervision may be directly involved in AML/CFT oversight, two or three were provided with training in 2013 and earlier years. Also, the amount allocated to AML/CFT training is low, e.g.: €696 for AML/CFT supervisory staff at the Central Bank and €11,000 for all staff at the SEC. In practice, however, this reflects reliance that has been placed on external organisations to provide training and technical assistance to competent supervisory bodies.

997. As a matter of law, the SEC and ISA are currently unable to build up a general reserve to meet the significant legal and other costs that may follow in the event of a particularly difficulty enforcement case. This temporary arrangement falls away on 1 January 2016. The absence of such reserves could prevent the competent supervisory bodies taking enforcement action against reporting entities that may have "deeper pockets" than the authorities, though the authorities have explained that, in practice, this has not been an issue. In any event, the SEC does retain a reserve: €1,890,080 at the end of 2013.

998. The APMLTF is responsible for overseeing a significant number of reporting entities, in particular: 928 estate agents, 60 dealers in precious metals and stones, 286 construction companies, 526 travel agents, a number of "financial institutions" (those engaged in factoring or financial leasing), as well as a large number of NGOs. It does so with five staff. Based on the current level of resourcing in the Reporting Entities Control Department, it is not possible to see how five staff working at full capacity will be able to monitor compliance by such a large number of reporting entities with the LPMLTF.

999. Whereas legal requirements limit who may be employed by the competent supervisory bodies, and staff are required to follow ethical standards, with the exception of the APMLTF, it does not appear that criminal record checks are routinely performed by the competent supervisory bodies before staff may take up employment or where there is a change in role. For example at the Central Bank, checks on criminal records are done only for employees in the Directorate for security and safety.

1000. Rules on supervision of securities operations (including stock-brokers) made under Articles 8(11) and 110 of the Securities Law cover: monitoring and enforcing Rules for the conduct of business; and compliance with provisions or requirements of the Securities Law, Rules made thereunder and terms and conditions of licences. Whilst the Rules themselves make reference to supervision of implementation of laws and rules (generally), this would appear to be ultra vires.

1001. Whereas each of the competent supervisory bodies have powers to compel information to be provided by reporting entities, not all can compel other persons that may hold relevant information to give statements or explanations. For example, the Central Bank does not have a power to require questions to be answered and documents to be provided by a former bank that has surrendered its licence, and the SEC may not ask for necessary explanations to be given by persons employed by stock-brokers. This could impede effectiveness of monitoring.

Recommendation 17 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1002. At the time of adoption of the third round report, evaluators noted that there was a lack of appropriate sanctions for less severe violations of the LPMLTF and absence of final decisions on imposed sanctions, which raised doubts about the effectiveness of proceedings.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

Misdemeanours

1003. Misdemeanour sanctions may be applied only in accordance with the Law on Misdemeanours. Sanctions may take the form of a Misdemeanour Order made by an authorized body (in this case the APMLTF) or a first instance judicial decision of the competent court.

1004. Article 24 of the Law on Misdemeanours establishes the range of fines that may be set in legislation. For legal entities the fine may range from €500 to €20,000, for entrepreneurs the range is from €150 to €6,000, and for natural and responsible persons the range is from €30 to €2,000.

1005. Article 42 of the Law on Misdemeanours also provides for the court to prohibit a person from practising a profession, business activity or duty for a period of time that may not exceed six months (Article 45(3)). The prohibition to practice a certain profession, business activity or duty prohibits an offender from practising a profession, business activity or duty for which he is registered or for which he requires a licence or permit issued by a competent body.

1006. Where a penalty is applied by the court, it may make a public announcement of its decision under Article 47(1) of the Law on Misdemeanours if it finds that it would be beneficial to the public. It is not immediately apparent that such a power could be used to publicise a fine or prohibition made under the LPMLTF.

1007. Articles 92 to 96a of the LPMLTF establish the fines to be imposed for misdemeanours related to breaching the provisions of that law. Fines in Articles 92 to 94 range from €1,000 to €20,000 for a reporting entity who is a legal person, from €500 to €6,000 for an entrepreneur who is a reporting entity, and €200 to €2,000 for a "responsible person" (executive director of a legal person) in a legal person and natural person. Under Article 96 of the LPMLTF, a lawyer or notary may be fined an amount from €3,000 to €20,000. The ranges of fines that may be applied in the LPMLTF are in line with Article 24 of the Law on Misdemeanours, except for those that may be applied to lawyers and accountants who are individuals. Law offices may not be fined.

Administrative sanctions – Central Bank

1008. Article 115 of the Banking Law provides for the Central Bank to impose measures for "removal of the irregularities" against a bank. Irregularities shall be considered to be inadequate management of risk, failure to comply with legislation, and the application of unsound banking practices.

1009. Article 116 of the Banking Law lists the measures that may be taken against a bank and credit union. These are widely drawn and include giving a written warning, ordering the removal of irregularities, ordering the removal of a member of the board of directors, temporarily prohibiting the performance of certain or all activities, temporarily prohibiting or restricting the introduction of new products, and revoking a bank's licence. Article 117 of the Banking Law sets out the factors to be considered when deciding what measures to apply.

1010. Article 165 of the Banking Law requires a fine to be imposed against a bank or other legal person ranging between €5,000 and €15,000 if, inter alia, it fails to establish a system for risk management (€5,000 to €6,000 in the case of an entrepreneur). Where such an offence is committed, then a responsible person shall also be fined between €500 and €1,000.

1011. Article 30 of the Central Bank of Montenegro Law allows the Central Bank to disclose information on "imposed measures".

1012. However, none of these measures may be applied to foreign bank branches. The Central Bank has explained that this is because the supervision of business operations of a foreign bank branch in Montenegro is primarily performed by the home supervisor of the foreign bank. It follows that administrative sanctions cannot be applied where there is failure to comply with the LPMLTF. In practice, the Central Bank has explained that it would initiate misdemeanour proceedings in the case

of a violation of provisions of the LPMLTF, and share visit findings with the home supervisor of the foreign bank. However, see paragraph 1600 of this report.

1013. Article 154 of the Banking Law sets out the measures that may be taken against a microcredit financial institution where it enters into unsafe and unsound operations. The Central Bank may issue a warning, oblige it to eliminate irregularities, order temporary suspension of members of the governing board, or revoke its licence.

1014. Inter alia, Article 16 of the Decision on conditions for performing credit guarantee operations (made by the Central Bank under Article 164 of the Banking Law) allows the Central Bank to revoke its approval in the event that a credit guarantee operation: fails to act pursuant to an order to address irregularities in its operations; or has been involved in illegal operations.

1015. Article 116(1) item 3 of the Banking Law specifies that the Central Bank may, inter alia, order a bank to "discharge a member of the Board of Directors, an executive director or an official with special powers and responsibilities and set the timeframe for conducting the procedure of their relieving of duty and, as a rule, prohibit these persons to further perform their functions until the completion of the ordered procedure". The Central Bank has explained that "an official with special powers and responsibilities" will include a bank's middle management.

1016. Legislation is not in place to regulate the following activities which are covered by Article 4 of the LPMLTF: legal entities licenced or approved by the Central Bank to execute transfers; other payment services providers that are issued approval by the Central Bank to perform foreign payment operations; and legal entities and entrepreneurs which have a contract with a bank and which are registered for performing exchange operations. It follows that sanctions may not be applied where there is failure to comply with the LPMLTF.

Administration sanctions - Securities and Exchange Commission

1017. Where the SEC, in the course of supervision under the Law on Investment Funds, reveals illegalities or irregularities in the management company's operations, it shall order remediation within a determined period under Article 144 of that Law. Where a management company fails to remediate, the Commission may, inter alia, dismiss the management and governing body of the management company, give an order for the change of the management company, place restrictions on the investment fund that is managed, or withdraw the management company's authorisation under Article 145 of the Law on Investment Funds. The Commission may also publicise the measures imposed under Article 146.

1018. Article 19 of the Rules on detailed conditions, manner and procedure of supervision of the company for management of funds and funds in transformation outline other measures that the Commission shall take. A significant number are listed, though few appear to have much relevance to failing to company with AML/CFT requirements. Such measures include issuing a written warning or imposing a reprimand.

1019. However, none of these measures (which are expressed as applying to management companies and not also to management company branch offices) may be applied to a branch of a foreign investment management company.

1020. Where the Commission, in the course of supervision under the Law on Voluntary Pension Funds, observes illegitimate actions or irregularities in operations of management companies or pension funds, it shall order remediation within a determined period under Article 58 of that Law. Where a pension management company fails to remediate, the Commission may, inter alia, issue a public warning, "recall" of members of the management company's board and executive director, issue a warning, temporarily prohibit the disposal of assets, or withdraw its licence under Article 59 of the Law on Voluntary Pension Funds.

1021. However, none of these measures may be applied to branches of foreign companies that manage pension funds, which are outside scope of the Law on Voluntary Pension Funds.

1022. If the Commission in carrying out off-site supervision under the Rules on Supervision of Securities Operations identifies irregularities in operations of stock-brokers, it shall it shall order remediation within a determined period under Article 11 of those Rules. Where a stock-broker fails to remediate, the Commission shall take action under Article 22 of the Rules. Similarly, where a stock-broker fails to eliminate irregularities identified in the course of an on-site examination it shall take action under Article 22 of the Rules. Such measures may include suspending a broker's trading in particular securities, suspending the performance of certain tasks, imposing a reprimand, public disclosure, dismissal of the executive director, and suspending or revoking a licence.

1023. However, it does not appear that such measures would be available to deal with a failure to comply with all elements of the LPMLTF. This is because the Rules on Supervision – which set out measures that may be taken by the Commission - deal with monitoring and enforcing Rules of conduct of business (Article 8(11) of the Securities Law) and compliance with provisions or requirements of the Securities Law (including Rules made thereunder) and terms and conditions of licences (Article 110), and not legislation more generally (including the LPMLTF). Whilst Rules on the manner of conduct of operations of authorised securities market participants (including stockbrokers) - made pursuant to Articles 78 and 80 of the Securities Law - require brokers to carry out identification in accordance with the LPMLTF, they do not make reference to other preventative measures.

Administration sanctions - Insurance Supervision Agency

1024. In exercising supervision over operations of an insurance company, the ISA may apply the following measures under Article 129(1) of the Insurance Law: warn the insurance company, and request irregularities to be remediated within a determined period; order measures to correct illegalities and irregularities (including establishing procedures and business organisation); order special measures against responsible persons in the company; appoint an interim administrator; and revoke an insurance company's licence. These measures shall be imposed by the ISA in the case of irregularities identified in Article 129(2). Where an insurance company is placed into interim administration or has its licenced revoked, then such decisions must be publicised under the Insurance Law.

1025. Inter alia, Article 130 of the Insurance Law provides that the ISA shall order an insurance company to correct illegalities and irregularities in operations within a defined period if it establishes that the company has acted contrary to law, other regulations and general acts which govern its operations. Whilst the Agency must revoke an insurance company's licence where it fails to correct illegalities and irregularities (including those related to the LPMLTF), terms for revocation of a licence set out in Article 144 do not explicitly include failure to comply with the LPMLTF.

1026. Special measures that may be taken against responsible persons are explained in Article 146 of the Insurance Law. If, during supervisory activities, the ISA determines that a board member, executive director or person with "special authorisation" fails to act in accordance with legislation, it may dismiss a member of the board, executive director or any person with "special authorisation", or temporarily prohibit that person from performing insurance business. The Agency has explained that a person with "special authorisation" will include an actuary, internal auditor, or individual that is able to bind the company by contract.

1027. As a result of Article 147 of the Insurance Law, the above provisions deal also with the activities of insurance agencies and brokers.

Administration sanctions - Agency for Telecommunication and Postal Services

1028. No information has been presented on sanctions available for use by the Agency for Telecommunication and Postal Services.

Administration sanctions - APMLTF

1029. In order to eliminate irregularities observed during examinations, inter alia, an inspector of the APMLTF shall have an obligation and authority under Article 15 of the Law on Inspection Supervision to highlight those irregularities and set a time limit for their elimination, issue an order for appropriate measures and actions to be taken within a set time limit, initiate appropriate procedures (a Misdemeanour Order under Article 144 of the Law on Misdemeanours) or initiate a misdemeanour procedure (under Article 143 of the Law on Misdemeanours).

1030. Article 36 of the Law on Inspection Supervision states than a controlled entity shall be obliged to inform the inspector of the measures undertaken within the given deadline. In the case of an ordered measure, a legal person that fails to take the necessary measures and actions in line with the deadline set shall be subject to a fine of between €500 and €5,000, and a private person between €50 and €500 under Article 59 (where the ordered measures cannot be executed through other persons or through direct coercion).

Designation of Authority to Impose Sanctions (c. 17.2)

1031. In line with the Law on Misdemeanours (since 1 September 2011), the APMLTF shall either itself issue a Misdemeanour Order under Article 144 or submit a request to the competent court to initiate misdemeanour proceedings under Article 143 - if it is determined in any of the following ways that a reporting entity has failed to comply with a requirement in the LPMLTF (i.e. a misdemeanour has been committed):

- Direct observation while conducting an examination, supervision or review.
- On the basis of information obtained by means of supervision or measurement devices.
- In the course of inspecting documentation, premises and goods or thorough other legal means.

1032. A Misdemeanour Order shall contain a notice that the subject has the right to file a Petition for Court Adjudication of the Misdemeanour Order under Article 143 of the Law on Misdemeanours. The Order includes space for the accused to accept responsibility or request court adjudication. In the event that the accused accepts responsibility, the Order shall become final and enforceable under Article 147 of the Law on Misdemeanours.

1033. In cases when a reporting entity does not accept responsibility, it may submit a Petition for Court Adjudication of the Misdemeanour Order to the competent court no later than eight days from the date that it was served with the Order. Upon receiving a Petition for Court Adjudication, the court shall be obliged to immediately notify the authorized body.

1034. After submitting the Petition for Court Adjudication, the competent court conducts a misdemeanour procedure and after that passes its conclusion in the form of judicial decision and order.

1035. In a case where a reporting entity is supervised by the CBM, SEC, ISA, or other supervisor, that supervisor must (under Article 89 of the LPMLTF) inform the APMLTF of any misdemeanour after completion of a supervisory examination. In turn, the APMLTF must submit a request to the competent court to initiate misdemeanour proceedings under Article 143 of the Law on Misdemeanours.

1036. Article 144(3) of the Law on Misdemeanours provides that if a fine is in a range, an authorized body shall impose the *minimum* prescribed fine in the Misdemeanour Order. If a person conducts a number of concurrent misdemeanours, Article 144(5) of the Law on Misdemeanours allows the authorized body to impose an aggregate fine that is equal to the sum of all the individual fines imposed in their minimum amounts.

1037. Article 29(2) of the Law on Misdemeanours explains that where fines are determined by the court for concurrent misdemeanours, an aggregate fine equal to the sum of all the individually determined fines shall be imposed, but the aggregate fine may not exceed the maximum level of such penalties provided for in legislation. For example, Article 93 of the LPMLTF provides that a legal person shall

be fined between €2,500 and €15,000 where it does not carry out client identification, where it does not monitor a client's business activities, or where it does not keep records and documentation. Whereas the maximum fine for each misdemeanour is €15,000, in aggregate, the total fine that might be applied under Article 93 for concurrent misdemeanours is capped at €15,000.

1038. Article 96a provides that, in the case of particularly serious violations or repeated violations of the LPMLTF, a prohibition on performing business activities may be imposed on a legal person for up to two years and a prohibition on performing business activities may be imposed on a responsible person and natural person for up to two years. Where a responsible person is not required to be registered, licenced or hold a permit, it seems that it would not be possible to prohibit the practising of a profession, business activity or duty. The period of the prohibition (two years as opposed to six months) also appears to be ultra vires. Only the competent court may apply a penalty under Article 96a.

1039. Under Article 54 of the Law on Misdemeanours a register of fines is kept. They remain recorded until the fine is paid in full. As outlined above, administrative sanctions may be imposed by the CBM, SEC and ISA.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

1040. As referred to in paragraph 1007 above, fines may be applied to a "responsible person" of a reporting entity that is a legal person under the LPMLTF. As described at paragraph 1038 above, a "responsible person" may also be prohibited from performing business activities for a period of up to two years. In the absence of a definition, the "responsible person" is taken to refer to a reporting entity's executive director (considered to be senior management).

1041. Article 116(1) item 3 of the Banking Law specifies that the Central Bank may, inter alia, issue "an order to a bank to discharge a member of the Board of Directors, an executive director or an official with special powers and responsibilities and set the time frame for conducting the procedure of their relieving of duty and, as a rule, prohibit these persons to further perform their functions until the completion of the ordered procedure". The Central Bank has explained that "an official with special powers and responsibilities" will include a bank's middle management.

1042. Special measures that may be taken against responsible persons are explained in Article 146 of the Insurance Law. If, during supervisory activities, the ISA determines that a board member, executive director or person with "special authorisation" fails to act in accordance with legislation, it may dismiss a member of the board, executive director or any person with "special authorisation", or temporarily prohibit that person from performing insurance business. The Agency has explained that a person with "special authorisation" will include an actuary, internal auditor, or individual that is able to bind the company by contract.

1043. Whilst each of the laws administered by the SEC provide for measures to be taken against a reporting entity's board and executive director, there is no clear reference to the application of sanctions to other management.

Market entry

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

Central Bank

1044. Article 9 of the Banking Law provides that no legal or natural person may acquire a "qualified participation" in a bank without the prior approval of the Central Bank. A "qualified participation" is:

– Independently or mutually with other related parties, direct or indirect participation in capital or voting rights of a legal person of at least 5%; or

- Possibility of having a significant influence on management, i.e. policy, based on an agreement or contract with another party, or in any other way, regardless of the amount of participation in capital or voting rights in the bank.

1045. Article 10 states that a party with a "qualified participation" may not further increase participation in capital or voting rights in a bank, on the basis of which it acquires 20%, 33% or 50% or more of participation in voting rights or in capital of the bank, without the prior approval of the Central Bank.

1046. Whilst there is no specific reference to criminal activities, Article 11 provides that, when deciding on granting approval for acquiring a "qualified participation", the Central Bank shall consider the existence of valid reasons to suspect that the acquisition could increase the risk of money laundering or terrorist financing. The Central Bank is also required to assess the reputation, relevant professional capabilities and experience of parties intended to run banking operations after the acquisition of the participation. In the event that a "qualified participation" is held without appropriate approval, the Central Bank is able to order the disposal of shares under Article 14 of the Banking Law. If shares are not subsequently sold, then they automatically become shares carrying no voting rights. Article 17 allows the Central Bank to revoke its approval for the acquisition of a "qualified participation" taking into account money laundering and terrorist financing risk and reputation, capabilities and experience of parties running the banking operations.

1047. In meetings, the Central Bank advised that it has used its power to prevent an individual acquiring a "qualified participation" once in 2010.

1048. Under Article 30 of the Banking Law, a member of the board of directors may only be a person holding a university degree, of recognised personal reputation and professional qualification, professional ability and experience in managing a bank. Under Article 31, he or she may not be a person who has been sentenced for a crime which makes them unworthy of performing the function of a member of the board. Under Article 32, a member of the board may not be elected without the prior approval of the Central Bank, which must take into account "fit and proper" criteria. It may revoke its approval on the basis of these same criteria. Similar provisions apply to executive directors (of which there must be at least two, one of whom must be the chief executive officer), by virtue of Articles 36 and 37 of the Banking Law. The Central Bank considers such executive directors to be "senior management" in line with the definition that is given in the Basel Core Principles for Effective Banking Supervision.

1049. In practice, prospective board members and executive directors must complete a questionnaire. Inter alia, this questionnaire requests a candidate to indicate whether:

- He or she have been subject to a "safety measure" prohibiting conduct of professional work, business activity or duty, imposed by a competent court, and, if so, to specify the measures and duration.
- He or she has been sentenced for a crime, and, if so, to specify the type of criminal offence and penalty.
- Criminal proceedings are pending, and, if so, to specify the type of offence.
- They have left office as a result of a regulatory sanction.

1050. However, the questionnaire does not request information about other regulatory sanctions that may have been applied to a prospective board member or executive director. A similar questionnaire is not used to collect information on a person seeking to have a "qualified participation".

1051. Article 116(1) item 3 of the Banking Law also specifies that the Central Bank may, inter alia, issue "an order to a bank to discharge a member of the Board of Directors, an executive director or an official with special powers and responsibilities and set the time frame for conducting the procedure

of their relieving of duty and, as a rule, prohibit these persons to further perform their functions until the completion of the ordered procedure".

1052. Similar provisions are not in place for branches of foreign banks, microcredit financial institutions or credit guarantee operations. However, the Central Bank may exclude a criminal from owning or running such persons using:

- Articles 21 and 27 of the Banking Law set out the information that is required to support an application by a bank or credit union for a licence and grounds for refusal. Paragraph 576 of the third evaluation report provides further details.
- Article 140 of the Banking Law sets out the information that is required to support an application by a branch operation, which includes information on the foreign bank's board and owners.
- Articles 21 and 155 of the Banking Law set out the information that is required to support an application by a microcredit institution for a licence and grounds for refusal.
- Article 4 of the Decision on Conditions for Performing Credit Guarantee Operations (made by the Central Bank under Article 164 of the Banking Law) allows the Central Bank to exclude a person from holding a board or executive director position or more than 5% of share capital or voting rights where that person has been excluded by a competent court from conducting professional work, a business activity or duty, or has been sentenced for a crime that makes the person unworthy.
- Article 116(1) item 3 in the case of a credit union (see paragraph 1010 above).

Securities and Exchange Commission

1053. Inter alia, Article 91 of the Law on Investment Funds (conditions for owners and employees) provides that the following persons may not be owners of management companies, supervisory board members or employees:

- Persons who no longer hold membership in a professional association on the grounds of infringement of association rules, or against whom the competent authority has imposed a measure of withdrawing authorisation for carrying on securities-related activity;
- Persons punished for a criminal offence of causing bankruptcy by negligent operations, failing to keep business books, adversely affecting creditors' rights, abuse in bankruptcy proceedings, unauthorised disclosure of information, or committing fraud – all for a period of five years after the sentence has become final; and
- Persons punished for a criminal offence or offence stipulated in the Securities Law for a period of five years after the sentence has become final.

1054. At the time of application for authorisation, Article 93 of the Law on Investment Funds provides, inter alia, that a list of members and persons related to the management company shall be submitted to the Commission. Article 108 provides that a management company's authorisation shall be withdrawn if it fails to meet conditions for granting authorisation or has seriously or systematically infringed the Law on Investment Funds.

1055. However, the offences listed under the second bullet under paragraph 1053 above are quite narrowly drawn (and appear to address prudential rather than financial crime concerns). Together with the time limit set of five years, they do not amount to a general power to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a senior management function in an investment manager. Further, the Commission has no power to directly exclude a criminal from taking an equity stake or holding a senior management function (though it may do so indirectly through the reporting entity). Article 188 of the Law on Investment Funds provides that a person may not acquire a qualifying holding in an existing management company without prior approval by the SEC.

1056. No similar provisions apply to Montenegrin branches of overseas investment management companies operating in Montenegro.

1057. Article 14 of the Law on Voluntary Pension Funds provides that only a person with a university degree, five years or more working experience in the business of managing and disposing of financial assets and who does not have a conviction for a criminal act against payment system operations and business activities and against official duty may be appointed as an executive director.

1058. Article 16 of the Law on Voluntary Pension Funds requires the management company to have at least two investment managers. Only a person with a university degree, relevant qualification and who does not have a conviction for a criminal act against payment system operations and business activities and against official duty may be appointed as an investment manager.

1059. At the time of application for a licence, Article 18 of the Law on Voluntary Pension Funds provides, inter alia, that details of members of the board and executive director shall be submitted to the Commission. Inter alia, Article 60 provides that a management company's authorisation may be withdrawn if it fails to meet conditions for granting authorisation.

1060. However, the criminal acts listed in Articles 14 and 16 of the Law on Voluntary Pension Funds are quite narrowly drawn and do not amount to a general power to prevent criminals or their associates from holding a senior management function in a pension manager. Further, the Commission has no power to directly exclude a criminal from holding a senior management function (though it may do so indirectly through the reporting entity).

1061. There is no power in the Law on Voluntary Pension Funds to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest in the management company or sitting on its board.

1062. Article 68 of the Securities Law sets out the information that needs to be provided to support an application for a licence. This includes information about any person who the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business, and, in particular "information on individuals with special authorisations and responsibilities and other information and evidence 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 licence". Article 71 also states that the Commission shall approve the appointment of the broker's executive director, but does not have a power to order that person's subsequent removal.

1063. Article 69 states that where the applicant is a legal person, the Commission shall take into account any circumstances relating to its majority shareholder, being a person having shares in the legal person whose number is equal or greater than 25% of the total number of shares with voting rights. Unlike other laws, where the threshold is also much lower, no provision is made for information to be provided where a person has a holding of 25% of the capital (without voting rights) or exercises influence on the broker in some other way.

1064. Article 74 sets out the grounds for revoking licences which include for legal persons failing to "comply with any condition applicable in respect of the license" and "the company contravenes the provisions of this law". However, there is no express power to remove a broker's licence where a criminal or associate takes a significant or controlling interest in the legal person or sits on the broker's board. Further, the Commission has no power to directly exclude a criminal from taking an equity stake. For individuals, grounds for revoking licences include them failing to comply with any condition applicable in respect of the licence, contravening provisions of the Securities Law and conviction with an unconditional custodial sentence or of an offence which disqualifies him from engaging in the business for which he has been licenced.

1065. Article 66 of the Securities Law provides that a broker's licence may be granted to a legal person which shall at all times employ at least two individuals who are licenced as brokers' representatives under Commission rules. It is not clear to what extent these rules address "fit and proper" criteria.

1066. The SEC does not make use of questionnaires to collect information on those wishing to hold a significant or controlling interest or senior management function in a reporting entity.

Insurance Supervision Agency

1067. Article 23 of the Insurance Law provides that a person who intends to acquire, directly or indirectly, a "qualifying holding" in an insurance company shall be obliged to obtain the prior consent from the ISA. A person who intends to increase the size of a qualifying holding which would reach or exceed 20%, 33% or 50% of the capital or shares with voting rights, or acquire all of the capital or voting rights in an insurance company shall be obliged to obtain a prior consent for such acquisition from the regulatory authority.

1068. In addition, a "qualifying holder" who intends to sell or otherwise dispose of shares below the level for which it has received consent shall also be obliged to submit prior notification thereof.

1069. A "qualifying holding" is:

- Alone or acting in concert with other related persons, a direct or indirect holding of 10% or more of the capital or voting rights; or
- Irrespective of the level of holding of capital or voting rights, the ability to exercise significant influence over the management or policies, on the basis of an agreement or understanding, or in any other way.

1070. Inter alia, Article 26 of the Insurance Law states that the ISA shall assess the application based on the risk of money laundering or terrorist financing and shall reject the application on the grounds of such a risk.

1071. Under Article 27, a person that acquires a "qualified holding" without the necessary consent shall not be able to exercise voting rights and shall be obliged to dispose of them. Under Article 28, where a "qualifying holder" ceases to meet the conditions based on which consent was granted, the ISA is required to withdraw its consent for acquisition of the holding.

1072. Paragraph 587 to 588 of the third evaluation report explain the factors to be taken into account when applying for a licence (Article 30) and rejection of such an application (Article 36). Article 30 calls for information to be provided on those who are to have a "qualified holding" and on members of the board and executive director, and a Rulebook has been published on the detailed requirements for licensing business activities and the manner of proving the fulfilment of such requirements (including questionnaires to be completed in respect of "qualified holdings" and by members of the board and the executive director). For shareholders, evidence must be presented that a person has not been unconditionally sentenced to imprisonment for more than three months for an economic, property, and malpractice or corruption offence. It is not clear whether this list of offences is sufficiently broad.

1073. Article 49 of the Insurance Law provides that only a person who has received consent from the ISA may be appointed as member of the board of directors. Article 48 explains that a person who has appropriate university education and at least three years' experience in a management position in insurance or insurance related area may be appointed as a member of the board. Article 50 provides that only a person who has received consent of the ISA Agency may be appointed an executive director. The Agency considers such executive directors to be "senior management" in line with the Core Principles. .

1074. Whilst there is no specific reference to criminal activities, Article 50a states that the regulatory authority shall not give consent for appointment of a board member or executive director if, based on

available data, the appointment could endanger the operation of the company due to the business and activities being performed or actions taken by him or her.

1075. Article 50b requires the regulatory authority to revoke a consent for the appointment of a member of the board of directors or an executive director if, inter alia, it establishes that an individual could endanger the operation of the insurance company due to the business and activities being performed or actions taken by him or her.

1076. In addition, Article 146 of the Insurance Law allows the ISA to dismiss a member of the board of directors, an executive director, or a "person with special authorisations" or to temporarily prohibit such a person from performing insurance business, e.g. where they have failed to act in accordance with law, general acts of the company or imposed measures.

1077. Under Article 56 of the Insurance Law, an application for obtaining a brokerage licence must include, inter alia: (i) a list of shareholders, or owners of holdings, and present the data that is referred to in Article 30; (ii) evidence that those persons nominated as board members or the executive director meet conditions referred to in Article 30; and (iii) evidence that at least two people to be employed have the necessary authorisation to pursue brokerage activities. Similar provisions apply to branches of foreign companies and agents. Whilst such provisions do not provide the Agency with a direct power to exclude a criminal from holding a significant or controlling interest or holding a senior management function, it may do so indirectly through the reporting entity (rejection of application or revocation of licence). However, Article 146 of the Insurance Law does permit the Agency to dismiss or temporarily prohibit a member of the board of directors, an executive director, or a "person with special authorisations" in the way that is described in paragraph 1076 above, and the Agency has explained that Article 129 may be used to order a shareholder to be replaced.

1078. In practice, prospective board members and executive directors and those intending to acquire a "qualified holding" must complete a questionnaire. Inter alia, this questionnaire requests a candidate to indicate whether he or she has been unconditionally sentenced (in Montenegro or abroad) to imprisonment for a period exceeding three months for a crime against "payment operations or commercial business, property or official duty".

Agency for Telecommunication and Postal Services

1079. The APMLTF has no power to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest of holding a senior management function. Given that post offices are operated by the State, it might be argued that there is no need to have such a power in respect of the beneficial owner.

APMLTF

1080. The APMLTF has no power to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a senior management function, in a reporting entity that is a relevant financial institution (under Article 4 of the LPMLTF), e.g. those engaged in factoring.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

1081. All eleven banks registered with the Central Bank provide money transfer and currency changing facilities. In addition:

- As noted at paragraph 470 above, "other legal entities licensed or approved by the Central Bank" may transfer funds, and "other payment services providers that are issued approval by the Central Bank" may perform foreign payment operations. However, no offence is committed where a person operates without approval.
- As noted at paragraph 473 above, exchange operations may be performed by legal entities and entrepreneurs which have a connection with a bank and which are registered for performing

exchange operations (with the Central Bank). However, no offence is committed where a person operates without approval.

1082. Information has not been provided on the licensing or registration process followed for post offices acting as sub-agents for Western Union.

Licensing of other Financial Institutions (c. 23.7)

1083. Under Article 4 items 14 and 15 of the LPMLTF, the AMLPTF is required to supervise a wide range of reporting entities. Whilst the law is prescriptive as to the sectors to be supervised, there is no requirement for such a reporting entity to be licenced or registered for AML/CFT purposes. However, 2,268 reporting entities (including NGOs) which have provided a "nomination form" to the APMLTF, in line with a requirement in Article 38(3) of the LPMLTF to disclose the name of their compliance officer (and deputy), are listed on its database, and the APMLTF makes use of information held at the Central Business Registry (using codes) and other databases. In practice, the APMLTF considers that it is able to identify the population of reporting entities in respect of which it has supervisory responsibilities.

1084. Information has not been provided on the licensing, registration, supervision or oversight process followed for post offices acting as sub-agents for Western Union.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

1085. Under Article 86 of the LPMLTF, the CBM, SEC and ISA are to supervise implementation of the LPMLTF and regulations passed thereunder by the following reporting entities within "established jurisdiction". Established jurisdiction will be:

- The Banking Law and Central Bank of Montenegro Law for the Central Bank;
- The Law on Investment Funds, Law on Voluntary Pension Funds, and Securities Law for the SEC; and
- The Insurance Law for the ISA.

1086. The effect of this is that the regulatory and supervisory measures that apply for prudential purposes and which are relevant to money laundering and terrorist financing will apply in a similar manner for AML/CFT purposes. Each of the above laws includes requirements for: (i) licensing and structure; (ii) risk management – to a greater or lesser extent; (iii) on-going supervision; and (iv) consolidated supervision (Banking Law only). As part of its AML/CFT oversight, each supervisor will also have access to data gathered for prudential and conduct of business purposes (and vice versa).

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

1087. All eleven banks registered with the Central Bank provide money transfer and currency changing facilities and are overseen under the Banking Law. In addition:

- As noted at paragraph 470 above, "other legal entities licensed or approved by the Central Bank" may transfer funds, and "other payment services providers that are issued approval by the Central Bank" may perform foreign payment operations. However, there is no basis for supervising such legal entities or other payment services providers.
- As noted at paragraph 473 above, exchange operations may be formed by legal entities and entrepreneurs which have a connection with a bank and which are registered for performing exchange operations (with the Central Bank). However, there is no basis for supervising such legal entities and entrepreneurs.

1088. Information has not been provided on the licensing, registration, supervision or oversight process followed for post offices acting as sub-agents for Western Union.

Supervision of other Financial Institutions (c. 23.7)

1089. The supervisory regime applied by the APMLTF is explained earlier in this section (c.23.1 and c23.2).

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

Table 21: Numbers of FIs registered and numbers of on-site visits carried out (in brackets)

	2009	**2010**	**2011**	**2012**	**2013**
Banks[49]	11 (8)	11 (5)	11 (10)	11 (14)	11 (7)
Securities companies[50]	41 (0)	39 (0)	36 (0)	29 (25)	27 (37)
Life insurance companies, agents and brokers	8 (0)	9 (0)	10 (3)	14 (1)	14 (1)
Factoring companies	N/A (0)	N/A (0)	2 (2)	2 (0)	2 (0)
Financial leasing companies	N/A (0)	N/A (0)	N/A (0)	N/A (4)	4 (0)
Third party property management companies	N/A (0)	N/A (0)	N/A (0)	N/A (1)	N/A (3)

1090. In order to allow competent authorities to review the effectiveness of their systems for combatting money laundering and terrorist financing on a regular basis, statistics are kept on the number of on-site examinations conducted covering AML/CFT matters. Statistics highlight that:

- The Central Bank has conducted on-site examinations throughout the period since the third mutual report (between five and 14 each year).
- The SEC did not start to test compliance with the LPMLTF through on-site examinations until 2012. In 2013, not one single on-site examination (out of 37) conducted by the SEC highlighted an AML/CFT infringement.
- In line with its statutory responsibilities, the ISA started to test compliance of insurance companies with the LPMLTF through on-site visits in 2011, but, at the time that assessors visited Montenegro, had conducted only five AML/CFT visits in total[51]. As its capacity has increased, so has the number of visits. The Agency has explained that it conducted four on-site examinations in 2014, as well as off-site checks and follow-ups to earlier examinations.
- The APMLTF conducted two visits of companies providing factoring services in 2011 (but not since).

1091. Statistics have not been presented on the number of visits carried out (indirectly) on microcredit financial institutions or post offices. Statistics presented did not cover companies providing factoring services.

[49] Excludes micro-credit institutions.

[50] Stock-brokers, custodian banks, investment fund management companies, and pension fund management companies. Excludes CDA and stock exchange.

[51] As its capacity has increased, so has the number of visits. The ISA has explained that it conducted four on-site examinations in 2014, as well as off-site checks and follow-ups to earlier examinations.

1092. Statistics are also kept on infringements identified and sanctions applied.

1093. Whereas examinations of banks appear to identify AML/CFT infringements, the number of administrative sanctions applied by the Central Bank in recent years has been very low (one in 2011, none in 2012 and none in 2013). Between 2008 and 2010, a number of low monetary fines were imposed by the Central Bank using its administrative powers, but this practice has not continued. This is because there has not been a legal basis to impose such penalties. However, six petitions were initiated by the APMLTF in 2012 and 2013 under Article 143 of the Law on Misdemeanours in respect of misdemeanours observed by the Central Bank during on-site examinations.

1094. Just one sanction has been applied by the SEC: a petition was initiated by the APMLTF in 2012 under Article 143 of the Law on Misdemeanours in respect of a misdemeanour observed by the SEC during an on-site examination.

1095. So far, sanctions applied by the ISA have warranted only written warnings (four separate occasions).

1096. In contrast, the APMLTF has found infringements on the majority of its on-site examinations, many of which have led to misdemeanour proceedings. In 2012, 64 requests were submitted by the APMLTF to the competent court to initiate misdemeanour proceedings, leading to six decisions for fines totalling €13,900. In 2013, 37 requests were submitted leading to 12 decisions to fine totalling €27,525. In addition, the APMLTF itself made 31 Misdemeanour Orders in 2013 for fines totalling €98,800.

1097. As referred to above, the APMLTF has made seven requests to initiate misdemeanour proceedings for the CBM and SEC. None of these requests have as yet led to fines: in one case the court found against the CBM and in the other imposed a warning[52].

1098. No sanctions have yet been referred to, or applied by, a competent court under Article 96a of the LPMLTF.

1099. The Central Bank has explained that violations identified in 2012 related to CDD and data protection, whereas those in 2013 related to inadequate CDD and the risk classification of one client.

1100. The APMLTF has explained that the following types of violations have been observed on visits: (i) failure to draft a risk analysis or to determine the risk presented by customers and products; (ii) failure to report cash transactions of at least €15,000 within the prescribe deadline; (iii) failure to appoint a compliance officer and deputy; and (iv) failure to provide and update information on the compliance officer and deputy to the APMLTF.

1101. Statistics did not initially present requests made by the APMLTF under Article 143 of the Law on Misdemeanours in respect of the CBM and SEC.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

1102. None of the competent supervisory bodies have received formal requests for assistance relating to, or including, AML/CFT. To some extent this may be explained by the largely domestic nature of financial services activities in Montenegro. However, this may not be consistent with the risk analysis set out at section 3.1 above, nor ownership of financial institutions in the country, many of which have foreign ownership.

1103. Only the SEC has made requests for assistance. In 2010, requests were sent to Austria (2), Slovenia (1) and the British Virgin Islands (2). Just one of these requests was executed. In 2011,

[52] The other five cases have still to be determined: one has yet to be heard; three are on-going; and one is subject to appeal.

requests were sent to Austria (3), Liechtenstein (2) and the British Virgin Islands (1) – all of which were executed. In 2012, requests were sent to Austria (2) and Cyprus (1) – all of which were executed.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

1104. Whereas the SEC must take into account any circumstances relating to the majority shareholder of a stock-broker, the definition of "majority shareholder" is much narrower than equivalent provisions in other laws, being a person having shares in the legal person whose number is equal or greater than 25% of the total number of shares with voting rights. On this basis, it appears that a criminal with a holding of 20%, or criminal able to exercise control through means other than voting rights would not be prevented from acquiring and holding on to a stake in a stock-broker. Further, the grounds for revoking the licence of a stockbroker do not make reference to the possibility of criminals taking an equity stake or holding a senior management function. This must necessarily reduce the effectiveness of the measures in Montenegro to prevent criminals from holding significant or controlling interests in a stock-broker.

1105. The basis for excluding criminals from owning or participating in the management of an investment management company is limited to persons that have committed the offence of: causing bankruptcy by negligence; failing to keep business books; adversely affecting creditors' rights; abuse in bankruptcy proceedings; unauthorised disclosure of information; or fraud. Also, such offences become "spent" after five years. This must necessarily reduce the effectiveness of the measures in Montenegro to prevent criminals from holding significant or controlling interests or holding a senior management function in an investment management company. These powers are not available in respect of Montenegrin branches of overseas investment management companies.

1106. There is no power in the Law on Voluntary Pensions Funds to prevent criminals or their associates from holding of being the beneficial owner of a significant or controlling interest in the pension management company or sitting on the board. And only those with a conviction for criminal acts against payment system operations and business activities and against official duty (corruption) may be prevented from being appointed as an executive director. This must necessarily reduce the effectiveness of the measures in Montenegro to prevent criminals from holding significant or controlling interests or holding a senior management function in a pension management company.

1107. Whereas the Central Bank and ISA administer legislation that requires both to give their prior approval to persons who are to hold a controlling interest in a reporting entity, sit on its management board, or act as executive director, this is not so for the SEC. This may reduce its effectiveness in preventing criminals from holding significant or controlling interests.

1108. As noted above, neither the Agency for Telecommunication and Postal Services nor the APMLTF have a power to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a senior management function in reporting entities.

1109. Article 59(1) of the Law on Misdemeanours provides that proceedings cannot be initiated or conducted in the event that one year has passed from the date that the misdemeanour is committed. In exceptional cases, for misdemeanours in the area of health protection, environmental protection, protection of competition, construction, customs, foreign trade and foreign exchange dealings, public revenues, political party funding and fundraising for elections, movement of goods and services and securities trade, a longer period of limitation which does not exceed three years may be provided. However, there is no provision for a longer period in the LPMLTF where it is quite likely that misdemeanours may not be detected within a period of one year.

1110. The maximum fine that may be applied directly by the APMLTF to a legal person is €2,500 under Articles 92 and 93 of the LPMLTF and just €1,000 under Article 94. In the case of entrepreneurs and individuals, the amounts that may be fined are lower yet. The Central Bank has

advised that banks had recorded an average net profit of €2 million in 2013 and that the average (gross) salary in the financial sector in 2013 was €1,345 per month (€16,140 per annum). Accordingly, it is doubtful that the level of such fines may be considered to be effective, proportionate or dissuasive.

1111. The range of fines that may be prescribed under the LPMLTF is in line with Article 24(2) of the Law on Misdemeanours. However, Article 24(4) of that Law provides that, for misdemeanours in the area of domestic violence, health protection, environmental protection, consumer protection, protection of market competition, cultural assets, construction, public information, work place safety, public revenue, customs, foreign trade and foreign exchange dealings, services and securities trade, a fine may be applied that does not exceed double the maximum amount set forth in Article 24(2). However, there is no reference to misdemeanours committed under the LPMLTF, despite the importance attached to preventing and detecting money laundering and terrorist financing.

1112. Article 24(6) of the Law on Misdemeanours provides that, in the most severe cases of preventing, limiting and undermining competition, a fine may be prescribed in the range between 1% and 10% of the total annual income of market participants, gained in the financial year before the year the misdemeanour was committed. No similar provision is offered for money laundering or terrorist financing.

1113. It seems that two penalties set out in the LPMLTF may be ultra vires. The fine that may be applied to lawyers or notaries (individuals) under Article of 96 of the LPMLTF is outside the range set for entrepreneurs or individuals set in the Law on Misdemeanours. Also, the period of prohibition set in Article 96a of the LPMLTF is greater than the six month period permitted by the Law on Misdemeanours.

1114. Whereas action is regularly taken by the APMLTF under the Law on Misdemeanours in respect of the non-financial sector, just seven petitions (2012 and 2013) have been initiated by the APMLTF under Article 143 in respect of the financial sector[53]. This may reflect greater compliance by banks, investment fund managers, pension fund managers, stock-brokers and insurance companies with the LPMLTF. However, it may also indicate that the scope of on-site examinations is insufficiently broad.

1115. In 2012, whereas 64 requests were submitted by the APMLTF to the competent court to initiate misdemeanour proceedings, just six lead to decisions for fines. In 2013, 37 requests were submitted leading to 12 decisions to fine. In 2012 and 2013, the APMLTF made six such requests for the CBM and one for the SEC, but none of these requests have as yet led to fines. The limited number of decisions to fine raises doubts about the effectiveness of misdemeanour proceedings.

1116. Whereas the range of administrative sanctions that may be applied by the Central Bank, SEC and ISA to *reporting entities* could be considered to be broad and proportionate in certain circumstances, the general effectiveness of administrative sanctions may be limited by:

- The lack of reference to sanctions that may be applied to employees (other than senior and middle management) of reporting entities who are neither directors nor "responsible persons" – see paragraphs 1009, 1015, 1017, 1020, 1022 and 1024.
- Provisions that limit the application of sanctions to circumstances where a reporting entity has failed to remediate – see paragraphs 1017, 1020 and 1022.
- Gaps in the regulation of reporting entities listed in Article 4 of the LPMLTF. This may be a consequence of the absence of a regulatory framework (see paragraphs 1012, 1016, 1019 and 1021).

[53] A further four petitions were initiated in 2014.

1117. The range of sanctions available to the APMLTF on the other hand appears to be limited to the elimination of irregularities and fines. In particular, the APMLTF does not have the power itself to bar individuals from employment, or suspend or withdraw a licence (on the basis that it does not register or licence any reporting entities). Taken together with penalties that may be applied under the Law on Misdemeanours, it is questionable whether the overall range of sanctions could be described as broad and proportionate.

1118. The statistics kept by the authorities to review the effectiveness and efficiency of systems for combatting money laundering and terrorist financing do not allow a conclusion to be drawn as to whether the system is effective and efficient. In particular:

- No administrative sanctions have been applied by the CBM since 2011.
- Despite a large number of on-site examinations carried out in 2013 by the SEC, not one single money laundering or terrorist financing infringement was identified.
- The number of on-site examinations carried out by the ISA since 2011 is low, despite most visits finding infringements.
- The record of the APMLTF is very different. It has found a large number of infringements and regularly applied misdemeanour proceedings.

3.7.2 Recommendations and comments

Recommendation 23

1119. The scope of Article 4 of the LPMLTF should be extended to cover all activities or operations covered by the FATF's definition of financial institution. Gaps are explained at paragraph 476.

1120. Guidelines covering risk analysis should be published by the Agency for Telecommunication and Postal Services.

1121. Legislation should be amended or introduced to allow the competent supervisory authorities identified in Article 86 of the LPMLTF to exercise statutory functions where this is currently not possible (including those responsible for money or value transfer). See paragraph 475.

1122. A clear legal basis should be introduced to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a senior management function (including sitting on the board) in an investment management company (or branch of an overseas company), pension fund management company (or branch of an overseas company), or stock-broker (or branch of an overseas company).

1123. Registration of a financial institution covered by Article 4 items 14 and 15 of the LPMLTF is considered to have taken place through the submission of information on the compliance officer under Article 38 of the LPMLTF. While the evaluation team accepts this indirectly achieves the requirement under criterion 23.7, it is recommended that a direct requirement is included in the LPMLTF for the reporting entity to register with the APMLTF.

1124. The Central Bank should supervise microcredit financial institutions directly for AML/CFT purposes.

1125. The SEC should consider the legal basis on which it supervises compliance with the LPMLTF by banks carrying on custody operations[54].

1126. The CBM and SEC should standardise the collection of information on those wishing to hold a significant or controlling interest or senior management function in a reporting entity. This should include information about regulatory sanctions (other than removal of an individual from his position) that may have been applied to an applicant.

[54] The SEC no longer supervises compliance with the LPMLTF by custody banks.

Recommendation 17

1127. The application of the Law on Misdemeanours to the APMLTF should be reviewed and consideration given in particular to: extending the period for which proceedings can be initiated beyond one-year; the level of the maximum fines that may be applied, including levels that may be applied directly by the APMLTF by Misdemeanour Orders, including in the most severe cases; and publicising a fine or prohibition made under the LPMLTF.

1128. Legislation should be amended to allow administrative sanctions to be applied to a branch of a foreign bank, branch of a foreign investment management company, and branch of a foreign company that manages pension funds.

1129. The basis for revocation of a licence under the Insurance Law should explicitly include failure to comply with the LPMLTF.

1130. The SEC should be able to apply sanctions under the Law on Investment Funds, Law on Voluntary Pension Funds and Rules on Supervision of Securities Operations in any case where there is a misdemeanour (rather than just where there is a failure to rectify a misdemeanour).

1131. The APMLTF should have a power to suspend or withdraw the licence or registration of a reporting entity that is a financial institution covered by Article 4 items 14 and 15 of the LPMLTF. Consideration should be given to allowing the APMLTF to bar individuals that work for such reporting entities from employment.

Recommendation 29

1132. The following legislation should be amended to make explicit reference to the role that the supervisor has to combat money laundering and terrorist financing: Banking Law; Law on Investment Funds; Law on Voluntary Pension Funds; Securities Law; and Insurance Law.

1133. Article 110 of the Securities Law and Rules made thereunder should be revised in order to ensure that they provide a clear basis for the SEC to conduct examinations of stockbrokers for AML/CFT purposes

1134. It should be an offence for a person employed to fail to provide necessary explanations to the SEC in relation to supervision conducted under the Investment Company Management Rules and Pension Company Management Rules. .

Recommendation 30 (all supervisory authorities)

1135. The CBM should perform criminal checks at the time of employment of staff and where staff change roles.

1136. The coverage and the nature of AML/CFT supervisor training should be reviewed and action plan agreed, in order to ensure that (at the very least) it is delivered to all relevant supervisory staff.

1137. The current level of resourcing in the Reporting Entities Control Department of the APMLTF should be reviewed in order to determine whether it is consistent with its statutory responsibilities under the LPMLTF.

1138. Notwithstanding other provisions in Articles 171 and 280 of the Criminal Code, Article 189 of the Insurance Law should be amended to extend the period for which data on persons over which the Agency exercises supervision is kept confidential. Currently it is confidential only for a period that expires three years after a person terminates employment with the Agency.

Recommendation 32

1139. The basis for collecting and analysing statistics on supervisory examinations should be reviewed in order to ensure that they cover all competent supervisory bodies and that statistics are complete and accurate.

3.7.3 Compliance with Recommendations 23, 29 & 17

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• Effective, proportionate and dissuasive sanctions are not available since: o The Law on Misdemeanours provides that proceedings cannot be initiated or conducted in the event that one year has passed from the date that the misdemeanour is committed. o The maximum fine that may be applied directly by the APMLTF to a legal person, entrepreneur or individual is low. o Administrative sanctions may not be applied to a branch of a foreign bank, branch of a foreign investment management company, or branch of a foreign company that manages pension funds. o The SEC may apply sanctions only where a reporting entity fails to remediate a misdemeanour. (17.1) • The range of sanctions available to the APMLTF is not broad and proportionate since they are limited to the elimination of irregularities and fines. (17.4) **Effectiveness** • A person may be prohibited from performing business activities for up to 2 years under the LPMLTF, which is in excess of the six-month period that is prescribed in Article 42 of the Law on Misdemeanours. This appears to be ultra vires. (17.1) • Whereas examinations of banks identify AML/CFT infringements, the number of administrative sanctions applied by the Central Bank in recent years has been very low (one in 2011, none in 2012 and none in 2013). (17.1) • Whereas action is regularly taken by the APMLTF under the Law on Misdemeanours in respect of the non-financial sector, just seven petitions (for 2012 and 2013) have been initiated by the APMLTF under Article 143 in respect of the financial sector. (17.1) • Whereas the APMLTF has submitted in excess of 100 requests to initiate misdemeanour proceedings, just 18 have led to decisions to fine. (17.2) • Whereas the Law on Misdemeanours allows the court to make a public announcement of a decision, it is not clear that such a power could be used to publicise a fine or prohibition made under the LPMLTF (on the basis that it may be difficult to show how this would be beneficial to the public). (17.4)
R.23	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures

		under the LPMLTF and AML/CFT supervision if lawfully conducted in Montenegro. (23.1) • The SEC, under the Securities Law and the Law on Voluntary Pension Funds, and the APMLTF, in relation to those financial institutions under its supervision, cannot take the necessary legal or regulatory measures to prevent criminals of their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in reporting entities for which they have supervisory responsibility. (23.3) • Not all persons that are recognised in legislation as being able to provide a money or value transfer service, or money or currency changing service must be licenced or registered or subject to effective monitoring systems. (23.5 and 23.6) **Effectiveness** • The Central Bank does not supervise microcredit financial institutions directly for AML/CFT purposes. (23.1) • Notwithstanding the ISA had the responsibility to oversee agents and brokers from 2012, it did not include such reporting entities in the scope of on-site examinations until 2014. (23.1) • The Agency for Telecommunication and Postal Services has not sought to exercise any supervision of post offices that are sub-agents in Montenegro of Western Union. (23.1) • The low number of AML/CFT infringements that have been identified (just one in 2012 and 2013) by the SEC, suggests that on-site examinations may have been insufficiently focussed on AML/CFT matters. (23.1) • Whereas the Central Bank and ISA administer legislation that requires both to give their prior approval to persons who are to hold a controlling interest in a reporting entity, sit on its management board, this is not so for the SEC.
R.29	**LC**	• It has not been demonstrated that the Agency for Telecommunication and Postal Services has powers to monitor and ensure compliance in respect of non-postal activities such as making and receiving transfers of funds, as sub-agent in Montenegro for Western Union. (29.1) • The SEC does not have clear authority to conduct examinations of stockbrokers for AML/CFT purposes. (29.2) •

3.8 Money or value transfer services (SR. VI)

3.8.1 Description and analysis

Special Recommendation VI (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1140. Recommendation SR.VI was rated partially compliant in the third round evaluation. The deficiencies outlined in the report were the following: 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 of informal MVT service providers are required.

Legal framework

1141. MVT service providers are regulated under several legal acts: the Banking Law, the Law on National Payment Operations, and Law on Foreign Current and Capital Operations. Significant efforts were undertaken to strengthen the existing AML/CFT framework of Montenegro in addressing regulatory deficiencies with respect to money and value transfer activities of legal entities. In this regard, the Parliament of Montenegro passed the new Payment System Law that will came into force on January 2015.

1142. Article 3 of the Law on National Payment Operations defines transfer of funds as a transfer of monetary assets executed at the originator's order by the performing institutions referred in Article 4 of the Law. Article 4 further on states that performing institutions are the Central Bank, banks, foreign branches and other legal entities licensed or approved by the Central Bank to execute transfers.

1143. Money remittance is included in the list of payment services defined under Article 2(6) of the Payment System Law. The Law stipulates that payment services include money remittance. Also, Article 4 of the Law further states that payment services may be provided by:

1) banks and other credit institutions having their head offices in Montenegro;
2) a payment institution having its head office in Montenegro;
3) an electronic money institutions having its head offices in Montenegro;
4) a branch of a third-country credit institution having its head office in Montenegro;
5) the Central Bank of Montenegro (hereinafter: the Central Bank);
6) the state of Montenegro and local authorities when not acting in their capacity as public authorities.

1144. Article 9 of the Payment System Law defines money remittance as:

> *"money remittance means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee"*

1145. Effectiveness of the provisions in the new Payment System Law cannot be assessed as far as the law is still not in force.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1146. Money remittance is included in the list of activities defined under the Payment System Law, which was adopted by Parliament and will come into force in January 2015. The Law states that payment services include money remittance. Also, the law further states that payment service providers may be:

- banks and other credit institutions having their head offices in Montenegro;
- a payment institution having its head office in Montenegro;

- an electronic money institutions having its head offices in Montenegro;
- a branch of a third-country credit institution having its head office in Montenegro;
- the Central Bank of Montenegro (hereinafter: the Central Bank);
- the state of Montenegro and local authorities when not acting in their capacity as public authorities.

1147. In order to provide payment services (including money remittance), the entities defined above have the obligation to apply for a license or obtain authorization from the CBM.

1148. The law also permits payment service providers to provide services through an agent which can be a legal person or an entrepreneur.

1149. In accordance with Article 89 of the Payment System Law, the Central Bank maintains a register of payment institutions authorised to provide payment services, and their branches and agents and updates it as appropriate. The register of payment institutions shall be publicly available and accessible on the website of the Central Bank.

1150. During on-site interviews, the Central Bank representatives stated that a special unit responsible for payment services including money remittance had not been established yet since the law was still not effective. Authorities stated that during the year 2014, the Central Bank would take all appropriate measures necessary for ensuring compliance with the requirements of the new law. This includes establishment of a supervisory unit and other measures as necessary. There are no detailed plans yet as the law was adopted in January 2014 close to the on-site visit.

1151. Article 72 of the new law does not provide for fitness and propriety requirements for directors and owners of MVT service operators.

1152. Also, provisions referring to national payment transactions and sharing of information in this respect, together with rights and obligations of payments service providers and users apply mutatis mutandis to international payment transactions, with precisely defined exemptions.

1153. The Law on Foreign Current and Capital Operations (OGRM 45/05 and OGM 62/08) regulates the issue of the foreign payment operations regime. The Law regulates performance of payment operations between residents and non-residents in euro and currency other than euro, as well as the manner for the transfer of property to and from Montenegro.

1154. Due to the fact that during the on-site visit no immediate plans were determined regarding the framework of supervision of payment services including MVT operators, the effectiveness of this issue could not be assessed by the evaluators. No specific resources had been assigned by the Central Bank to the supervision of money remittance service providers, no list of entities conducting MVT operations was provided since the supervision on MVT operations was still not in place.

1155. At the moment operations conducted by Western Union in Montenegro are not subject to supervision. Representatives of the Central Bank stated that operations of Western Union in Montenegro will be regulated after the new Payment System Law becomes effective.

Application of the FATF 40+9 Recommendations (applying R. 4 – 11, 13 – 15 & 21 – 23 and SR IX (c. VI.2))

1156. Article 4 of the LPMLTF includes organizations performing payment transactions as reporting entities. However, these institutions were not subject to registration or licensing before the adoption of the new law. The obligation to register with the Central Bank will only be effective from January 2015. Therefore, MVT service operators are not subject to the AML/CFT supervision and monitoring by the CBM yet. Additionally, the term in the LPMLTF is different from the terms referred to in the new law which might result in inconsistent practice. Therefore, for clarity it would be appropriate to refer to the same terms in both laws. In accordance with the

Payment System Law, payment services include money remittance activities and payment institutions are able to undertake the activities defined below:

"1) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;

2) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;

3) Execution of payment transactions, including transfers of funds on a payment account of the payment service user held with payment service provider or with another payment service provider:

- *execution of direct debits, including one-off direct debits,*
- *execution of payment transactions through a payment card or a similar device,*
- *execution of credit transfers, including standing orders."*

1157. Article 12a of the LPMLTF provides that:

"A reporting entity engaged in payment operations services or money transfer services shall obtain accurate and complete information on the originator and enter them into the form or message related to wire transfers of funds sent or received in any currency that is the subject of the wire transfer.

The data from paragraph 1 of this Article shall accompany the funds transfer through the payment chain."

1158. The introduction of organizations performing payment transactions in the reporting entities' list is a step forward to regulate money or value transfer activities undertaken by legal entities that were not regulated previously. Further steps shall be taken in establishing supervisory system on money remittance operations.

1159. The banks interviewed stated that the most used system of money remittance in Montenegro is Western Union. Only some banks have full access to the system. Those banks that have limited access to the system can only receive remittances and are not able to send remittance from Montenegro.

Monitoring MVT services operators (c. VI.3)

1160. Although the Central Bank is the supervisory authority for banks and institutions issuing electronic money, there is no supervisory authority for payment institutions to ensure compliance by payment institutions with the requirements of the LPMLTF.

Lists of agents (c. VI.4)

1161. The Central Bank maintains a register of payment institutions authorised to provide payment services, and their branches and agents and update it as appropriate.

1162. Article 77 of the Payment System Law authorizes a payment institution to provide payment services through an agent. In this case, the payment service provider is obliged to apply to the Central Bank for listing of its agents in the registry. Paragraph 3 of this Article further states that agents are not authorized to commence activities without being registered at the Central Bank.

1163. Effectiveness of the abovementioned provisions cannot be assessed due to the fact that the new law will be effective from January 2015.

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

1164. With respect to banks undertaking MVT operations, the sanctioning regime assessed in Recommendation 17 is also applicable here.

1165. Sanctioning powers of the Central Bank with respect to payment service providers (including MVT operators) are defined in the Payment System Law, where there are no appropriate sanctions to address violations of the LPMLTF by these entities.

Additional element – applying Best Practices paper for SR. VI (c. VI.6)

1166. There are some aspects of the Best Practice paper for SR VI that have been implemented, particularly issues related to licensing and AML/CFT regulation. However, there are deficiencies with respect to monitoring, supervision and the relevant sanctioning regime for entities undertaking MVT services.

Effectiveness and efficiency

1167. The new Payment System Law adopted in January 2014 will be effective from January 2015 therefore effectiveness of the provisions could not be assessed. No supervisory or oversight system exists in connection with MVT service providers. There are no resources at the Central Bank allocated to the supervision of MVT operations. There are no legal provisions regulating sanctioning regime of payment service providers including MVT operators with respect to violations of AML/CFT obligations under the LPMLTF.

3.8.2 Recommendations and comments

1168. Authorities are recommended to:

- Establish supervisory framework for MVT operations;
- Maintain consolidated and up to date register of all entities undertaking MVT services;
- Ensure that managers and owners of MVT service operators are subject to fit and proper requirements
- Ensure proper sanctioning regime exists for MVT service providers for violation of obligations set out in the LPMLTF

3.8.3 Compliance with Special Recommendation VI

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
SR.VI	**NC**	• There is no supervisory system established to oversee some forms of MVT operations • No requirements with respect to fitness and propriety requirements for managers and owners of MVT service operators • The Central bank lacks the legal powers to impose proportional and dissuasive sanctions on MVT service providers for violations of requirements established under the LPMLTF **Effectiveness** • The Payment System Law adopted in 2014 will become effective in January 2015, therefore its effectiveness could not be assessed.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

Generally

1169. Pursuant to Article 4 of the LPMLTF the following DNFBPs are subject to preventive measures:

1) organizers of lottery and special games of chance;

2) pawnshops;

3) audit companies, independent auditor and legal or natural persons providing accounting and tax advice services;

4) other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of:

- third persons' property management;
- travel organizing;
- investment, and agency in real estate trade;
- motor vehicles trade;
- vessels and aircrafts trade;
- sport organizations;
- catering;
- 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.

1170. Trust and company service providers are not subject to preventive measures, except for persons managing third persons' property. As stated in Section 1.3 of this report, there is no clear prohibition for TCSPs to operate on the territory of Montenegro. However, as the legislation neither regulates the establishment nor the existence of TCSPs, it is assumed by the authorities that there are no such providers on the territory of Montenegro.

1171. As to company service providers, the provision of such services is usually undertaken by lawyers or notaries. It is not clear if other legal persons or professionals may undertake such activities as a way of business. There are nevertheless no provisions requiring registration or licencing of CSPs as such.

4.1.1 Description and analysis

Recommendation 12 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1172. Montenegro was rated PC in the 3rd round evaluation report as a result of the following deficiencies: Company Service Providers were not covered under Article 4 of the LPMLTF as obliged parties; Similar deficiencies relating to R5 that were applicable to financial institutions also applied to DNFBPs; the CDD requirements did not apply to casinos; the implementation of R6 by DNFBP's was inadequate; there was a need for a comprehensive program of outreach to DNFBPs to raise awareness of CDD requirements and to introduce effective compliance practices; the practical application of AML/CFT provisions under LPMLTF were still developing.

Legal framework

1173. DNFBPs are subject to the same AML/CFT requirements and obligations set out in the LPMLTF as financial institutions, except for lawyers and notaries in respect of whom certain specific requirements apply. The Games of Chance administration has issued Guidelines on risk analyses aimed at preventing ML and TF for casinos. Guidelines include issues related to identification and verification of customer's identity, requirements on risk assessment and analyses, categories of customers and appropriate risk levels of such clients, and measures of on-going due diligence.

Risks

1174. The DNFBP sector in Montenegro is particularly vulnerable to misuse for ML/FT purposes. According to the Money Laundering and Financial Crimes Country Database of US Department of State Bureau for International Narcotics and Law Enforcement Affairs, "evidence exists that the proceeds of narcotics trafficking, tax evasion, internet fraud and other illegal activities are being laundered through construction and real estate transactions. According to the Montenegrin financial intelligence unit (FIU), most of the suspicious transactions involve lease and real estate contracts. Further on, Investigations by Montenegrin government agencies into organized crime operations and suspicious financial transactions show money moving from and through foreign offshore financial institutions. These funds are being used to purchase real estate, luxury consumer goods, and businesses". Also, during interviews conducted during the on-site visit, financial institutions and the DNFBP sector representatives identified the real estate sector as a risky sector from a ML perspective. This was also confirmed by the Montenegrin FIU.

Applying Recommendation 5 (c. 12.1)

1175. The CDD requirements set out in the LPMLTF apply in an equal fashion to both financial institutions and DNFBPs (except for lawyers and notaries, which are subject to certain specific obligations). Therefore, the technical deficiencies identified under Recommendation 5 also apply to Recommendation 12.

Casinos (Internet casinos / Land based casinos)

1176. Casinos are subject to AML/CFT requirements by virtue of Article 4 para 1(item 9) of the LPMLTF.

1177. Prohibition of anonymous accounts or accounts in fictitious names is set out under Article 31 of the LPMLTF. Article 31 seems to restrict the prohibition on anonymous accounts/accounts in fictitious names to banking products which would exclude any type of account held by casinos. In accordance with Article 9 paragraph 3, organizers of special games of chance are obliged to verify and identify a client and obtain data from Article 71 item 6 of the Law when a transaction amounting to at least €2,000 is carried out. Furthermore, Article 18 provides for the timing of identification and verification of a customer of organizers of special games of chance. Namely, the Law states that customers shall be identified and verified: "*1.When a customer enters the premises where special games of chance are organized".* Paragraph two of this provision provides that when establishing and verifying the customer's identity pursuant to paragraph 1 of this Article an organizer of Games of Chance shall obtain the following data: name, address of permanent residence or temporary residence, data and place of birth.

1178. Information requested shall include: name, address of permanent residence or temporary residence, date and place of birth of the natural person entering the casino or accessing the safe deposit box; date of establishing business connections or date and time of entering the casino or accessing the safe deposit box. Article 18 specifically requires that CDD is undertaken when a customer enters the premises where special games of chance are organised.

1179. Article 18 is silent with respect to undertaking CDD requirements in case of online gambling. The Law on Games of Chance sets out which activities are considered as games organized in

casinos. Article 4, paragraph 12 provides the definition of games organized in casinos. This definition does not exclude the possibility of organizing internet casino games. Also, Article 9 of the Law on Games of Chance states that operating internet gaming is allowed in the event the organization is already granted a concession to operate games of chance. The fact that CDD requirements do not extend to online casinos was also confirmed by representatives of the Games of Chance Administration. In this regard it should be noted that a number of web-sites do offer online gambling possibilities. Article 71 item 6 also has limited scope of application as it refers to "name, address of permanent residence or temporary residence, date and place of birth of natural person entering the casino." From the analyses of these provisions it is evident that CDD obligations for casinos have a limited scope and do not cover internet casinos. The representative of casinos met onsite stated that internal guidelines and procedures for conducting CDD measures are in place. It was stated that receptionists and the head of desk at the casino are responsible for applying CDD measures to clients entering the premises of the casino. During the meeting it was stated that fulfilment of CDD obligations causes difficulties since the CDD obligations appear to be in conflict with data protection requirements. It was also noted that regardless of the conflict of laws in this regard each and every client entering the premises is identified and copy of identification document is recorded.

1180. During the meeting with the casino representatives it was stated that it is difficult to identify linked transactions due to the large number of playing machines and the volume of transactions.

Real estate agents

1181. Real estate agents are reporting entities under Article 4. The obligations of reporting entities to undertake CDD measures are outlined in Article 10 of the LPMLTF. In this regard it should be noted that Article 10 refers to the obligation of a reporting entity to identify and verify a client and beneficial owner, if the client is a legal person. Notwithstanding this provision, it does not further clarify whether the term "client" referred in Article 10 of the Law would include both the purchasers and the vendors in a real estate transaction, as required in C.12.1 (b). There is no guidance or further clarification in relation to this matter.

1182. The evaluation team did not have the opportunity to meet with any representatives of real estate agents. Therefore, the implementation of CDD requirements by real estate agents could not be assessed.

Dealers in precious metals and dealers in precious stones

1183. Dealers in precious metals and dealers in precious stones are specifically defined in Article 4 as 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.

1184. Though the law does refer to the €15,000 threshold, the definition of "interconnected transactions" is not clear. This term does not visibly refer to the notion of one or more transactions that appear to be linked.

1185. During the interview with dealers in precious metals and dealers in precious stones evaluators were not persuaded that the sector representative had sufficient understanding of CDD obligations and other measures required under the LMPLTF. Also, the dealer stated that there was an instance when ID information on customer was requested by the bank however it was not provided because the information was not kept by the dealer itself. During the meeting it was also noted that obligations with respect to foreign customers representing PEPs were not adhered to in practice.

Lawyers, notaries and other independent legal professionals and accountants

Accountants

1186. Accountants are listed in Article 4 of the LPMLTF defining the list of reporting entities. Item 12 states that measures for detecting and preventing money laundering and terrorist financial shall be taken by audit companies, independent auditors and legal or natural persons providing accounting and tax advice services. CDD obligations for reporting entities are defined in Chapter II of the LPMLTF. Obligations of accountants to undertake CDD measures are the same as those applicable to financial institutions. Therefore, discussion and deficiencies outlined in reference to Recommendation 5 are also applicable here.

1187. Meetings with accountants demonstrated that there is low understanding of AML/CFT requirements prescribed by the LPMLTF and the representatives pointed out that the industry would like to receive more guidance and training with respect to CDD measures. Also, due to the fact that there is no supervisory authority established to oversee activities of accountants and to ensure implementation of LMPLTF provisions, fulfilment of CDD measures by accountants cannot be assessed as adequate.

Lawyers and Notaries

1188. Lawyers and notaries are dealt with separately in the LPMLTF. Chapter III of the law sets out the responsibilities and obligations of lawyers and notaries. These requirements are however limited in scope. Article 41 and 42 of Chapter III set out the basic CDD obligations of lawyers and notaries. Those obligations regulate aspects of CDD, suspicious transaction reporting, and record keeping. Article 41 states the following:

"A lawyer or a notary shall, in compliance with this Law, implement measures of detecting and preventing money laundering and terrorist financing, when:

1. He/she assists in planning or executing transactions for a customer related to:

- *purchase or sale of real estate 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 transactions concerning real estate on behalf of and for a customer."

1189. Article 42 further defines responsibilities of lawyers and notaries in the process of the verification of a customer. It should be noted that Article 42 refers to the verification process without prior reference to the identification procedure. In this regard it is to be noted that Article 42 cross refers to Article 9 which states that "*within customer verification in the process of establishing the identify 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."* Furthermore, paragraph 2 of Article 42 provides that in the event of a suspicion about the accuracy or veracity of the obtained client identification data and in the event there are reasonable grounds for suspicion of money laundering or terrorist financing related to the transaction or client, the lawyer or notary is required to obtain additional information on the transaction or the client. Article 9 as such does not define what measures shall be considered as CDD measures, it merely states in which particular circumstances CDD measures shall be undertaken. CDD measures are further defined in Article 10 which formulates measures that are to be considered as part of CDD. However Article 10 of the law is not applicable to lawyers and notaries. Therefore, CDD obligations for the purpose of applying recommendation 5 are defined in Article 42. Article 42 itself does not give a precise definition of which measures shall lawyers undertake for the purpose of CDD in general.

Also, paragraph 3 sets out the obligation of lawyers and notaries that in the process of applying enhanced CDD measures additional information shall be gathered. Article 42 paragraph 3 states which information shall be gathered in the event of enhanced CDD. However, due to the fact that tasks and obligations of lawyers and notaries are defined separately and not in conjunction with obligations defined for reporting entities in general, there is no specific reference to circumstances in which enhanced due diligence is required.

1190. The formulation of article 42 paragraph 5 provides that 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. Obligation of lawyers and notaries to establish beneficial owners is also not fully in line with FATF recommendations. Lawyers and notaries are not obliged to obtain information or data from a reliable source to be satisfied that they know who the beneficial owner is. Lawyers and notaries do not have the explicit obligation to determine for all customers whether the customer is acting on behalf of another person.

1191. CDD requirements with respect to specific information that should be obtained and further recorded is dealt with in Article 42 of the LPMLTF which provides that lawyers and notaries are obliged to obtain data in the verification process of a customer identity, as defined under Article 73. Article 73 lists all information that lawyers and notaries shall obtain. Also, this provision itself sets out record-keeping obligations of lawyers and notaries. List of information that shall be requested by lawyers and notaries does not fully cover all the necessary requirements defined under Methodology for Recommendation 5. Namely, Article 73 does not refer to the information to confirm the authority of a representative; information with respect to ownership and control structure of the client; information with respect to natural persons does not clearly encompass information on ultimate controlling of the legal entity. Furthermore, paragraph 1 of Article 73 states that a lawyer or notary is obliged to keep data with respect to: name, address of permanent residence, date and place of birth of the entrepreneur and natural parson, 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. The provision is inconsistent because it refers to entrepreneur, legal person and company defining different information that shall be kept. For instance, with respect to entrepreneurs and natural persons, permanent residence and address is required, with respect to companies, registered office and address is required and with respect to legal persons, the personal identification number is required. These requirements are not fully in line with criterion 5.4, which requires information with respect to information on proof of incorporation or similar evidence of establishment of existence and information on directors and provisions regulating the power to bind the legal person or arrangement is also required. Paragraph 1 is also limited in scope in the sense that it does not refer to clients which might represent legal arrangements. Paragraph 2 of the provision further states that name, address of permanent residence, date and place of birth of the agent that establishes business relationship or executes transaction for the person listed in paragraph 1 shall be recorded. In this regard it is important that criterion 5.4 requires to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. Article 73 (2) only refers to agent, therefore not including other representatives of the company who are not agents but are authorised to act on behalf of the legal entity (for instance directors). Information requested under Article 42 is also not fully in line with requirements of criterion 5.6; lawyers and notaries are required to obtain information on the purpose and intended nature of the transaction but not on the business relationship.

1192. With respect to on-going due diligence and updating CDD information, lawyers and notaries do not have an obligation to conduct on-going due diligence and update CDD information on existing clients. Lawyers and notaries are not required to terminate the relationship with a customer in the event they are unable to complete the verification process of a customer. Article 42 is silent in this regard.

1193. In the meeting with lawyers and notaries it was pointed out, that there are difficulties in checking the beneficial ownership of customers due to the fact that information in public registers are not updated in a timely manner. It was also confirmed that beneficial ownership with respect to foreign clients is not implemented. During the meeting it was stated that lawyers and notaries do identify clients however no obligations with respect to on-going due diligence or enhanced due diligence are observed.

Trust and company service providers

1194. Trust and company service providers are not reporting entities under the LPMLTF.

Audit companies and tax advice services

1195. Audit companies, independent audit and legal or natural persons providing accounting and tax advice services are reporting entities in accordance with Article 4 of the LPMLTF. All CDD requirements set out in the LPMLTF are also applicable to this sector.

1196. Meetings with sector representatives outlined that there is need for further guidance on undertaking CDD measures. It was noted that for audit companies and accountants AML/CFT preventive measures are very new and they still need more training on the implementation of the requirements of the LPMLTF.

Others

1197. In addition to the DNFBP sector representatives defined under FATF recommendations, the LPMLTF includes the following entities within its scope: pawnshops; humanitarian, non-governmental and other non-profit organizations; entrepreneurs and natural persons engaged in an activity or business of travel organizing, trade of motor vehicles, vessels and aircrafts, sport organizations, trading in works of art.

Applying Recommendation 6, 8, 10 and 11(c. 12.2)

1198. Due to the fact that all the DNFBPs (except for lawyers and notaries) are reporting entities defined under the LPMLTF, all obligations with respect to PEPs, new and developing technologies, record-keeping and complex, unusual transactions defined under the Law are applicable to DNFBPs.

1199. With respect to lawyers and notaries, there are no specific provisions with respect to PEPs and unusual transactions.

Applying Recommendation 8 (c. 12.2)

1200. Reporting entities have an obligation to take measures and actions to eliminate money laundering risks that may arise from new developing technologies. The DNFBP sector representatives except lawyers and notaries have the same obligation as financial institutions. With respect to casinos it should be noted that the deficiencies outlined with respect to CDD measures for online casinos have direct effect on the implementation of requirements of Article 28a of the LPMLTF by casinos.

Applying Recommendation 10 (c. 12.2)

1201. Most of the DNFBPs are subject to the same record-keeping requirements as financial institutions. Therefore, deficiencies outlined in the relevant sections are applicable in this regard. Article 83 determines record keeping obligations of reporting entities.

"*reporting entity shall keep records provided on the basis of Articles 9,14,15,16,17,18,19,20,21,22,22,23,26,27 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..*"

1202. Record-keeping obligation established in Article 83 does not cover activities of online casinos because it mainly refers to the physical entrance of the customer into the room where special games on chance are organized. Article 83 is not in conformity with requirements of Criterion 12.2 stating

that in the circumstances set out in criterion 12.1 DNFBPs should be required to comply with criteria set out under Recommendations 6 and 8-11. Lawyers and notaries have record keeping obligations defined under Articles 83 and Article 73 of the LPMLTF. Article 83 states that:

"*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."

1203. Article 73 defines what information and documents shall be kept and processed by lawyers and notaries.

1204. Article 73 in particular defines that records kept by lawyers and notaries should contain 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 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."

1205. Lawyers and notaries met noted that there are doubts whether CDD obligations of the LPMLTF prevail over requirements of the Data Protection Act. In accordance with the interviews, there were number of cases when individuals took the issue to the court. Therefore, requirements

of the Data Protection Act undermine effective implementation of record-keeping obligations of lawyers and notaries and other DNFBP sector representatives. It was later clarified by the APMLTF that the Data Protection Act allows entities to retain copies in the event the copy states that it is to be used for no purposes other than identification.

Applying Recommendation 11 (c. 12.2)

1206. There are no relevant obligations for DNFBP sector representatives to examine as far as possible the background and purpose of such transactions as required under criterion 11.2. Obligation to examine all unusual transactions does not exist for lawyers and notaries.

Effectiveness and efficiency

1207. Despite the fact that after third round evaluation report, the obligation to conduct CDD for transactions above Euro 2 000 for casinos was introduced, the evaluation team concluded that this requirement was not being adequately implemented. Requirements to determine beneficial ownership are not adhered in practice. The meeting with lawyers and notaries revealed that responsibilities arising out of obligations to determine beneficial ownership are difficult to implement in practice both for domestic and foreign entities. Domestically the establishment of beneficial ownership is difficult due to the fact that information in public registries is not updated on a timely manner. Interviews conducted with the DNFBP sector demonstrated that the implementation of CDD obligations is not effective. None of the representatives of the DNBFP sector demonstrated that in the event of incomplete identification data it would not be possible to conduct business activity. The evaluators in general question the ability of the DNBFBP sector representatives to undertake CDD measures due to the lack of resources of the sector itself and the insufficient supervision of the sector and provision of guidance.

1208. Absence of CDD requirements for online casinos increases the risk of money laundering in this industry. The current legal framework permits the operation of online casinos without any legal obligation for identifying and verifying a customer using online gaming facilities. During on-site interviews with casinos it was noted that linked transactions are not examined in casinos, which undermines the effective implementation of CDD measures in the casino industry.

1209. The requirement to pay attention to unusual and complex transactions is not implemented by the DNFBP sector. The DNFBP sector representatives met were not aware of obligations to examine unusual and complex transactions and what the grounds for such examinations are.

1210. Practical implementation of requirements with respect to obligations related to foreign PEPs is rarely observed due to the fact that the DNFBP sector representatives do not have appropriate resources to determine the source of wealth and funds of foreign PEPs.

1211. Obligations of record-keeping are not clearly understood by representatives of the DNFBP sector. The obligation of record-keeping is mostly associated with keeping the copy of identification data. Most DNFBP representatives did not show any awareness of record-keeping obligations with respect to information on transactions themselves including account files and business correspondence. On-site interviews demonstrated that there is inconsistency among two pieces of law. Specifically, the personal data protection legislation and the LPMLTF differently regulate issues regarding retention of ID documents by DNFBPs. Discrepancy and uncertainty in the application of the LPMLTF requirements pose risks that record-keeping requirements under the LPMLTF will not be adhered to in practice.

1212. The evaluation team did not have the opportunity to meet with representatives of the real estate sector which, based on assessments by the financial sector and the supervisory authorities, represents the most vulnerable sector from a ML perspective.

4.1.2 Recommendations and comments

Applying Recommendation 5

Authorities are recommended to:

1213. Include Trust and company service providers as reporting entities under the LPMLTF

1214. Amend LPMLTF provisions governing activities of casinos to ensure that CDD obligations are extended to cover activities of online casinos

1215. Amend Chapter III of the LPMLTF to bring the CDD requirements for lawyers and notaries in line with Recommendation 5

1216. Clarify obligations of lawyers and notaries with respect to conducting enhanced due diligence

1217. Introduce obligation for DNFBPs to establish beneficial ownership of legal arrangements

1218. Issue more guidance on identification and verification process of beneficial ownership of foreign entities

1219. Clarify issues related with the Data Protection Act and make clear provisions ensuring supremacy of LPMLTF identification and verification requirements over data protection requirements that would not undermine effective implementation of fulfilment of CDD obligations

1220. Ensure that CDD obligations are effectively implemented by representatives of DNFBP sector

Recommendation 6

1221. Amend relevant provision in the LPMLTF with respect to the senior management approval for establishing business relationships with a PEP

1222. Authorities should provide further guidance on responsibilities of the DNFBP sector regarding customers that are PEPs

1223. DNFBP sector representatives should be required to obtain information on source of funds and assets sources in the event of conducting due diligence on customers representing PEPs

1224. Introduce requirements for lawyers and notaries to undertake on-going due diligence with respect to PEPs

Recommendation 8

1225. Introduce requirement for lawyers and notaries to take actions to eliminate money laundering risks that may arise from new technologies

1226. Introduce requirement for casinos to implement obligations under Article 28a for online activities

1227. Provide guidance to DNFBPs with respect to risks associated with new technologies

Recommendation 10

1228. Extend record-keeping obligations to activities of online casinos

1229. Lawyers and notaries record-keeping obligations shall be clarified and extended to cover all information and documents required under FATF recommendations

1230. Ensure that DNFBPs comply with record-keeping obligations prescribed by Law

1231. Introduce requirement for lawyers and notaries to keep record of examinations of unusual and complex transactions

Recommendation 11

1232. Obligation to pay special attention to unusual transactions should also include special attention to all complex transactions or unusual patters of transactions

1233. Amend provisions in the LPMLTF regarding obligations on unusual transactions to include analyses of the background and purpose of such transactions

1234. Introduce obligation for lawyers and notaries to analyse all unusual and complex transactions

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12[55]	**NC**	• The legal framework does not cover trust and company service providers; • Deficiencies outlined in R5 also apply to DNFBPs; ***Applying Recommendation 5*** • CDD requirements do not apply to online casinos; • CDD obligations for lawyers and notaries are limited in scope and do not cover the whole range of CDD obligations; • No obligation for DNFBPs to determine the beneficial owners of legal arrangements; • Weak implementation of CDD measures of the 2 000 Euro threshold by casinos; • Weak implementation of CDD measures in situations where the transaction is carried out in a single operation or in several operations that appear to be linked by casinos; • Weak implementation of obligations related to beneficial ownership by DNFBP sector representatives; • The obligations on beneficial ownership applicable to lawyers and notaries do not include the requirement to satisfy themselves that they know who the beneficial owner is; ***Applying Recommendation 6*** • Lack of guidance on determining whether a customer is a PEP and undertaking the necessary additional measures; • Lawyers and notaries are not required to establish whether a customer is a PEP; • Weak implementation of CDD measures with respect to PEPs; ***Applying Recommendation 8*** • No guidance on the use of new technologies in DNFBP sector; • Limited scope of CDD obligations for casinos undertaking online activities undermine obligation of casinos to eliminate money laundering risks that arise from new technologies; • Lawyers and notaries are not required to pay special attention to risks associated with new technologies in their activities;

[55] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3rd round report on Recommendation 9.

		Applying Recommendation 10 • Record-keeping obligations do not apply to online activities of casinos; • Record-keeping obligations for lawyers and notaries do not include all the necessary information subject to record-keeping under Recommendation 10; ***Applying Recommendation 11*** • Obligation to analyse all unusual and complex transactions is not in line with FATF requirements; • Lawyers and notaries are not required to undertake obligations with respect to unusual transactions and to analyse all complex transactions or unusual patters of transactions; • Lack of guidance on unusual transactions and obligations associated with such transactions; • Weak implementation of analyses of such transactions by DNFBP sector;

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

Recommendation 16 (rated NC in the 3rd round report)

Summary of 2009 MER factors underlying the rating and developments

1235. In the previous 3rd round assessment report, the addressed deficiencies regarding Recommendation 16 were of both technical as well as effectiveness nature, resulting in a NC rating. Analogously to the analysis of Recommendation 13 and Special Recommendation IV of the 3rd round assessment report, the provision dealing with the reporting requirement was not in line with the FATF standard, as it only covered the obligation to report an STR if suspicions were raised before executing a transaction. From an effectiveness perspective, it was stated that the low number of STRs filed by the DNFBP sector might be an indicator of the ineffectiveness of the system.

Legal Framework

- The Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF)
- Rulebook on the manner of reporting cash transactions in the amount of EUR 15,000 or more and suspicious transactions to the APMLTF (FIU – Guidance)
- Rulebook on Indicators for recognizing suspicious customers and transactions (List of Indicators)

Applying Recommendations 13-15

Requirement to submit STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

Casinos & Real Estate Agents

1236. According to Article 4 para 2 item 9 and 15 LPMLTF organizations, other legal persons, entrepreneurs and natural persons organizing lotteries and special games of chance or engaged in an activity or business of agency in real estate shall be reporting entities. Hence, casinos and internet casinos as well as real estate agents are also regarded as reporting entities. In addition, para 1 stipulates that these reporting entities shall take measures for detecting and preventing money laundering and terrorist financing before, during and after the conduct of any business. Regarding the reporting requirement therefore, the analysis in 13.1 and 13.2 applies equally.

1237. Article 9 Para 3 and 4 covers CDD measures to be conducted by casinos. Hereafter, organizers of special games of chances shall while carrying out transaction in excess of EUR 2,000 verify the identity of a client and obtain the data according to Article 71 item 6. This does make sure that following a potential request by the APMLTF all necessary data could be obtained.

Dealers in precious metals and dealers in precious stones

1238. According to Article 4 para 2 item 15 dealers in precious metals and stones and related products fall under the same regime as organizers and conductors of biddings and traders in works of art. This provision only obliges the mentioned reporting entities to take measures from para 1 of the same article if one or more linked cash transactions in excess of EUR 15,000 are executed.

1239. In the case of dealers in precious metals and stones this reduced reporting requirement would be in line with the FATF Methodology.

Lawyers, notaries and other independent legal professionals and accountants

1240. Lawyers and notaries are not covered by Article 4 and therefore do not count as reporting entities. However, specific provisions in the LPMLTF have been introduced in order extend the reporting requirement to lawyers and notaries as well. According to Articles 41 para 2 LPMLTF lawyers and notaries shall implement measures of detecting and preventing money laundering and terrorist financing when financial transactions or transaction concerning real estate on behalf of a customer are executed.

1241. Similarly to all other DNFBPs and financial institutions all data shall be kept according to Article 72 and 73 LPMLTF, which is an additional article in the law to Article 71 which covers the CDD requirement of all other financial institutions and DNFBPs.

1242. Finally, Article 43 LPMLTF covers the reporting requirement of lawyers and notaries. When Article 41 para 2 is applicable and lawyers and notaries execute a financial transaction or a transaction concerning real estate on behalf of a customer and reasonable ground for suspicion of money laundering and terrorist financing are established he/she shall inform the APMLTF before the execution of a transaction. The information can be submitted via telephone but must also be sent in written form no later than on the following working day after the submission via telephone.

1243. In contrast to the reporting obligation of reporting entities, lawyers and notaries are not obliged to make an STR after the execution of a suspicious transaction. Furthermore, Article 43 does not provide for a time frame as provided for in Article 33 ("without delay"). Also, Article 43 does not provide for a provision that stipulates that STRs are to be filed regardless of the type or amount of the transaction.

1244. In addition, lawyers and notaries are also obliged to notify the APMLTF without delay, if a customer asks for advice on money laundering and terrorist financing (Article 43 para 4).

1245. What is more, notaries are obliged to provide certified copies of the sales contracts in excess of EUR 15,000 referring to real estate trade on a weekly basis to the APMLTF.

1246. Lawyers and notaries are obliged to inform the APMLTF without delay in cases where they are asked to give advice on money laundering or terrorist financing.

1247. Accordingly, criteria 13.1 and 13.2 are not met in the case of lawyers and notaries, as the reporting obligation only covers instances of suspicion raised before the execution of a transaction. Furthermore, there is no stipulation of a timely submission of an STR.

Legal Privilege

1248. Article 44 LPMLTF provides for exceptions in the reporting requirement of lawyers, whereupon the reporting requirement does not apply if a lawyer is establishing his customer`s legal position or representing his customer in court proceedings, which includes providing legal advice in that matter. Furthermore, the same article specifies in para 2 that if a lawyer does not provide information to the APMLTF upon a request filed according to Article 49 LPMLTF, the lawyer has to state the reasons for not answering in the required manner without delay and no later than 15 days after receiving the request.

1249. Furthermore, according to Article 44 Para 3 lawyers are not obliged to report on cash transactions pursuant to Article 33 LPMLTF, unless reasonable grounds for suspicion of money laundering or terrorist financing related to a transaction or a customer are detected, which again would trigger an STR, which is compliant with the standard.

1250. Article 44 LMPLTF covering the legal professional privilege is fully in line with the FATF standard.

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs)

1251. The reporting requirement is also extended to "planned" transactions, hence covering attempted transactions in Para 2.

1252. Criterion 13.3 is therefore fully met.

Making of ML/FT STRs Regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBPs)

1253. There is no provision restricting the reporting entities nor lawyers or notaries from making an STR if tax matters are possibly involved.

1254. Criterion 13.4 is fully met.

Reporting through Self-Regulatory Organisations (c.16.2)

1255. There is no such mechanism in Montenegro establishing reporting by DNFBPs through SROs.

Applying Recommendation 21

Special attention to persons from countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS)

1256. LPMLTF does not contain a relevant provision establishing obligation of 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.

1257. Article 64 paragraph 1(4) defines that the competent administrative body shall publish on its web site the list of countries that do not apply standards in the area of detection and prevention of money laundering and terrorist financing. However, this provision does not address the obligation of reporting entities to pay special attention to business relationships and transactions from the list of countries published on the web site.

1258. There is no reference that DNFBP sector representatives shall apply counter-measures where a country continues not to apply or insufficiently applies the FATF recommendations required under criterion 21.3.

1259. During on-site interviews it was not referred that casinos actually undertake obligations to apply special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations.

Examinations of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBPS)

1260. LPMLTF does not contain any obligation for DNFBPs to examine the background and purpose of transactions that have no apparent economic or visible lawful purpose in case transactions are from or to countries that do not insufficiently apply the FATF recommendations.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

1261. There are no direct provisions envisaged in the Law or other enforceable means to apply appropriate countermeasures to countries that continue not to apply or insufficiently apply the FATF Recommendations.

1262. On 2 February 2012, the CBM passed the Order on the prohibition of performing financial transactions with the Central bank of Iran, Iranian financial institutions and their related parties, pursuant to decisions of relevant international organisations on sanctions to Iran.

1263. On-site interviews with DNFBP sector representatives have not demonstrated that requirements of recommendation 21 are effectively implemented.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

1264. According to Article 4 para 2 item 12 LPMLTF audit companies, independent auditors and legal or natural persons providing accounting and tax advice services are also reporting entities and are therefore also covered.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

1265. Analogously to the analysis of criterion 13.5 the same conclusions apply. The additional element is not covered.

Effectiveness and efficiency

Applying Recommendation 13

1266. As for casinos and real estate agents the same deficiencies as described in detail in the analysis of Recommendation 13 apply. The reporting requirement is not met, as only transactions that raise suspicions of money laundering and terrorist financing are covered.

1267. The complete absence of STRs filed by casinos and real estate agents in the years 2010-2013 raises serious concerns about the effectiveness of the reporting regime in the view of the evaluators. During the on-site visit several Montenegrin authorities have claimed that in their opinion in particular the gambling as well as the real estate sector are vulnerable to money laundering, especially the real estate sector which has grown significantly in recent years and services high-risk, non-resident clients. In addition, during the meeting with the casino representatives it became evident that the reporting requirement is not clearly understood. The representatives appeared to only be aware of the requirement to report CTRs to the APMLTF.

1268. Dealers in precious metals and stones are now fully covered in accordance with the FATF Methodology. In the meeting with the representative from this sector the evaluators were told that it rarely ever happens that precious metals and stones are sold for the equivalent of more than EUR 15,000. Therefore, the threshold according to the reporting requirement is never reached, which was their explanation for the complete lack of CTRs in the years 2010-2013. The evaluation team did not have a chance to further explore this explanation.

1269. As for lawyers and notaries, on the one hand the authorities have introduced a legal obligation that requires these professions to report STRs, and in the case of notaries CTRs as well. Therefore, this is a significant step forward. Since notaries are in charge of certifying any kind of change of ownership regarding property and real estate it is sensible to oblige them to report CTRs to the APMLTF. This has been done only since 2012, as before that only the court was in charge of certification. This explains the jump in the statistics when comparing the numbers from 2010-2011 and 2012-2013. Interestingly, the number of CTRs reported to the APMLTF has increased considerably from 2012 to 2013. The notaries met on-site did not have a specific explanation for this. It was also explained that the real estate sector is booming at the moment and more and more clients are coming to Montenegro to do business.

1270. On the other hand, the authorities should assess whether or not lawyers should also be obliged to report CTRs when dealing with real estate business, which seems to be the standard case. This would in fact give the APMLTF much more information on the real estate sector and allow them to further assess and explore its vulnerabilities.

1271. A major deficiency regarding the reporting obligation on STRs for lawyers and notaries (in addition to the ones already mentioned in the analysis of Recommendation 13) is the restriction to report transactions only before being executed. This is clearly not in line with the methodology and might have an adverse impact on the effectiveness, as there have been only two (2) STRs reported by lawyers and none by notaries in the last four years prior to the on-site.

1272. All in all, the heavy reliance on the list of indicators might have an adverse impact on the effectiveness of the system. In some meetings with the DNFBP sector it was stated that in earlier instances where the person did have a suspicion did not choose to report because there were no exact indicators describing the circumstances accurately.

Applying Recommendation 21

1273. Interviews with the DNFBP sector have not demonstrated that in practice requirements of recommendation 21 are implemented. No reference to existence of any enhanced measures with respect to customers representation countries which do not or insufficiently apply the FATF recommendations was revealed.

4.2.2 Recommendations and comments

Applying Recommendation 13

1274. Authorities should:

- Amend current Article 33 LPMLTF to refer to “funds” rather than “transactions”.
- Amend current Article 33 LPMLTF to refer to “proceeds from criminal activity” rather than only to “suspicions for money laundering or terrorist financing”.
- Analogously amend the FIU-Guideline as well as the list of indicators to reflect these amendments in due manner
- Further stipulate in Article 33 LPMLTF how attempted transactions are covered and at the same time amend Article 43 Para 1 in a way that would cover reporting prior and after the execution of a transaction.
- Assess whether lawyers should as well be obliged to report CTRs when dealing in real estate business, in order to get a better understanding of the high-risk real estate sector
- Introduce a mechanism of regular awareness raising and training regarding the reporting requirement provided to reporting entities (dealing also with the clear distinction between unusual and suspicious transactions, as well as CTRs and STRs), especially with the gambling and real estate sector (including lawyers and notaries)

Applying Recommendation 21

1275. Provide guidance to DNFBP sector regarding risks associated with activities related to countries which do not or insufficiently apply the FATF recommendations

1276. Ensure compliance of activities of the DNFBP sector with requirements of the LPMLTF regarding paying special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**[56]	***Applying Recommendation 13*** • Regarding casinos and real estate agents the same deficiencies described in R. 13 apply; • Reporting obligation for lawyers and notaries unduly restricted; **Effectiveness** • Inadequate understanding of the reporting requirement by the gambling sector; • Very low number of reporting raises concerns regarding effectiveness of the system, especially with regard to the high-risk real estate sector; ***Applying Recommendation 21*** • Poor implementation of compliance with requirements paying special attention to transactions with countries which do not or insufficiently apply FATF recommendations; • Poor guidance on effective measures for ensuring that DNFBP sector is aware about weaknesses in the AML/CFT systems of other countries.

4.3 Regulation, supervision and monitoring (R. 24)

4.3.1 Description and analysis

Recommendation 24 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1277. Montenegro was rated PC in the 3rd round evaluation report for recommendation 24 and the factors underlying the rating for this recommendation were: the absence of effective systems for monitoring and ensuring compliance and general lack of knowledge among DNFBPs of their AML/CFT responsibilities; Need of a register on reporting entities to be supervised by LPMLTF.

1278. According to Article 86 of the LPMLTF, the specific supervisory bodies for each DNFBP are:

[56] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3rd round report on Recommendations 14 and 15.

- The administration body competent for games of chance – organization of lottery and special games of change;
- The Tax Authority – pawnshops;
- Bar Association of Montenegro – lawyers and law offices
- Notary Chamber – notaries;
- Ministry of Finance – Audit companies, auditors, accountants and persons providing tax consulting services;
- APMLTF – Other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity of:
  1. third persons' property management;
  2. travel organisation;
  3. investment, and agency in real estate trade;
  4. motor vehicles trade;
  5. vessels and aircrafts trade;
  6. sport organizations;
  7. catering;
  8. 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;

1279. According to information provided by the authorities there are: 928 real estate agents, 60 dealers in precious metals and stones, 685 lawyers, 44 notaries 151 certified accountants, 65 auditors and 2895 NGOs. In addition to this list, there are 526 touristic agencies and 250 car dealers.

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1280. Licensing of casinos is undertaken by the Administration for Games of Chance. There is a total of 16 employees in the administration for games of chance. There are two authorities in charge of casino supervision the Administration for Games of Chance and the Administration for Inspection Affairs. The Administration for Games of Chance is in charge of licencing and granting concessions, whilst the Administration for Inspection Affairs monitors and controls the regulated entities and undertakes inspections. In accordance with the statistics provided the supervisory action in terms of inspections has only been undertaken with respect to one casino.

Licensing of Casinos

1281. In accordance with Article 36 of the Law on Games of Chance applications for concession for organizing games of chance in casinos must be supported by documents in relation to the proof of core capital, data on individuals managing the business and proof of their education and qualification for carrying out activities in the casino, also a clean criminal record with respect to offences against the payment system is required. Licensing requirements do not contain information on beneficial ownership and there are no requirements to ensure that beneficial owners of significant or controlling interests are not criminals or their associates. Criminal records are only requested in relation to offences against the payment system without taking into consideration ML/FT or other crimes.

1282. Article 14 of the Law on Games of Chance sets out instances when license can be withdrawn. The list includes instances when:

1) the concession has been granted on the basis of untrue data;

2) *the concessionaire has not started to operate within the commencement deadline determined in the concession contract;*

3) *the concessionaire stopped the operation in violation to the provisions of this Law;*

4) *the concessionaire fails to meet the prescribed technical, IT and other conditions any longer;*

5) *the concessionaire breaches the rules of the games of chance;*

6) *the concessionaire fails to pay obligations stipulated in this Law or fails to pay winnings to players;*

7) *the concessionaire does not allow or otherwise prevents the supervision prescribed by this Law or makes the supervision difficult;*

8) *the concessionaire presents the realized turnover incorrectly;*

9) *the concessionaire lends money to players;*

10) *the concessionaire breaches the provisions of the concession contract;*

11) *the facts have occurred due to which the concession would not have been granted.*

1283. Article 86 of the LMPLTF provides that the Administrative body is authorised to inspect organisers of lottery and special games of chance. In accordance with Article 13 of the Law on Inspection Supervision, an inspector during the inspection is obliged to provide a notice for the commencement of an inspection informing the responsible person of the entity subject to supervision. The inspector is also obliged to record the conducted inspection review. The specific authority of the inspector is set out in Article 14 which provides that when conducting inspection supervision, the inspector is authorised to:

1) *Review: buildings and premises, land, equipment and devices, working tools and other objects, products which are in trade, goods in trade, conduct of trading in goods and rendering of services, business books, records and registries, contracts, public documents and other business documents;*

2) *Determine the identity of entity subject to supervision and other persons;*

3) *Take statements from entity subject to supervision and other entities;*

4) *Take samples necessary for establishing of factual situation;*

5) *Order undertaking of appropriate measures and actions in order to provide conduct of supervision;*

6) *Take away documents on a temporary basis, objects and other things which are necessary for determination of actual condition;*

7) *Prohibit the conduct of certain actions;*

8) *Provide the execution of ordered measures;*

9) *Undertake other prescribed measures that are providing the conduct of inspection supervision.*

1284. For ensuring compliance, in accordance with Article 15 and 16, inspectors are authorised to address deficiencies in the activities of inspected entities. Namely, the inspector is authorised to require the reporting entity to undertake certain measures for addressing deficiencies, temporarily suspend activities, impose fines, submit a request for initiating a misdemeanour procedure, and to initiate criminal or other procedures.

1285. In general, the Law on Inspection Supervision is a law that applies to all government activities and inspection of all entities subject to government regulation and control. The law governs the manner in which Ministries and administration bodies conduct inspection supervision. Article 3 sets

out the areas to which inspection supervision is applicable. The scope of applicability of inspection supervision includes physical persons, non-governmental organizations, business organizations and other forms of business operations, public companies, public authorities and services, state administration bodies, bodies of local self-government, bodies of local government and municipal authorities, bodies of the capital, Royal Historic Capital and other type of local self-government. The Law on Inspection Supervision does not include any specific reference to the areas to be covered during on-site inspection of casinos.

1286. The inspection authority of the supervisory body is undertaken in accordance with Law on Inspection Supervision. The Games of Chance Administration performs administrative functions related to:

- deciding on the features of some games, such as games of chance in terms of the Law on Games of Chance
- preparing expert basis for drafting legislation in the field of games of chance;
- approval of the rules of games of chance;
- keeping a register of organizers of games of chance;
- participation in commissions for drawing and finding gains in lottery games of chance
- controlling the capital and deposits of the organizers of the games by necessity, at least once in three months
- issuing approval for holding risk-deposit insurance for payment of winnings in the special games of chance ;
- consideration of bids due to competition for granting the concession for organizing games of chance, in accordance with the procedure for granting concessions and performing other professional activities related to granting concessions;
- preparing proposals for the revocation of the concession;
- performing evaluation of the validity of the prize fund for organizing reward winning games in goods and services
- proposing legislation on other conditions that casino has to fulfil;
- establishing a single financial software for betting;
- issuing approval for changing the location of slot clubs or betting shops
- issuing stickers for machines and tables
- issuing of consent and performing of control on the organizers of reward winning games in goods and services

1287. The sanctioning power of the Administration for Inspection Affairs for the purpose of AML/CFT is not defined in the Law on Games of Chance. Article 15 of the Law on Inspections Supervision Article empowers an inspector to impose fines and other measures as sanctions. However, neither the Law on Inspection Supervision nor Law on Games of Chance set out clearly the breaches for which sanctions shall be applied. Therefore, there is uncertainty as to the type of sanctions are applicable to breaches of the LPMLTF. Based on the statistics provided by the authorities no sanctions have been applied to casinos. There are doubts as to the effectiveness of sanctioning framework of Montenegro for violations of AML/CFT requirements by casinos.

1288. Article 86 of the LPMLTF provides that supervisory authorities prior to conducting the inspection are obliged to inform and consult with the competent administration body on activities of

supervision they plan to carry out and, if necessary, coordinate and harmonize activities in performing supervision over the implementation of the law.

1289. The Games of Chance administration has issued guidelines on Risk analyses aimed at preventing money laundering and terrorist financing. Guidelines cover areas including: assessment of AML/CFT risks, definition of risk categories, measures in relation to enhanced due diligence, procedure for identifying PEPs, on-going due diligence, and other issues. The guidelines cover many aspects of AML/CFT compliance. However it is not targeted to casinos and to the risks and vulnerabilities of the sector itself. Meetings with representatives of casinos have demonstrated that more specific guidance would be beneficial for the effective implementation of AML/CFT requirements by casinos.

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

1290. All reporting entities, including DFNBPs, are subject to supervision. Article 86 defines supervisory authority for each DNFBP sector.

1291. The Reporting Entities Control Department (of the APMLTF) in accordance with paragraph 4 of Article 86 is required to supervise a whole range of activities in the DNFBP sector to ensure AML/CFT compliance. The Department has been operating for five years and there are approximately 7000 reporting entities subject to supervision by the APMLTF. Article 86 states that the Reporting Entities Control Department is in charge of supervising activities of the DNFBP sector. There are only five inspectors available for conducting on-site visits of reporting entities. The Department conducts 4/5 inspections per month. During on-site interviews it was stated that due to the fact that real-estate sector represents a higher risk, AML/CFT inspections targeted this sector. However, resources allocated to supervise and monitor activities of the whole range of DNFBPs are not adequate. The authorities have indicated that the Reporting Entities Control Department conducts risk-based supervision which is determined in internal procedures for the Reporting Entities Control Department.

1292. The power to conduct on-site inspection of the APMLTF is defined in the Law on Inspections Supervision. Additionally, specific sanctioning powers of the ALPMLTF are defined in the chapter dealing with misdemeanour procedure Chapter X of the law. The APMLTF has imposed pecuniary penalties on reporting entities subject to its supervision.

1293. There is no register of reporting entities within the APMLTF. During on-site interviews it was stated that the fact that there is no registry poses some difficulties in determining what is the total scope of activities under supervision.

Auditing companies

1294. Ministry of Finance was in charge of supervising accounting services and tax advising. However, no specific power was prescribed in law and the Ministry of Finance did not undertake any supervisory/monitoring activities of accounting and tax advising services. During on-site interviews with representatives of the sector it was stated that there is a need for guidance on implementation of AML/CFT requirements by accounting services and there was a lack of understanding of obligations defined under LPMLTF to fight money laundering and terrorist financing[57].

Lawyers and notaries

1295. The Notary Chamber is the supervisory authority with respect to monitoring activities of notaries for AML/CFT compliance.

[57] According to the new LPMLTF (Official Gazette No. 33/14) the APMLTF is the supervisory body for audit companies, independent auditor and legal or natural persons providing accounting and tax advice services.

1296. The Bar Association of Montenegro is responsible for supervising activities of Lawyers and Law offices from AML/CFT perspective.

1297. The Notary Chamber and the Bar Association of Montenegro are not administrative bodies and therefore the Law on Inspection Supervision is not applicable to them. The LPMLTF generally defines that the Notary Chamber shall be responsible to supervise activities of notaries and the Bar Association the activities of lawyers and law offices. No other specific authority is defined in the LPMLTF. There is no specific authority of the Notary Chamber and the Bar Association to inspect and impose sanctions on lawyers and notaries for violations of AML/CFT requirements defined under the LPMLTF. No notary or lawyer or law office was ever inspected for the purpose of AML/CFT and no sanctions have been applied. Taking into consideration the fact that real estate contracts from 2011 concluded by notaries undertaking supervisory authority over the activities of notaries is important. No reporting has been undertaken by lawyers and notaries.

Intermediation in real estate transactions

1298. The APMLTF is the supervisory body for real estate trade intermediation.

1299. The Reporting Entities Control Department of the APMLTF conducts on-site examinations of real estate agents. There are only five inspectors available for conducting on-site visits of reporting entities. The total number of real estate agents at the time of on-site visit was 928. Taking into consideration the fact that real estate sector in Montenegro is regarded as posing a higher risk for AML, conducting effective supervision over the activities of real estate sector representatives is essential. The fact that there APMLTF Control Department has limited resources for supervision of DNFBP sector (five inspectors), it is not possible to effectively monitor activities of real estate agents when those activities pose high risk from AML/CFT perspective. The fact that no STR's are filed by real estate sector representatives to FIU also raises concerns as to the effective implementation of supervisory regime in this sector. Since 2009, 49 real estate agents were subject to imposition of sanctions for AML/CFT violations. APMLTF has conducted on-site inspections of DNFBPs and has imposed sanctions. Also, misdemeanor procedures have been initiated against DFNBP sector representatives with court orders on imposition of pecuniary penalties. Total amount of fines imposed on real estate agents since 2009 is Euro 179 455. Evaluators were informed by the authorities that control department is using a risk based approach while conducting on-site inspections of real estate agents. Accordingly, there are various sources based on which the control department makes a decision to conduct an on-site visit to the specific real estate agent. Namely, information obtained and analysed through CTRs are reviewed, the risk assessment is also based on information obtained through real estate contracts received from notaries (all the contracts signed in Montenegro have to be sent to FIU). When analysing daily reports of CTR demonstrating the fact that investment or real estate company is more active in undertaking activities, Analytic department forwards all the gathered information to the Control department. Authorities have also referred that real estate agents are subject to inspection by Tax authority which on its part reports any inconsistencies revealed as a result of their on-site visit.

1300. The evaluation team did not meet with representatives of the real estate sector.

Provision of accounting services and tax advising

The Ministry of Finance is in charge of supervising accounting services and tax advising. However, no specific powers are prescribed in law. The Ministry of Finance does not undertake any supervisory/monitoring activities of accounting and tax advising services. During on-site interviews with representatives of the sector it was stated that there is a need for guidance on implementation of AML/CFT requirements by accounting services and there lack of understanding of obligations defined under LPMLTF to fight against money laundering and terrorist financing.

Dealers in precious metals and precious stones

1301. The APMLTF is authorised to supervise activities of any legal person, entrepreneur and natural persons who trades in precious metals and precious stones and precious metals and precious stone products.

Recommendation 30 (DNFBP Supervisors)

Adequacy of resources of competent authorities (c.30.1)

1302. A significant part of the DNFBP sector falls under the supervision of the APMLTF. The analysis on resources under Section 3.7 is relevant.

1303. According to the Law on Games of Chance, the Games of Chance Administration is responsible for the implementation the law on Games of Chance and according to the Decree on organisation and method of operation of state administration, the Games of Chance Administration is part of the Ministry of Finance and the Ministry conducts administrative supervision over the Administration. Administration for Inspection Affairs is responsible to undertake on-site inspection of casinos. There are total 16 employees in administration for games of chance. Only one casino has been inspected before the on-site visit. As it was outlined during on-site visit with representatives of Administration for Inspection Affairs, there are not enough resources to undertake inspection of casinos.

Integrity of competent authorities (c.30.2)

1304. The analysis on integrity of the staff of the APMLTF under Section 3.7 is relevant to this part of the report. The analysis also applies to the employees of the Games of Chance Administration since they are civil servants and therefore subject to the same legal framework as the staff of the APMLTF.

Training for competent authorities (c.30.3)

1305. Issues related to training of APMLTF staff in its supervisory capacity is also discussed in Section 3.7 of this report.

1306. The Administration for Inspection Affairs stated that it is necessary to provide additional continuous training for the inspectors, to improve the conduct of inspections, especially for casinos. No training was organized for the supervisory authorities of DNFBPs, except APMLTF.

Effectiveness and efficiency (R. 24)

1307. The supervision of casino activities was not considered to be adequate. There are limited resources directed at overseeing the operations of casinos for AML/CFT purposes. According to statistics for the last several years, there was only one on-site inspection. During on-site interviews with a casino representative, it emerged that the casino was inspected in 2013 since it had not reported a cash transaction (which was identified when the client deposited a large amount at the bank). The inspection focussed on this particular case and no other records or transactions were inspected. The absence of effective supervision in the casino sector raises concerns as to the implementation of AML/CFT requirements established under the law by casinos.

1308. The specific powers of the Administration for Inspection Affairs to impose sanctions on casinos for violations of AML/CFT requirements are not clearly defined in laws and regulations. Furthermore, no sanction was imposed on casinos for of their obligations. As stated during the on-site interview, there was a specific instance when the reporting was not done by casino. However no sanction was applied.

1309. Accountants and tax advisors are not subject to supervision for the purpose of ensuring compliance with AML/CFT requirements. Based on the statistical information, only real estate agent was subject to sanctions. Despite the efforts of the Reporting Entities Control Department at targeting sectors representing high risks, it is doubtful whether supervision of the DNFBP sector is

effective, considering the high number of real estate agents and DNBFP's in general which amount to approximately to 7 000 reporting entities.

1310. The Notary Chamber and the Bar Association do not undertake supervisory action required to monitor activities of lawyers and notaries for the purpose of ensuring compliance with AML/CFT requirements.

1311. The relatively high number of the DNFBP sector representatives, understaffing and lack of appropriately trained inspectors to conduct AML/CFT supervision undermine the effective implementation of AML/CFT supervision framework in the DNFBP sector.

1312. On site interviews have shown that the sector has does not have an adequate level of knowledge of their AML/CFT obligations. Therefore, more guidance is necessary to be provided by relevant supervisory authorities.

4.3.2 Recommendations and comments

1313. Authorities are recommended to undertake AML/CFT effective supervision on activities of DNFBP sector.

1314. Authorities are recommended to raise awareness of AML/CFT compliance in the sector.

1315. Define specific powers of the Administration for Games of Chance to impose sanctions on casinos for violations of AML/CFT.

1316. The Authorities should consider introducing registration or similar procedure to ensure that all DNFBP sector representatives subject to AML/CFT supervision are registered with the relevant supervisory authority and the authority has precise information with respect to the total number of reporting entities subject to its supervision.

1317. Define powers and authority of the Notaries Chamber and the Bar Association of Lawyers to undertake supervisory authority with respect to AML/CFT.

1318. Define specific authority of the Administration for Games of Chance for the inspection of casinos for AML/CFT purposes.

1319. The authorities should undertake supervisory measures with respect to audit and accounting services.

1320. The authorities should issue on-site inspection manuals to ensure that all areas of AML/CFT compliance are covered during on-site inspection activities.

1321. The authorities should ensure that effective, proportionate, and dissuasive sanctions are available for violations of AML/CFT requirements by notaries, lawyers, accountants and audit service providers.

4.3.3 Compliance with Recommendations 24

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• There are no mechanisms in place to prevent criminals and their associates to own or control a casino because fit and proper requirement under the law is limited to offenses towards payment system and does not cover beneficial owners of casinos; • Casinos are not subject to effective, proportionate, and dissuasive sanctions for AML/CFT breaches; • There is no sanctioning regime for lawyers, notaries, auditors

		and accountants; • There are no supervisory powers specifically defined for lawyers, notaries, auditors and accountants to conduct AML/CFT supervision; **Effectiveness** • No specific regulation setting out the areas to be inspected during on-site inspections of DNBFPs; •

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

Recommendation 33 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1322. Montenegro was rated as being "partially compliant" on the basis of insufficient implementation of the requirement placed on reporting entities to establish the beneficial ownership (distinct from legal ownership) of legal persons (particularly foreign legal persons).

Legal framework

1323. The Law on Business Organizations recognises the following forms of business organisation: the individual entrepreneur, the general partnership, the limited partnership, the joint stock company, the limited liability company and the foreign company branch. Each of these forms is described in section 1.4 of the third assessment report. Whereas only joint stock companies and limited liability companies are recognised as being "legal persons" under the Law on Business Organizations, it is understood that partnerships can also establish a permanent relationship with a reporting entity and so may be considered to be a legal person for the purpose of this assessment.

1324. The Central Business Registry holds information relevant to the setting up, nature and activity of companies and partnerships, and registration with the Central Business Registry is a prerequisite for the incorporation of a company and creation of a limited partnership. Information held is made available for public inspections, including through electronic means (e.g. the Central Business Registry website: http://www.crps.me/). For companies, the register includes data on the name, identification number and residential address of board members and executive director(s).

1325. Securities of joint stock companies are issued, transferred and kept in dematerialised form by the Central Depository Agency ("CDA"). Rights and obligations related to such securities start upon registration at the CDA, and are held in "buyers' accounts". Where natural or legal persons acquire or release securities, acquire or relinquish voting rights, and where, as a consequence of that acquisition or relinquishment, the proportion of votes a person possesses exceeds or falls below 10%, 20%, 33% or 50%, the CDA is obliged to notify the company and the Securities and Exchange Commission within seven days. The notice shall include the name and address for a natural person or corporate name and domicile for a legal person. Article 45 of the Securities Law provides for securities to be traded only on certain securities markets.

1326. In contrast, Article 65 of the Law on Business Organizations states that a limited liability company must limit the maximum number of its members to 30. Its charter must restrict the

transfer of parts (shares) and the company shall not have the right to issue a public invitation for subscription to any of its parts.

1327. Article 74 of the Law on Business Organizations states that the parts of a limited liability company may be transferred amongst members without restriction. Where a member of the company intends to transfer his part, other members of the company and the company itself shall have a pre-emptive right to purchase the part. Where members and the company itself decline to purchase the part, the part may be transferred to a third party under terms no less favourable than those offered to existing members. A part shall be transferred by written agreement.

1328. In addition, legal persons may be established under legislation covering non-governmental organisations, political parties, religious communities, housing communities, property rights, tourist organisations, education, sport, science and art, electronic communication and dispute resolution.

Measures to prevent unlawful use of legal persons (c. 33.1)

1329. Under Article 6(6) of the Law on Business Organizations, a general partnership must be registered by submitting a registration statement to the Central Business Registry. This statement shall include the names of partners, their addresses and personal identification numbers. There is no requirement to update this information in the event that there is a change in a partner.

1330. Under Article 12 of the Law on Business Organizations, the registration of a limited partnership shall be done by submitting to the Central Business Registry a statement or contract that includes the first name, last name and personal identification number, or (in the case of a legal person) name of each of the partners. Article 13 obliges a limited partnership, within seven days from the date of change, to submit to the Central Business Registry a signed statement specifying changes in partners or data about partners. The authorities have explained that documents are processed within four days and postponement occurs only in cases provided for by law.

1331. Inter alia, Article 21 of the Law on Business Organizations requires the foundation agreement to be submitted to the Central Business Registry for first registration of a joint stock company. The foundation agreement consists of the first and last names of founders, or names of legal persons, their addresses and personal identification numbers. In addition, information must also be presented on members of the Board of Directors and Executive Director. In the case of members of the Board, this includes name, date and place of birth, personal identification number, residence and citizenship. Article 28 provides that any change in members of the Board or Executive Director shall be notified to the Central Business Registry within seven business days of the change. The authorities have explained that documents are processed within four days and postponement occurs only in cases provided for by law.

1332. Article 70 of the Law on Business Organizations requires a list of founders, members of the company, managers, members of the Board of Directors (if appointed) and Executive Director to be submitted to the Central Business Registry and published at the first registration of a limited liability company. The list must be accompanied by information on each person, including name, date and place of birth, personal identification number, residence and citizenship. All amendments to information provided at the time of registration must be delivered to the Central Business Registry within seven working days of a change. The authorities have explained that documents are processed within four days and postponement occurs only in cases provided for by law.

1333. Article 83(5) of the Law on Business Organizations states that data and documentation submitted to the Central Business Registry shall be kept in a single information database. Under Article 83(6), this database may be inspected six hours per day on each business day and, under Article 83(10) inspection shall also be possible through electronic means, including use of the Central Business Registry's website.

1334. A company or other organisation pursuing economic activities commits an offence if it fails to submit data on a timely basis at the time of registration and subsequent changes under the above provisions. It will be liable to a fine not exceeding €10,000. Any person within the company or other organisation who is responsible for the offence shall be liable to a fine not exceeding €500.

1335. Notwithstanding the above, requirements to submit information on partners and shareholders are not expressed in terms of beneficial ownership, and a person who is recorded as a partner of a partnership or a shareholder of a company may be a company and/ or acting in a nominee capacity on behalf of one or more an undisclosed individuals. It is also questionable whether a maximum penalty of €10,000 provides a sufficient incentive for partnerships and companies to submit accurate data in a timely fashion.

1336. Article 96 of the Securities Law states that the CDA must deliver on request to a joint stock company information about the owners of dematerialised securities immediately after confirming all changes in beneficial ownership. The term "beneficial ownership" is not defined in the Securities Law, and the authorities have explained that information is recorded on registered owners of shares. Where a person performing custody operations holds dematerialised securities for third parties, Article 100 treats those third parties as the owner of the securities which must be held on a separate account and specified as kept for that third party. Whilst it appears that there is no requirement to disclose to the CDA who that third party is, each custodian (which will be a bank) will be required to identify and verify the identity of each of its clients under the LPMLTF, and, in line with Article 26 of the Rules on Conducting Custodian Activities, make that information available to the SEC and APMLTF on request.

1337. Article 88 of the Securities Law provides that, whilst the owner of shares in a joint stock company has the right of access to its account, the CDA shall otherwise be required to keep data on the balance of individual accounts confidential (so that there is no public record of ownership of joint stock companies). However, in accordance with Directions of the SEC on the publication of certain information about ownership, the CDA publishes on its website information on the ten largest shareholders of all joint stock companies (name and address of the shareholder and the percentage share of that shareholder in the total capital of the issuer). In practice, it was explained that this means that 95% of shareholders of joint stock companies will be publicly disclosed, though, in line with paragraph 1336 above, the list will generally include names of one or more custodians holding securities for third parties.

1338. Recognising these limitations, the authorities have referred to other measures in place in Montenegro to prevent the unlawful use of legal persons. The assessors have been made aware of a provision in Article 5 of the Law on Prevention of Illegal Business Operations which includes a requirement for legal persons and entrepreneurs to open a bank account and maintain money on that bank account. The authorities have explained that the Law on Prevention of Illegal Business Operations extends also to business organisations that are not legal persons under the Law on Business Organizations, e.g. partnerships. However, assessors have not been provided with a copy of this law and so it has not been possible to confirm that such an account must be opened with a bank in Montenegro (though this is understood to be the case), that it applies also to general and limited partnerships (though this is understood to be the case), how the requirement to open and maintain a bank account is enforced, and what penalties may be applied where there is failure to open such an account.

1339. For such measures to be effective, it will be necessary for each bank to obtain, verify and hold information on the beneficial ownership and control of companies and partnerships in line with requirements in Articles 10 and 20 of the LPMLTF (which are explained in paragraphs 516-518 above), including information on name, address, date and place of birth, and keep this information up to date in line with Article 22 of the LPMLTF. However, all four of the banks visited by assessors confirmed that a customer who is a legal person would be requested to

provide information on beneficial ownership at the time of applying to open an account and explained that this information would be compared to data held in the Central Business Registry (and other public registers) and (for three) to information available on the Internet. As outlined above, the Central Business Registry and CDA will hold information on the legal owner of companies and limited partnerships established under the Law on Business Organizations, who may not be the beneficial owners.

1340. The authorities have also referred to Article 11 of the Decision on the structure of transfer execution accounts and detailed conditions and manner of account opening and closing which requires a client to inform a bank of any change of information (including information on beneficial ownership) with regard to an account within three days of the change. Whilst that Decision is made under Article 77 of the Central Bank of Montenegro Law and Article 11 of the Law on National Payment Operations, neither law appears to provide for an offence to be committed where a client fails to notify their bank of a change. The authorities have said that the requirement to provide notification of a change is also contained in every contract on the opening and maintenance of accounts entered into between banks and their customers.

1341. However, whereas the Decision on the structure of transfer execution accounts and detailed conditions and manner of account opening and closing places a requirement on clients to notify changes, one of the banks visited said that it did not require customers that are legal persons to notify changes in beneficial ownership. It observed (it seems wrongly) that there was no legal requirement in this area and that it was not practical to do so. Instead, it reviews information held on ownership in the Central Business Registry (and overseas registries) in order to meet the requirement set in Article 22 of the LPMLTF to update documents and data on a customer.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1342. As explained above, reliance is placed on a requirement for business organisations (companies and partnerships) and entrepreneurs to open a bank account (understood to be in Montenegro) and maintain money on that bank account, and for that bank to hold information on beneficial ownership and control that is in line with Articles 10 and 20 of the LPMLTF. However, in practice, assessors are concerned that the requirement in Article 20(4) of the LPMLTF to establish who is the beneficial owner of a joint stock company or limited liability company will be considered to have been met where information provided by the customer on ownership is consistent with information held at the Central Business Registry on the legal ownership of companies. Accordingly, information may not be accurate.

1343. Further, banks are not required under Article 20(4) of the LPMLTF to establish who is the beneficial owner of a general partnership or limited partnership (on the basis that, in the domestic context, reference is made only to legal persons[58]).

1344. As explained above, information on partners and directors is held at the Central Business Registry and is available for public inspection. However, information on partners is provided to the Central Business Registry only at the time of registration of a general partnership and not subsequently. For limited partnership and companies, it is also questionable whether a maximum penalty of €10,000 provides a sufficient incentive to submit accurate data in a timely fashion.

1345. Article 112 of the Banking Law requires banks to allow the Central Bank free insight into business books, other business documentation and records. .

[58] Defined in the Law on Business Organizations to be joint stock companies and limited liability companies.

1346. Despite this, competent authorities responsible for conducting investigations have powers to be able to compel the production of identification data obtained through CDD processes, account files and business correspondence.

Prevention of misuse of bearer shares (c. 33.3)

1347. Article 5 of the Securities Law provides that the shares of joint stock companies must be registered at the Central Depository Agency and that rights and obligations related to such securities start upon registration at the CDA. In addition, Article 100 of the Securities Law provides that the owner of an account in the CDA in which the security is recorded shall be considered the owner of the dematerialised security and that the CDA statement is the only legal proof of ownership of securities. Article 101 states that the ownership of dematerialised securities may be transferred to another account in the CDA.

1348. In support of the above, Article 52 of the Law on Business Organizations requires shares of joint stock companies to be issued in the name of the holder and registered with the SEC and the CDA.

1349. Article 48 of the Securities Law requires every joint stock company to keep at its registered office, a list of shareholders and members of the Board of Directors. By virtue of Article 79, it appears that this provision applies also to limited liability companies. However, it does not appear that a company commits an offence where it fails to keep such a list. The authorities have said that a statement issued by the Central Business Registry is proof of ownership of a share in a limited liability company but have not provided legal text to support this view. The conclusion that is drawn from this is that it may be possible to issue bearer shares that may be misused for money laundering.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1350. Measures are not in place to facilitate access by reporting entities to beneficial ownership information, so as to allow them to more easily verify customer identification data.

5.1.2 Recommendations and comments

1351. The LPMLTF should be revised to include a requirement for the beneficial owners of general partnerships and legal partnerships to be identified and verified.

1352. Whereas the Law on Prevention of Illegal Business Operations is understood to require business organisations (companies and partnerships) to open a bank account in Montenegro, those banks may not hold information on beneficial ownership. Given the reliance that banks place on information held at the Central Business Registry or CDA, the information that they collect on the ownership of legal persons is likely to mirror information on legal ownership that is available through these registers. Banks should therefore consider additional ways of determining who are the natural persons that ultimately own or control a customer that is a legal person.

1353. A basis for monitoring and enforcing compliance with the requirement for each legal person to open a bank account in Montenegro should be put in place.

1354. The Law on Business Organizations should expressly provide that a limited liability company must keep a register of members, and make it an offence for failing to do so. The basis for recording a change in ownership of a part of a limited liability company should also be addressed in legislation.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating

R.33	**PC**	• Banks are not required to establish who the beneficial owner of a limited partnership is (33.1); • No explanation has been provided as to the basis for monitoring and enforcing compliance with the requirement placed on business organisations to open a bank account in Montenegro (33.1); • • A limited liability company does not commit an offence when it fails to keep a list of its shareholders. Nor is an entry in such a list stated in legislation as being conclusive proof of ownership (33.3). **Effectiveness** • Banks consider that they meet the requirement in Article 20(4) of the LPMLTF to establish who is the beneficial owner of a joint stock company or limited liability company by: comparing information provided by the customer to information held at the Central Depositary Agency or Central Business Registry on legal ownership of companies; and Internet checks.

5.2 Non-profit organisations (SR.VIII)

5.2.1 Description and analysis

Special Recommendation VIII (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

1355. Special Recommendation VIII was rated NC in the 3rd round MER due to the following facts:

- A review of domestic legislation that relates to NPOs vis-à-vis terrorist financing has not yet been carried out.
- 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.

Legal framework

1356. Non-profit organizations fall within the category of non-governmental organizations (NGOs) in Montenegro. The NGO sector is regulated by several legal acts; the most relevant being the new Law on NGOs, which was adopted in June 2011, together with the LPMLTF, which applies to NGOs as reporting entities.

1357. Article 1 of the Law on NGOs regulates the manner of establishment, registration and removal from the register, status, bodies, financing and other issues of importance for non-governmental organizations' work and operations.

1358. Non-governmental organizations, within the meaning of the above mentioned law, are non-governmental associations and foundations. An association is a voluntary non-profit membership organization, established by domestic and/or foreign physical and/or legal persons, aiming at reaching certain common or general goals and interests. A foundation is a voluntary non-profit organization without members, with or without initial assets, aiming at reaching general goals and interests.

1359. Whilst at least one of the founders of an association has to have a permanent residence, temporary residence or a registered office in Montenegro, foundations are not subject to such a requirement. NGOs established in accordance with the Law on NGOs obtain a legal personality upon registration. Despite their non-profit nature, according to Articles 28 and 29 of the Law on NGOs, Montenegrin NGOs may directly undertake commercial activities, if this is stipulated in their status and the organisation is registered in the Register of Business Entities for the performance of this activity. The maximum annual income from a commercial activity is limited to 4 000 EUR or the value of 20% of the total annual income in the previous year.

1360. The Law on NGOs also regulates the status of foreign NGOs operating in Montenegro, which are defined in Art. 4. Such entities are required to register their branch offices at the Register of NGOs in order to carry out their activities on the territory of Montenegro. The registration requirements for a foreign NGO are enumerated in Art. 20 of the Law on NGOs.

1361. All NGOs established in accordance with the Law on NGOs are subject to an obligatory registration at the Register of NGOs, administrated by the Ministry of Interior. Branches of foreign NGOs were previously registered with the Ministry of Justice. Since the entry into force of the Law on NGOs, they also need to register with the Register of NGOs of the Ministry of Interior. Based on the information published on the official website of the Ministry of Interior, 3096 NGOs are registered in the Register of NGOs, of which 2908 are non-governmental associations, 95 foundations and 93 representative offices of foreign NGOs, as of1st April 2014.

1362. Art. 5 of the Law on NGOs, provides that the *"Law shall not apply to political parties, trade unions, business associations, other organizations and foundations established by the state, as well as other forms of associations, which are established by a separate law or on the basis of a separate law, except for the issues not regulated by those separate laws"*. The evaluators were informed that *"other forms of associations"* also refers to trade unions and political parties. Issues of importance to the work of these organisations are regulated by the Law on Financing of Political Parties, the Labour Law and the Law on trade union representatives.

Review of adequacy of laws and regulations (c.VIII.1)

1363. For the purposes of cooperation and coordination of the state activities and legislative actions in respect of the NGO sector, a cross-sectorial working group was formed by a Decision of the Minister of Interior, which includes representatives of the Ministry of Interior (2 members and secretary), Ministry of Justice (1), Ministry of Finance (2 members) and the Office for Cooperation with NGOs (1 representative). This working group has undertaken an analysis of the legislative framework regulating the NGO sector and prepared the "Analysis of the Current Regulations relevant for the NGOs' Work", which was adopted by the Government of Montenegro in January 2011. Based on this analysis, the draft Law on NGOs was prepared by the Ministry of Interior and subsequently adopted by the Government in June 2011.

1364. The cross-sectorial working group further conducted an analysis of public source funding models, which was also adopted by the Government of Montenegro in 2011.

1365. The competencies with respect to NGOs are divided between several state authorities. The National Security Agency is an intelligence agency with competencies in the ambit of terrorism prevention, the Ministry of Interior has regulatory powers with respect to the NGO sector and is in charge of the registration of NGOs and the APMLTF supervises the compliance of NGOs with the requirements of the LPMLTF.

1366. As the scope of competency of the Ministry of Interior with regard to NGOs is mainly regulatory; the Ministry does not undertake any assessments in relation to TF. Whilst both the NSA and the APMLTF partially undertake assessments of the risks related to the NGO sector, these are done only on a case-by-case basis. The NSA undertakes such assessments only within its competencies in the ambit of terrorism and terrorism prevention, the APMLTF only within its duties as an AML/CFT supervisor.

1367. It has been concluded by the evaluation team that there is no system in place for reviews of the features of the NGO sector and its vulnerabilities with regard to TF, nor is a regime established for periodic reassessments.

1368. During the on-site visit, the National Security Agency informed the evaluation team that their case-by-case analysis indicated that humanitarian NGOs could potentially be at risk of misuse for terrorist financing; this information was confirmed by the representatives of the APMLTF. Both institutions however stated that these risks are in general very low and apart from one case of suspicion encountered by the APMLTF, no risks or specific vulnerabilities have been identified.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1369. Article 80 of the Law on State Administration of Montenegro regulates the relations of state administration authorities with non-governmental organizations. According to this article, ministries and other administrative authorities shall put in place mechanisms to ensure cooperation with non-governmental organizations, which shall specifically be implemented by: (1) consulting the non-governmental sector about legal and other projects and regulations governing the realisation of rights and freedoms of citizens;(2) enabling the participation of NGOs on the work of working groups for the consideration of specific issues; (3) organizing joint public discussions, round tables, seminars and other forms of joint activities and in other appropriate forms; (4) informing about the content of the work program and other reports on activities of state administration authorities. This provision of the Law on State Administration is further developed in the Strategy of Cooperation of the Government of Montenegro and Non-Governmental Organisations, adopted in 2009.

1370. The evaluation team was informed that the APMLTF organised informal meetings with the representatives of the larger NGOs. These meetings were held at the APMLTF's premises. The objective of the meetings was to improve the cooperation with the NGO sector, identify any possible difficulties and challenges and define the activities for overcoming them, as well as to express willingness to be at their disposal for any kind of cooperation, resolving issues and concerns, assisting them in clarifying dilemmas and uncertainties, etc.

1371. However, despite the possible wide range of cooperation between state administration authorities and the NPO sector provided for under the Law on State Administration, the authorities of Montenegro did not undertake any specific outreach with a view to protecting the NPO sector as a whole from terrorist financing abuse, besides the abovementioned meetings.

1372. The Guidelines on Developing Risk Analysis with a View to Preventing Money Laundering and Terrorist Financing issued by the APMLTF (as discussed in further detail above in the analysis of preventive measures) extend to all the reporting entities, which fall under the supervision of the APMLTF. These Guidelines however focus above all on ML risks, especially in relation to customer identification and their use within the NGO sector is therefore limited.

Supervision or monitoring of NPOs that account for a significant share of the sector's resources or international activities (c.VIII.3)

1373. Supervision of compliance of NGOs with the requirements of the Law on NGOs is foreseen in Art. 41, which stipulates that such supervision should be undertaken by *"inspection bodies, in line with law"*. The law referred to in this article is the Law on Inspection Supervision, which includes non-governmental organizations. Nevertheless, neither of the two laws designates specifically the

authority competent to undertake such supervision and this issue has not been made clear to the evaluation team during the on-site visit. The evaluators therefore remain doubtful whether any such supervision is being undertaken.

1374. As for the supervision over the process of registration, the Ministry of Interior is obliged to, while taking the necessary activities for registration, check whether the NGO in question has submitted completed documentation, and whether the conditions for registration prescribed under the Law on NGOs are fulfilled

1375. Additionally, concerns remain about the undertaking of supervision of the *"other forms of associations"*, which do not fall under the scope of the Law on NGOs. The evaluation team has been provided with information that this definition includes other types of associations, such as trade unions and political parties, and issues of importance to the work of these organizations are regulated by the Law on Financing of Political Parties, Labour Law and the Law on trade union representativeness. However, as the Law on NGOs itself provides that *" The Law shall not apply to political parties, trade unions, business associations, other organizations and foundations established by the state, as well as other forms of associations, which are established by a separate law or on the basis of a separate law, except for the issues not regulated by those separate laws"*, the reference to other forms of associations is unclear, when it includes political parties and trade unions, which are already referred in the same article.

1376. According to Art. 86 of the LPMLTF, supervision of the implementation of the LPMLTF and regulations passed on the basis of this law over the humanitarian, non-governmental and other non-profit organizations, is carried out by the administration body competent for prevention of money laundering and terrorist financing. The AMPLTF is therefore responsible for the supervision of NGOs in this ambit.

1377. The FATF standards require countries to focus supervision and monitoring of NPOs on NPOs which account either for a significant portion of sector's financial resources or international relations. The evaluators are however concerned whether Montenegrin authorities are able to prioritise the undertaking of supervision on such basis, as the necessary information about the sector is not easily accessible.

1378. Article 37 of the Law on NGOs provides that an NGO, which has generated an income of more than 10.000 EUR during a calendar year, shall publish its annual financial report, adopted by the organization's competent body, on its web page within 10 days from the day of the adoption of the report. This is the only way of obtaining information on the significant share of the sector resources. However, this requirement remains unrealistic, as not all of the NGOs have web pages and the authorities would have to check the web page of every NGO to verify if the annual report is published on it or not. There is also no mechanism for identifying the NPOs that account for significant share of international activities.

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1379. The Law on NGOs requires every NGO to have a founding act and a statute. Pursuant to Articles 11 and 12 of the Law, a broad range of information is to be included in these documents, covering amongst other information on the NGOs itself, its purpose and objectives, information on the identity of its founders, of the person authorised to represent the organisation, of the president and members of the managing board, as well as information about initial assets of a foundation. Despite the broad range of information contained in the founding act and the statute, concerns remain whether they would at all times include the identity of all the persons, who own, control or direct their activities (beneficial owners), including all senior officers.

1380. The founding act and the statute are provided to the Ministry upon registration. The abovementioned information contained in the founding act and the statute can be obtained through the Ministry according to the Article 17 of the Law on Personal Data Protection if the

requirements of Articles 10 and 13 of the same law are met. These requirements, however, restrict the public availability of the information contained in the founding act and the statute.

1381. According to Art. 14 of the Law on NGOs, the association, foundation and foreign organization register is kept in a written and electronic form by the Ministry of Interior. The Ministry shall prescribe the content and the manner of keeping registers, as well as the application forms for registration. Pursuant to Art. 16 of the same law, information from the register shall be public and shall be published on the web site of the Ministry, unless otherwise prescribed by a separate law. According to Art. 19 of the Law on NGOs, the Ministry shall be notified on any change of facts and information entered into the register by the authorized person of the NGO.

1382. The register of NGOs is available in an electronic form on the official webpage of the Ministry of Interior since January 2012. It includes the following information: type of the organization; name; entry number; decision number; date of registration; type of activity; municipality; city; address; date of the decision; re-registration; other name; date of the adoption of the founding act; date of the adoption of the statute; a wider description of the activities; official gazette; additional information; family name of the authorised person; name of the authorised person; information about the founders.

1383. The information available on the register is not sufficient for establishing the identity of the authorised persons and founders, as it includes only first and last names of these persons. It was explained by the authorities that such information cannot be made available on the register, as the Law on Personal Data Protection does not allow for the publication of personal information on the internet and the information on the identity of authorised persons and founders can be available through the Ministry. However, as mentioned above the availability of such information is restricted by the requirements under Article 10 and 13 (in case of special categories of personal data) of the Law on Personal Data Protection.

Measures in place to sanction violations of oversight rules by NPOs (c.VIII.3.2)

1384. Both the LPMLTF and the Law on NGOs establish a sanctioning regime for NGOs for violations of the requirements of the mentioned laws.

1385. Under the LPMLTF, NGOs are subject to the general sanctioning regime, applicable to all reporting entities. In particular, Articles 92-94 of the LPMLTF provide for fines to be imposed on legal entities and responsible persons of the legal entity, which failed to comply with the requirements of the law. Article 96a further provides the possibility to impose a prohibition on performing business activities up to two years to the legal person and to the responsible person of the legal entity in case of particularly serious violation or repeated violations, the application of this sanction is though restricted with regard to NGOs, as it is applicable only to the insignificant number of NGOs, which undertake business activities. As has been discussed above, the competent authority for supervision of compliance of NGOs with the AML/CFT regime is the APMLTF. For a more detailed analysis of the sanctioning regime under the LPMLTF, the reader is referred to the analysis under R.17.

1386. Whilst the range of fines available in the LPMLTF is sufficiently dissuasive, their effective application may be hindered by the wording of the violations for which fines may be applied. The majority of the violations are related to obligations with regard to customers of the legal entities in questions, which is a term that is not adequately defined in relation to NGOs. The practical impact of this issue may be observed in the effectiveness part, where it is evident from the cases of the sanctions imposed that the range of actually identified violations of the LPMLTF with regard to NGOs is limited.

1387. As for the Law on NGOs, Articles 42 and 43 set forward a range fines imposable to NGOs and responsible persons of NGOs as a sanction for violations of certain of the requirements of the law. However, as it was mentioned above, there is no designated authority for the supervision of

the implementation of the requirements of the Law on NGOs, which consequently inhibits the application of the sanctioning regime.

1388. As may be observed from the analysis above, the only sanctions imposable to NGOs within the context of supervision are fines, which are provided for by both of the above mentioned laws; the provision of Art. 96a of the LPMLTF will rarely be applicable to NGOs.

1389. The possibility of applying parallel civil, administrative or criminal proceedings is not precluded.

Licensing or Registration of NPOs and availability of this information (c.VIII.3.3)

1390. As described in the analysis under c.VIII.3.1, all the NGOs established under the Law on NGOs are registered in the Register of NGOs administrated by the Ministry of Interior. The information included in the register of NGOs is available on the official webpage of the Ministry of Interior.

1391. The decisions on the Register entries and on removals from the Register are also published in the "Official Gazette of Montenegro".

1392. It has been pointed out above that not all the NPOs are subject to the Law on NGOs; this issue raises a concern also under this criterion, as there are doubts whether all the NPOs operating on the territory of Montenegro are registered in the Register of the Ministry of Interior.

Maintenance of records by NPOs, and availability to appropriate authorities (c.VIII.3.4)

1393. NGOs are considered reporting entities under the LPMLTF, hence the requirement of record keeping, provided by Art. 83 of the LPMLTF, also applies to them. However, the record keeping obligation, as established under this Law, requires reporting entities to keep records on transactions undertaken or executed, so this provision would not be applicable in practice to NGOs. Furthermore, there is no requirement in the LPMLTF to ensure that the records on transactions being kept are sufficiently detailed to enable the assessment of the manner how they have been spent. In conclusion, the evaluators are of the opinion that there is no explicit obligation for NGOs to maintain detailed records on transactions, as required by c.VIII.3.4.

1394. Under the Law on NGOs, the bodies of every NGO are required to adopt an annual financial report. This requirement does not fully meet the international standard, as there is no specification or definition of the information, which should be contained in such a report or of its structure; it is therefore not explicitly required that the information maintained should contain detailed breakdowns of incomes and expenditures of the NGO.

1395. As for the availability of the abovementioned information, the APMLTF is authorised under the Law on Inspection Supervision to review among others business books, records and registries, contracts, public documents and other business documents, as well as to take away documents on a temporary basis. Furthermore, Art. 37 sets an obligation for NGOs to publish this annual financial report on their webpage, this requirement however applies only to NGOs, which have generated income of more than 10.000 EUR within one calendar year.

Measures to ensure effective investigation and gathering of information (c.VIII.4);Domestic co-operation, coordination and information sharing on NPOs (c.VIII.4.1);Access to information on administration and management of NPOs during investigations (c.VIII.4.2);Sharing of information, preventative actions and investigative expertise and capability, with respect to NPOs suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1396. Domestic co-operation, co-ordination and information sharing is based mainly on the LPMLTF and the Law on Internal Affairs. These legal acts provide the possibility of requesting information, as well as providing information in case of suspicion of TF. The APMLTF, CMB, Ministry of Finance, Ministry of Interior, SEC, the ISA and the Police Directorate also signed in

2013 an MoU on Cooperation and Exchange of Information regarding the Prevention of ML and TF.

1397. Powers of the law enforcement authorities within investigations and criminal proceedings are based on Montenegrin criminal legislation, which sets for the authorities a wide range of competencies. These powers are generally applicable, therefore they equally cover investigations related to NGOs. For detailed information of these measures, the reader is referred to the analysis under Recommendation 27.

Responding to international requests regarding NPOs – points of contacts and procedures (c.VIII.5)

1398. The APMLTF as a financial intelligence unit exchanges financial intelligence information with all members of the EGMONT Group. All requests received from foreign FIUs regarding any person (legal or natural), institution or organization (e.g. an NPO), in relation to which there is a suspicion on terrorist financing or terrorism support, would be processed by the APMLTF. Consequently, the APMLTF forwards the requests for notification and verification to the competent state authority (State Prosecutors Office, National Security Agency, Police Directorate). After performing verifications, the competent authority provides information to the APMLTF. Following that, the APMLTF processes this information, adds information from its database on the subject persons/organisation and then forwards the reply to the requesting foreign FIU.

1399. Exchange of information with regard to NPOs may also be undertaken by the Ministry of Internal Affairs- Police Directorate, which performs international exchange of information regarding persons involved in criminal activities through the INTERPOL's National Central Bureau in Podgorica, and the National Security Agency, which performs international exchange of intelligence information with its foreign counterparts.

Effectiveness and efficiency

1400. The authorities of Montenegro have achieved considerable progress in establishing a comprehensive AML/CFT framework for the NPO sector. The overall effectiveness of this regime is however to some extent negatively impacted due to the Art.5 of the Law on NGOs and Art. 4(1)(14) of the LPMLTF, which lead to an uncertainty whether the international standards are implemented with regard to all NPOs existing on the territory of Montenegro.

1401. A noteworthy achievement for the transparency and accountability of the NGOs is the establishment of an electronic register of NGOs, which was mostly welcomed by the evaluators.

1402. The legislation, as well as adopted strategic documents, foresee and facilitate the possibility of cooperation between state authorities and representatives of NGOs, which has been in several manners already applied in practice. It has been however noted that the authorities do not undertake any outreach to the sector, which would be specific to the issues of TF and enhance awareness about this topic.

1403. Furthermore, the system is weakened by the absence of a mechanism for conducting periodic assessments of the sector's vulnerabilities to terrorist activities and by the generally low knowledge of the authorities about the sectors composition, structure, activities and size.

1404. This may be partially caused by the number of different authorities, which are involved in the issues regarding NGOs. It seems that no clear division of competencies is set, especially in order to ensure that all the necessary aspects of supervision and monitoring of the NGO sector are covered.

1405. As a result, and as has been pointed out under c.VIII.3.2, no administrative body seems to be authorized to supervise the implementation and to sanction NGOs and their responsible persons for the breaches of the requirements of the Law on NGOs. The absence of supervision not only renders the application of the sanctioning regime in this matter inexistent in practice and therefore

ineffective, but above all the obligations under this Law are not enforceable. This fact may, amongst others, prejudice the transparency of NGOs, as there is no mechanism to ensure that the information in the Register of NGOs is up-to-date.

1406. As for the supervision conducted by the APMLTF on the implementation of the requirements of the LPMLTF, 50 on-site inspections have been undertaken in the period 2009-2013, based on which 8 fines were imposed to NGOs and their responsible persons. The sanctions were applied for the infringement of Art. 92 (1)(1) (failure to draft risk analysis or not determining risk evaluation of certain groups or types of clients, business relationships, transactions or products) , Art. 92(2) (the responsibility of the responsible person of the legal entity), Art. 94(1)(6) (failure to deliver to the competent administration body, within the prescribed deadline, data on personal name and working position of the compliance officer and his/her deputy and information on any change of those data)and Art. 94(2) (responsibility of the responsible person of the legal entity). The provided information lets to assume that the above mentioned 8 fines were imposed to 4 NGOs, and in parallel with the sanction applied to the NGO, sanctions are imposed also to the responsible person of the NGO.

1407. No record keeping infringements were identified by the supervisors, and above all it is not clear that the record keeping requirement under the LPMLTF is practically applicable to NGOs.

1408. In general, as has been stated above, the sanctioning regime under the LPMLTF has a limited application to NGOs. Furthermore, as may be observed from the statistics above, the number of undertaken inspections seems highly insignificant compared to the number of NGOs actually operating in Montenegro. The low number of inspections raises concerns especially in the context, where the authorities did not present a comprehensive knowledge of the composition of the NGO sector, its size, financial assets and international relations, and are therefore not able to undertake supervision on a risk-based approach.

1409. In conclusion, the evaluators were of the opinion that the authorities do not currently consider the implementation of CFT measures with regard to NGOs as a priority.

5.2.2 Recommendations and comments

1410. It is recommended that the Montenegrin authorities amend the legislation which applies to the NPO sector to ensure that all the requirements apply equally to all NPOs.

1411. A mechanism should be established for conducting comprehensive assessments of the risks connected with the NPO sector, as well as for conducting periodic reassessments of the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities.

1412. The authorities are encouraged to build on the experience of cooperation with representatives of NGOs on other topics, with the view to ensure comprehensive out-reach to NGOs about TF risks, as well as about the AML/CFT framework.

1413. Clear division of competencies between the different authorities involved should be defined to especially avoid negative competency conflicts. An administrative authority should be designated to conduct supervision over the implementation of the requirements of the Law on NGOs as a matter of urgency.

1414. Information on all senior officers of NGOs and persons, who own, control or direct their activities, should be publicly available. As for the information on the authorized persons and founders of NGOs, the information publicly available should be wide enough to enable the identification of these persons.

1415. A clear requirement of maintaining information on domestic and international transactions for at least five years, so as it will be possible to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization, should be provided by the

legislation. In addition, the requirement to issue annual records should specify that these should contain detailed breakdowns and expenditures.

5.2.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• No mechanism is in place for conducting comprehensive assessments and periodic reassessments of the NPO sector; • No outreach undertaken to the NPO sector for raising awareness about the potential risk of terrorist abuse and about the available measures to protect against such abuse, and promoting the transparency, accountability, integrity and public confidence in the administration and management of all NPOs; • There is no supervision in place to sanction violations of the provisions of the Law on NGOs; • No requirement to maintain records of domestic and international transactions; annual financial statements are not required to contain detailed breakdowns of incomes and expenditures of the NGOs. **Effectiveness** • It has not been demonstrated that NPOs, which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities have been identified, and are adequately supervised or monitored.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated LC in the 3rd round report

Summary of 2009 MER factors underlying the rating and developments

1416. In the previous 3rd round assessment report, the addressed deficiencies regarding Recommendation 31 were rather of effectiveness than technical nature.

1417. The evaluators raised doubts whether the mechanisms for national cooperation would go beyond a strategic level and play a crucial role at an operational level. Furthermore, it was recommended to periodically analyse the situation in order to develop and implement policies and activities to combat money laundering and terrorist financing at a national level.

Legal Framework

- Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF)
- Central Bank of Montenegro Law (CBML)
- The Law on Internal Affairs (Police Act)

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1418. The Montenegrin authorities cooperate in the field of AML/CFT domestically predominately through cooperation provisions in respective laws. The coordination of strategic and policies matters are dealt with by signing Memoranda of Understanding which establish working groups with members of all relevant authorities. In order to address recommendations made in the 3rd round report a National Commission implementing a National Strategy was established.

1419. The National Commission is composed of high state officials from the Ministry of Defense, the National Security Agency, Ministry of Finance, the APMLTF as well as the National Police. Its composition has been changed repeatedly since its establishment in 2010.[59]

Domestic exchange of information provided by law

1420. The LPMLTF provides the APMLTF in Article 50 to request another state authority or public power holder to provide data for analysis purposes (see discussion on criterion 26.3). This provision leaves the door open for the establishment of direct electronic access to data and information if desired.

1421. Article 47 of the Law on Internal Affairs empowers the Police to forward any data and information it holds according to Article 44 of the same law to other state authorities, state administration bodies, local self-government bodies and legal persons if it is necessary for the execution of their powers.

Domestic exchange of information resulting from signing MoUs

1422. The following MoUs were signed among authorities of which only the MoU dealing with the establishment of a Joint Investigative Team was provided to the evaluation team.

1423. The APMLTF has signed general memoranda of understanding on mutual-cooperation with the following authorities (no date of signing provided by the authorities):

- Ministry of Internal Affairs
- Department of Public Affairs
- Customs Administration
- Basic Court in Podgorica
- The Central Bank of Montenegro
- Securities Commission

The Police, the State Prosecutor`s Office nor the Higher Court in Podgorica are not signatories to this MoU.

1424. On 19 February 2010, five authorities signed an MoU with regard to prevention and prosecution of offenders related to organised crime and corruption, including:

- The APMLTF
- Supreme State Prosecutor`s Office
- Police Directorate Department of Public Revenues
- Customs Administration

1425. In December 2010, again five authorities signed an MoU with regard to the suppression of organized crime, including:

[59] Please see the Subchapter ”National Commission” further below for more detailed information

- The Ministry of Interior and Public Administration
- Ministry of Justice
- Police Directorate
- The APMLTF
- Tax Administration

1426. Moreover, the Customs Administration of Montenegro has signed Memoranda of Understanding with:

- the APMLTF
- the Tax Administration
- Police administration
- Department of Public Revenues

regulating and closely defining mutual cooperation and method of exchange of information and data.

1427. The establishment of a joint investigative team was agreed upon in February 2010, dealing with cases of organized crime and the most serious forms of corruptive criminal offences. From the APMLTF one staff member has been assigned to solely work on issues dealt with within the joint investigative team for three years. According to the authorities, the joint investigation team has been operational since 2010 with its premises within the Department for Suppression of Organised Crime, Corruption, Terrorism and War Crimes. The members of the team act on the orders of the Special Prosecutor or the Deputy Special Prosecutor.

1428. The Joint investigative team is composed of representatives of

- State Prosecutors Office
- Police Administration
- Tax Administration
- APMLFT
- and Customs Administration.

1429. The Customs Administration and APMLTF have concluded the Agreement on cooperation, signed on 20/10/2004, for the purpose of implementation of the LPMLTF, as well as establishing of channels of communication, coordination, cooperation and data exchange, necessary for detecting and preventing money laundering and performing all other obligations stipulated by the law.

The National Commission

1430. On 30 September 2010, the Government of Montenegro adopted The Strategy for Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing for the period 2010-2014, the first strategic document, which defines a framework of action of Montenegro in accordance with the basic objective, in the areas of fight against terrorism, money laundering and terrorist financing by improving the existing and developing new measures and mechanisms serving the purpose of national, regional and global stability and security.

1431. For the purpose of the implementation of the Strategy, the Government adopted the Action Plan for the period of two years (2010-2012), defining specific measures, competent authorities, deadlines, performance indicators, risk factors and sources of funding.

1432. These documents were drafted by a working group composed of the following institutions:

- Ministry of Interior Affairs and Public Administration
- Prosecutor's Office
- Central Bank of Montenegro
- Insurance Supervision Agency
- the Ministry of Finance
- the Ministry of Justice
- the Customs Administration
- Police Directorate, Directorate for Anti-Corruption Initiative
- Administration for Games on Chance
- Securities Commission
- APMLTF
- National Security Agency
- State Audit Institution
- and the representatives of the non-governmental sector.

1433. Furthermore, the Government established the National Commission for the implementation of the Strategy for Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing. The Commission's tasks are primarily:

- to organize, coordinate and monitor activities of government agencies, public administration bodies and other competent institutions in implementing the Strategy,
- to evaluate the results achieved in implementing the Strategy, actions and measures from the Action Plan and
- to submit at least twice a year a report to the Government on activities which were carried out, together with an assessment of the current situation and a proposal of measures.

1434. After the appointment of the new Government, on 29 December 2010, implying personnel and organizational changes, the Government took a decision of 17 January 2011 to change the composition of the National Commission, both in terms of the number of Commission members, as well as its personnel. The Commission has worked in the current composition from the date in question.

1435. Bearing in mind the tasks that were placed under its responsibility by the decision on its formation, at its meetings the National Commission repeatedly noted that its tasks are very extensive, responsible and complex and that they require full involvement of all members of the Commission. To that end, the Commission has tasked the competent authorities with appointing contact persons for cooperation with the Commission and for reporting to it on the degree of implementation of the Action Plan measures.

1436. These contact persons, together with the Commission's Secretary, were to form an expert team of the Commission. The expert team was in charge of collecting and processing data obtained from the competent authorities and promptly reporting to the Commission thereon, with all supporting materials and documents. The resulting reports and data on the present level of implementation of measures from the Action Plan formed the basis for setting priorities and

deadlines for implementation of certain measures, assessing the current situation and proposing further measures.

1437. In its conclusions, the Commission has also obliged competent authorities with implementing measures from the Action Plan to submit to the National Commission reports on the degree of implementation of the Action Plan measures no later than by 31 May 2011, so that the Commission could prepare in due time and submit to the Government of Montenegro the first report on the implementation of the Strategy for Prevention and Suppression of Terrorism, Money Laundering and Terrorist Financing.

1438. As both the Strategy and Action Plan were adopted before Montenegro obtained candidate status for EU membership, the Commission has also tasked competent authorities with analysing recommendations from the opinion of the European Commission related to combating terrorism, money laundering and terrorist financing, which will possibly be implemented by adopting appropriate regulations, whose development has already been planned by the Government's Work Plan for 2011, with a precise indication on which regulation is concerned and which recommendation is realized in that way, as well as to inform the Commission on other activities serving the purpose of implementation of a certain recommendation, if they have been conducted or are underway.

1439. The National Commission compiled this report on the basis of received reports from bodies and institutions which are entities subject to enforcement of measures from the Action Plan. In July 2013 the Government of Montenegro adopted the Action plan for Implementing the Strategy for suppression of terrorism, money laundering and financing of terrorism (for the period 2013-2014).

1440. The implementation document related to the prevention of terrorist acts, money laundering and terrorist financing of the Action Plan comprises 23 goals, among which, goals 16 to 23 focus on measures to be taken for the prevention of money laundering and terrorist financing (part II of the Action Plan dealing with the prevention of terrorism acts, money laundering and terrorist financing)[60]:

- Goal 16: Conducting a National Risk Assessment
- Goal 17: Legal framework – list of indicators to detect suspicions of money laundering and terrorist financing
- Goal 18: Expansion of human resources and IT capacity
- Goal 19: Institutional cooperation and exchange of information
- Goal 20: International Cooperation
- Goal 21: Expansion of capacities through training
- Goal 22: Implementation of recommendations made by Moneyval
- Goal 23: Monitoring and controlling the implementation of the APMLTF by reporting entities

1441. For the period beyond 2014 no such implementation plan of the action plan has been drafted at the time of the on-site visit. These works were timed to be finished by the end of 2014.

[60] Further information about the implementation of these actions may be found at the following link:

http://www.aspn.gov.me/en/library/izvjestaji

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS)(c. 31.2)

1442. There are no specific mechanisms for consultation between competent authorities and the financial sector including other sectors.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1443. Although there is a high level political will to give importance to the effectiveness of the Montenegrin AML/CFT regime, there is a clear lack of periodic review mechanisms of the latter. No formal nor informal risk assessment regard AML/CFT issues and challenges has been conducted as of yet which becomes very evident when asking representatives of different authorities about the most predominant AML/CFT risks the Montenegrin regime is prone to, as the evaluation team has done in all meetings with the authorities as well as the private sector.

1444. The evaluators were given very divergent answers from different authorities to the same question. What seemed to be on top of the AML/CFT threat list for one authority was not perceived as a threat at all by other authorities and vice versa. This indicates that there is a lack of a periodically applied mechanism to review proper and effective implementation of adopted measures in the field of AML/CFT.

1445. The lack of such understanding and awareness becomes even clearer when discussing the same issues with the private sector representatives. In these meeting the evaluators were given much more cohesive and homogeneous answers to the same questions. According to them the main AML/CFT risks in Montenegro were the real estate and gambling sector.

1446. With the lack of a sufficient and well established feedback mechanism in strategic matters between authorities and the private sector the divergent understanding of the risks for AML/CFT between them can have a negative influence on the system as a whole.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1447. As the evaluation team was not given the chance to meet with the members of the National Commission as well as with the Inter-institutional working group it is not in a position to assess the adequacy of resources and training level of the members of these two bodies.

Effectiveness and efficiency

1448. The National Commission, formed in 2010, covers strategic matters such as the aforementioned implementation of the action plan. The authorities could not give precise information on how many times the National Commission has held meeting in the period between 2010 up to the on-site visit.

1449. When meeting the representatives of the National Commission on-site the authorities expected to meet with high-level officials as announced by the authorities. Prior to the scheduled meeting on-site the evaluation team was informed that the members of the National Commission could not attend.

1450. However, three representatives of the authorities attended the meeting: two staff members of the APMLTF and one of the National Police. As all of them have not yet attended any meetings with the National Commission they were not in a position to answer questions regarding what has been discussed during meetings of the National Commission. Contrary to the information provided to the evaluation team prior to the on-site, the representatives in the meeting claimed that so far only five reports have been sent by the National Commission to the Government.

1451. There seems to be a high level commitment for strategic coordination and cooperation in Montenegro. The Action Plan is cohesive and comprehensive. However, as the members of the

National Commission were not able to attend the meeting with the evaluation team, effectiveness of national cooperation on a strategic level could not be assessed.

1452. On an operational level, the evaluation team was informed during this meeting that an inter-institutional working group has been established by the end of 2013 (three months prior to the on-site visit) to deal with more specific operational issues. However, the evaluation team was informed that his working group had not yet held a meeting prior to the time of the on-site visit. Therefore, effectiveness of national cooperation on an operational level could not be assessed.

1453. In contrast to the comprehensive and cohesive national strategic action plan and its implementation with regards to AML/CTF measures through the National Commission on an operational level the quantity and quality of established MoUs between involved authorities seems rather incomprehensive and non cohesive. Authorities claimed that those were only signed in addition to the already existing legal framework allowing authorities to cooperate on a domestic level. They claimed that prior to the establishment of such MoUs representatives of authorities would keep in touch regularly via telephone without having a formal forum for discussion.

1454. Most MoUs were only signed between one and two years prior to the on-site and it still remains unclear on how cooperation was conducted prior to the adoption of the mentioned MoUs with the aim to involve all affected authorities.

1455. Keeping in mind that there is no sufficient IT system in place in order to maintain quantitative and qualitative statistics on cases the evaluators are of the opinion that the level of cooperation between the APMLTF, Prosecutors (High State Prosecutor & Supreme Prosecutor`s Office) and Police is insufficient and inadequate.

6.1.2 Recommendations and Comments

Recommendation 31

1456. Authorities should:

- Establish a regular meeting timetable for the National Commission
- Consider using the knowledge and practical expertise of the private sector in discussions with regard to the national strategy and in determining key areas of focus
- Use the inter-institutional working group to provide for a forum for in-depth discussions of issues on an operational level
- Hold regular and ad-hoc meetings of the inter-institutional working group on operational issues, especially between the APMLTF, Prosecutors (High State Prosecutor & Supreme Prosecutor`s Office) and Police

Recommendation 30

1457. Authorities should:

- Use the given inter-institutional fora (National Commission and Working Group) for training related purposes and liaise with the private sector in that regards

Recommendation 32

1458. Authorities should:

- Establish a review mechanism of the AML/CFT regime in order to properly assess vulnerabilities and threats to the current system

6.1.3 Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating

R.31	**PC**	• Lack of inter-institutional body in relation to operational cooperation and coordination before the end of 2013; • Cooperation between APMLTF, Prosecutors (High State Prosecutor & Supreme Prosecutor`s Office) and Police needs enhancement. **Effectiveness**: • Effectiveness of national cooperation on a strategic level could not be fully assessed since the evaluation team did not have the opportunity to meet with the members of the National Commission; • Effectiveness of national cooperation on an operational level could not be assessed.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated LC in the 3rd round report) & Special Recommendation I (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1459. Recommendation 35 was rated LC in the 3rd round mutual evaluation report based on the following conclusions:

- Implementations of Vienna and Palermo Conventions are not fully adequate due to a narrower incrimination of money laundering offence.

1460. Special Recommendation I was rated PC in the 3rd round mutual evaluation report based on the following conclusions:

- Implementation of the Convention for Suppression of Financing of Terrorism is not fully adequate due to a narrower incrimination of the terrorist financing offence.
- Resolution S/RES/1267 (1999) is not implemented.

Ratification of AML Related UN Conventions (c. R.35.1) and of CFT Related UN Conventions (c. SR I.1)

1461. The 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) was ratified by the Socialist Federal Republic of Yugoslavia in 1990. The 2000 UN Convention against Transnational Organized crime (Palermo Convention) was ratified in 2001. The 1999 UN International Convention for the Suppression of Financing of Terrorism was ratified in 2002. Montenegro succeeded to all the Conventions in 2006.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

1462. The majority of the provisions of the Vienna Convention are implemented by Montenegro broadly in line with the Convention. As for the criminalization of the ML offence, it should be noted that there remain some minor shortcomings, which impact on the implementation of Article 3, as discussed under R.1, as well as Articles 6 and 7 of the Convention due to the requirement of dual criminality in the Law on Mutual Legal Assistance in Criminal Matters (MLA Law). In addition, the implementation of Art. 5 is weakened by the few remaining deficiencies of the confiscation framework, such as the partial absence of value-confiscation.

1463. Besides, according to Montenegrin jurisprudence conspiracy to commit a crime under article 400 is limited to cases where the crime has not been committed. Indicting a conspirer in cases where the crime has been committed by another person is possible under article 23(2) of the CC but this is restricted under that article only to cases where the conspirer has made a *"significant contribution"*.

1464. The misuse of commercial carriers, vessels and mail for illicit traffic, is partially mitigated by the measures foreseen by the CPC (such as provisional seizure of correspondence, evidence, special investigative techniques, as well as the search or persons, objects, ships, etc.), together with the provisions of the MLA Law, which give place to international cooperation and assistance, and bilateral and multilateral agreements, established for the purposes of undertaking joint investigations. No further information on the specific measures to implement Articles 15, 17 and 19 of the Vienna Convention has however been provided by the authorities, especially in relation to the preventive measures required by the discussed articles. Thus, it cannot be concluded that these articles are fully implemented by Montenegro.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1465. Most of the provisions of the Palermo Convention are also implemented by Montenegro broadly in line with the text of the Convention. They are however subject to the same shortcomings as have been identified above with regard to the definition of the ML offence and confiscation. Furthermore, insufficient information was provided about the measures that have been put in place in relation to Art. 30 (measures to ensure the implementation of the Convention through economic development and technical assistance), it remains therefore unclear whether any such measures have been considered and put into practice by the authorities.

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1466. The provisions of the TF Convention are partly implemented by Montenegro. As it was analysed under c. II.1, not all offences included in the Annex Conventions to the TF Convention are criminalized in Montenegro or their wording is not compliant with the texts of the Conventions. Please refer to the analysis under SR.II for more detailed information on this topic.

1467. As has also been pointed out above, the requirement of dual criminality leads to impediments of the full provision of MLA, due to the shortcomings identified with respect to TF offence.

1468. There are further concerns related to the implementation of Art. 18 of the Convention. First of all, the scope of general application of the preventive measures under Art. 18 is limited due to the shortcomings identified with respect to TF offence. In addition, the majority of the preventive measures are actually implemented in the LPMLTF, which contains in Art. 3 a definition of TF even narrower than the definition provided in the CC. Namely, the definition doesn't cover financing of individual terrorists and terrorist organizations for any purpose. This means that even though the preventive measures from Art. 18 of the Convention are introduced in Montenegrin law, their actual application is limited only to this restrictive definition.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1469. The analysis under SR.III also applies to c.SR.I.2.

Additional element – Ratification or implementation of other relevant international conventions

1470. Montenegro is a State Party to the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; the latter entered into force in Montenegro in January 2009.

6.2.2 Recommendations and comments

Recommendation 35

1471. The ML offence should be brought fully in line with the texts of the Vienna and Palermo Conventions.

1472. The authorities are encouraged to take additional measures to implement fully the CFT Convention, in particular by addressing the shortcomings identified in SR.II.

Special Recommendation I

1473. The recommendations and comments provided under SR.III also apply for this section.

1474. The definitions of the FT offence in the CC and the LPMLTF should be harmonized with each other and with international standards.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Minor deficiencies remain in the implementation of several provisions of the Vienna and Palermo Conventions; • The TF Convention has been ratified, but deficiencies remain in the implementation of certain provisions of the Convention.
SR.I	**PC**	• Deficiencies remain in the implementation of certain provisions of the TF Convention; • There are no laws and procedures for the application of S/RES/1267(1999) and S/RES/1373(2001).

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated C in the 3rd round report)

Summary of 2009 factors underlying the rating

1475. Montenegro was rated as Compliant in the 3rd round mutual evaluation report in respect of R. 36.

Legal framework

1476. MLA in Montenegro is based on national legislation, as well as a number of bilateral and multilateral agreements. In addition to the Vienna and Palermo Conventions, Montenegro is also a State Party to the European Convention on International Legal Assistance in Criminal Matters (1959) (ETS. No.30), with two additional protocols, European Convention on Extradition (ETS. No.24), also with two additional protocols, European Convention on Transfer of Convicted Persons (ETS. No.112), with the additional protocol, as well as Strasbourg (CETS. No.141) and Warsaw (CETS. No.198) Conventions. Montenegro has also concluded a number of bilateral agreements governing MLA, extradition and cooperation, the majority with countries in the region.

1477. The national legislative framework remains as at the time of the 3rd round mutual evaluation. The main source of law is the MLA Law, which was adopted and entered into force in January 2008 (Official Gazette of Montenegro, 04/08) and was last amended in July 2013. The provisions of the MLA Law are subsidiary to the regulation of MLA in criminal matters as provided for in the respective international agreements and are applicable in the cases where reciprocity is provided or can be expected. Additionally, all the provisions of the CPC shall be applied *mutatis mutandis* to the provision of MLA.

1478. The competent authorities involved in providing MLA are also the same as at the time of the 3rd round mutual evaluation. The authorities competent for the actual provision of MLA are the courts and the State Prosecutor's Office, whilst the authority responsible for receiving and sending MLA requests is the Ministry of Justice, which is in charge of mediating the requests between the domestic judicial authorities and the foreign country.

1479. The 3rd round evaluation team came to the conclusion that all the necessary forms of MLA 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). It also welcomed that the provision of MLA is complemented by the powers of the APMLTF, which is able to provide data, information and documentation about persons or transactions and, in cases of the provision of reasoned written initiatives by a foreign body; it can also suspend a transaction for up to 72 hours.

Widest possible range of mutual assistance (c.36.1)

1480. The MLA Law provides for a wide range of mutual legal assistance, which includes extradition of accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign judgments in criminal cases, as well as other forms of MLA, such as the submission of documents, written materials and other information on other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as the undertaking of individual procedural actions; hearing the accused, witnesses and experts, including hearing via video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, joint investigative teams, delivery of banking data, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records, information on judgments and other procedural actions.

1481. Despite the wide range of possible MLA Montenegrin authorities may provide, concerns were raised about the possible restrictive impact of the wording of Art. 38 of the MLA Law, which regulates the enforcement of a criminal judgment of a foreign court. This article states that to enforce a final and legally binding criminal verdict of a foreign court, the competent Montenegrin court shall *"make a decision on the imposition of a criminal sanction, or a decision ordering the suspension or revocation of* ***property obtained by criminal activity****"*. It is evident that this provision is not broad enough to cover all the requirements of c.36.1(f) (identification, freezing, seizure or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences and assets of corresponding value).

1482. The Montenegro authorities have advised the evaluators that Montenegro is in process of drafting the Law on Confiscation and Management of Assets Gained through Criminal Activity. A special chapter in this law will regulate the MLA and cooperation. According to the draft law MLA includes procedure of revealing of assets gained through criminal activity and a procedure for freezing, seizure and confiscation orders/requests.

1483. Given the provisions regulating the applicability of the MLA Law (Art. 2 of the MLA Law), this law should be applied only in cases where there is no international agreement in place or such an agreement does not regulate all the necessary aspects, therefore in the majority of cases this provision should not be applicable. The fact which primarily raised concerns of the evaluators is that the authorities encountered during the on-site visit were not sure about which provision they would apply, and it seemed as if they would firstly recur to the provisions of domestic legislation. The authorities agreed that the provision of Art. 38 is too restrictive and the evaluators are of the opinion that this provision is deficient and is likely to restrict the effectiveness of MLA in ML and TF cases, especially due to the unclear interpretation and application of the norms in MLA cases by the authorities.

1484. An additional concern arises due to Art. 137 (2) of the CC, which explicitly states that the "criminal legislation of Montenegro" only applies to offences committed abroad by a foreigner against a foreign country or national, when the offence is punishable by minimum of 4 years' imprisonment by the law of that country.

1485. It is clear that the Montenegro authorities would be able to provide MLA regarding the Money Laundering. Nevertheless the evaluators remain concerned regarding the potential impact that Art. 137 may have on the scope of MLA regarding the predicate offence for money laundering in cases where the predicate offence (punishable by less than 4 years) was committed abroad by a foreigner against a foreign country or a foreigner. In such cases, it may be argued that the Montenegrin criminal legislation is not applicable to such a crime and related proceedings, limiting the scope of MLA regarding the predicate offence and therefore indirectly affect the effectiveness of MLA in relation to the ML case as well.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1486. Given that no specific procedures apply for the provision of MLA, general procedures regulating criminal procedure would be applicable. Whilst the Law on Courts stipulates in Art. 4 that "*the court is under a duty to render decisions in legal matters falling within its competence in a lawful, objective and* ***timely manner***", there is no provision which would require timeliness from the Ministry of Justice when mediating the requests. Furthermore, neither the Law on Courts, the MLA Law nor the CPC establish a concrete time period, specifying the requirement of timeliness, which would be mandatory for the execution of an MLA request.

1487. The feedback received from other States in respect to their experience of cooperation with Montenegro did not include any negative feedback in this respect, however there has been little data provided about actual cooperation.

Mutual legal assistance should not be prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions (c. 36.2)

1488. The provision of MLA on the basis of the MLA Law is only subject to the following conditions. Firstly, MLA shall not be provided in relation to a military criminal offence (Art. 46) and it may be refused with regard to a political criminal offence or if the execution of the letter rogatory would be likely to prejudice the sovereignty, constitutional order, security and other essential interests of Montenegro (Art. 47).

1489. Provision of MLA is also subject to the principles of dual criminality and reciprocity. While the principle of dual criminality is likely to cause some restrictions in the provision of MLA due to the narrow incriminations, in particular, of the ML and TF offence (as discussed above), the principle of reciprocity is formulated very broadly (Art. 2 (2)) and also covers cases when reciprocity *"can be expected"*.

1490. The evaluators have come to the conclusion that Montenegro does not subject the provision of MLA to unduly restrictive conditions.

Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays (c. 36.3)

1491. As was the case at the time of the 3rd round mutual evaluation, the execution of MLA requests is regulated by general provisions applicable to domestic criminal procedure; there are no special provisions or procedures for the execution of such requests.

1492. According to the MLA Law, the Ministry of Justice is the competent authority for receiving and sending MLA requests, as well as for further forwarding them to the competent court. The Montenegrin court then decides whether and how to proceed by following the general rules of Montenegrin criminal procedure. These rules are further followed also during the undertaking of actions necessary to provide the assistance, for example during investigations.

1493. The MLA Law further provides in Art. 4 for special cases, where MLA may be provided directly between competent domestic judicial authorities (Art. 4 (3)); for urgent cases, when the letter rogatory may be delivered through the National Central Bureau of the Interpol (Art. 4 (4)); as well as for cases, where no agreement or reciprocity are in place and the request is therefore mediated through diplomatic channels.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1494. Montenegro will not refuse legal assistance solely on the basis of the offence being a fiscal matter. As stated above, even where the principle of dual criminality is invoked, the principle of reciprocity, which is formulated very broadly (Art. 2 (2)), would be resorted to, even in cases involving fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1495. Except in cases where the legal professional privilege or legal professional secrecy applies, no request for legal assistance in criminal matters will be denied.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1496. MLA is within the competence of the Ministry of Justice and courts; the competent courts in criminal cases are Higher Courts. As has been stated above, the Ministry of Justice is the central authority for the distribution of incoming requests to competent courts and for providing the replies to requesting authorities. Higher Courts are primarily responsible for the execution of requests of MLA.

1497. For the purpose of execution of requests for MLA, the competent courts are empowered to exercise any investigative measures as provided in the CPC 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.

1498. 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 one year and thus meet the criteria for extradition in Art. 13, para. 1 of the MLA Law.

Avoiding conflicts of jurisdiction (c. 36.7)

1499. Conflicts of jurisdiction are dealt with on a case by case basis, pursuant to Articles 34 to 37 of the MLA Law, which set the conditions and the procedure for assuming and transfer of criminal proceedings. The procedure for these actions follows the procedure for MLA, with the court or state prosecutor (depending on the stage of the proceedings) sending or receiving a request through the Ministry of Justice. Article 37 further sets the conditions applicable to the assumed proceedings, which regulate the transition with regard to the already undertaken actions.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1500. The MLA Law also enables in Art. 4 (3) the possibility for direct cooperation (sending and receiving of letters rogatory and consecutive provision of MLA) between the competent domestic judicial authority (court or State's Prosecutors Office) and its foreign counterpart. This direct provision of MLA is subject either to being provided for in an international agreement or on the basis of reciprocity. It is stated that such direct cooperation is exceptional, but this is not further developed. A copy of the letter rogatory shall be under all circumstances delivered to the Ministry of Justice.

Special Recommendation V (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

1501. In the 3rd round MER, Special Recommendation V was rated as Compliant regarding the aspects related to R.36.

International Co-operation under SR. V (applying 36.1 – 36.7 in R.36, c.V.1)

1502. As explained above, Art. 38 of the MLA law restricts the competent Montenegrin court to provide MLA only "*regarding of property obtained by criminal activity*". As a result, there remain concerns that Montenegrin authorities are not able to provide the full range of MLA in CFT investigations, prosecutions and related proceeding, as prescribed under c.36.1(f) of the Methodology, namely the identification, freezing, seizure, or confiscation of assets intended to be laundered, assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value. This deficiency is especially relevant in MLA requests regarding FT investigations, as in many cases these would typically involve property which was not "*obtained by criminal activity*".

1503. In the discussions held during the onsite visit, Montenegrin authorities acknowledged this deficiency in the current MLA Law and they envisage to address this deficiency in future amendments. The evaluators encourage the Montenegrin authorities do to so.

Additional element under SR V (applying c. 36.8 in R. 36, c.V.6)

1504. The possibility for direct cooperation between judicial and law enforcement authorities as described above, applies equally to all MLA requests, if the set conditions are fulfilled. Cases related to TF are therefore also covered.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1505. The competent authority for processing MLA requests is the Department of International Cooperation at the Ministry of Justice. At the time of the on-site visit, this department has been staffed only with 5 employees, who were in charge of both incoming and outgoing MLA requests, as well as of all the procedures related to or resulting from international conventions.

1506. The evaluators have been informed that currently there is no electronic computerised database of the cases handled by this Department, but the Montenegrin authorities plan to install one in the course of year 2014. Due the lack of a computerised system, the staff has to execute all the requests manually and on paper, which makes the process lengthier, as well as does not enable the authorities to maintain comprehensive statistics and evaluate these.

1507. As a result, it seems accurate to conclude that the department is understaffed and under-resourced.

1508. For further information regarding the resources and staffing of the judicial and law enforcement authorities, the reader is referred to the analysis under R.27.

Recommendation 32 (Statistics – c. 32.2)

1509. As has been stated above with regard to resources, the Department of International Cooperation of the Ministry of Justice does not have a computerised database and as a result, the evaluators were informed that comprehensive statistics are not maintained with regard to MLA.

1510. No statistics in relation to MLA have been provided for the years 2009-2012.

1511. Regarding 2013, statistics were provided regarding MLA related to ML, TF and FATF designated predicate offences. 4 MLA requests were received and 7 requests were send by Montenegro for money laundering in that year and no requests were processed for TF. No information has been provided by the authorities about the time of execution of the requests, nor about the countries to which the requests were related. Statistics also do not differentiate between

the requests on which the legal assistance was provided and those in which the assistance was declined.

1512. Statistics were also provided about incoming and outgoing requests for extradition, which also covered ML, TF and the designated predicate offences. In 2013 one ML request was received, no requests were send and there have been no requests related to TF. The extradition statistics included also the length of execution, which for the ML request was 73 days, whilst for the extradition requests for predicate offences the average time was 64 days.

1513. Given the limited scope of the statistics maintained by the authorities, the evaluators welcome the foreseen establishment of an electronic database.

Effectiveness and efficiency

1514. Due to a rather flexible system of direct contacts (if so provided by international agreement or on the basis of reciprocity, Art. 4(3) of the MLA Law), the possible use of Interpol (in urgent cases and under the reciprocity principle, Art. 4(4)) and the possibility of use of modern means of communications, including electronic communications (Art. 6(2)) for the distribution of letters rogatory, the system as determined by the law appears to enable a rather effective processing and provision of MLA.

1515. The feedback received from other States in respect to their experience of cooperation with Montenegro has not included any negative feedback in this respect, the quantity of information received was however not sufficient to draw any relevant conclusions.

1516. Given the regional aspect of criminality in Montenegro, Montenegrin law enforcement authorities have participated successfully in several joint investigations. International cooperation in criminal matters is also highly developed especially in relation to the neighbouring countries of Montenegro, as many bilateral agreements on MLA and extradition have been signed in this context.

1517. In conclusion, Montenegro has a sound legal framework for providing legal assistance in criminal matters and it hasn't formulated any restrictive conditions to the provision of such assistance. The authorities are aware of the particular risks of international crime in the country and cooperate with other countries in criminal investigations. However, the analysis of the statistical data on MLA, provided by the Ministry of Justice, does not allow to come to a conclusion about the actual effectiveness of the processing of MLA requests. Furthermore, the lack of statistics inevitably affects the possibility to undertake internal assessments of the work and the needs of the department, as well as the undertaking of a national risk assessment. Finally, the lack of a computerised system impacts on the preciseness and timeliness of the work of the Department, especially in conjunction with the lack of staff.

6.3.2 Recommendations and comments

Recommendation 36

1518. The authorities are encouraged to adopt measures, which would ensure that the principle of dual criminality will not inhibit the provision of MLA due to the identified shortcomings of the ML offence.

1519. The wording of Art. 38 of the MLA Law should be brought in line with international standards.

Special Recommendation V

1520. The authorities are encouraged to adopt measures, which would ensure that the principle of dual criminality will not inhibit the provision of MLA due to the identified shortcomings of the TF offence.

1521. The wording of Art. 38 of the MLA Law should be brought in line with international standards.

Recommendation 30

1522. The Department of International Cooperation of the Ministry of Justice should be granted an appropriate number of staff with necessary expertise.

Recommendation 32

1523. No comprehensive statistics as to MLA are collected by the authorities. The evaluators have been advised by the authorities that during the year 2013 4 MLA requests regarding Money laundering were received, and 9 such requests during 2014. The authorities report that none of these requests were refused. 3 outgoing MLA requests regarding money laundering were sent out in 2014 the results of which were not provided.

1524. The electronic computerised database, as foreseen by the authorities, should be developed as a matter of urgency.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**LC**	• MLA is restricted only to *"property obtained by criminal activity";* **Effectiveness** • The data provided were not sufficient to show the effectiveness of the system
SR.V[61]	**LC**	• MLA is restricted only to *"property obtained by criminal activity"*

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated LC in the 3rd round report)

Summary of 2009 MER factors underlying the rating and developments

Legal Framework

- Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF)
- Law on Civil Servants and State Employees
- Law on Internal Affairs
- Banking Law
- Central Bank of Montenegro Law
- Securities Law
- Insurance Law
- Postal Services Act

[61] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37, 38 and 39.

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3)

Supervisory authorities

Central Bank

1525. Article 107 (Cooperation with Other Institutions) of the Banking Law 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 shall not be considered as revealing a "secret".

1526. Article 107 of the Banking Law is understood to apply also in respect of credit unions (by virtue of Article 163) and persons performing credit and guarantee operations (by virtue of Article 164(3)). The Central Bank has explained that Article 107 also applies in the case of a reporting entity that is a foreign bank branch. However, Article 107 would not allow the Central Bank to cooperate with an overseas supervisor of a credit and guarantee operation or microcredit financial institution (or supervisor of more general lending activities) that is not also a bank supervisor[62].

1527. Article 9 of the Central Bank of Montenegro Law provides that the Central Bank may cooperate with other central banks, international financial institutions and organisations whose activities relate to the objectives and functions of the Central Bank.

1528. Article 84 of the Central Bank of Montenegro Law provides that a member of the Council or employee shall be obliged to keep confidential the information and data which are considered to be "secret" under other legislation. The obligation continues even after termination of the function and/ or employment in the Central Bank. Notwithstanding this, information and data may be passed to a third party in accordance with a procedure established in a special act of the Central Bank provided, inter alia, that the third party is a supervisory authority of a foreign bank or financial institution for performance of official duties.

1529. In addition to those listed in Montenegro's third assessment, the Central Bank has concluded memoranda of understanding with the National Bank of Croatia (September 2009) and Bank of Belarus (2009), which it is understood cover cooperation and confidentiality arrangements. In particular, memoranda of understanding are in place with countries in which parent banks are established, e.g. France and Slovenia.

Securities and Exchange Commission

1530. Article 18a of the Securities Law regulates international cooperation between the SEC and foreign bodies "competent for supervision of trade in securities". It says that, *on the request of such a body*, the Commission shall be obliged to submit necessary data and information. Exchange of data and information referred to in Article 18(1) of the Securities Law shall not be considered as disclosure of "business secret". However, whereas Article 18a allows the SEC to respond to a request for assistance, it does not allow the Commission to share information *spontaneously*.

1531. In addition to those listed in Montenegro's third assessment, the SEC has concluded memoranda of understanding with the Slovenian Securities Market Agency (April 2010) and the Bulgarian Financial Control Agency (May 2011). In addition, the SEC concluded a declaration of cooperation in November 2011 with the Slovenian Securities Market Agency, Republic of Srpska Securities Commission, Securities Commission of the Federation of Bosnia and Herzegovina,

[62] The Central Bank has explained that only two Member States of the EU regulate the non-bank microcredit sector with specific laws.

Securities Commission of Brčko District, SEC of "the former Yugoslav Republic of Macedonia", the Croatian Agency for Supervision of Financial Services and the Republic of Serbia Securities Commission.

1532. In addition, the SEC has become a signatory to the IOSCO multilateral MOU.

1533. By virtue of Article 7 of the Law on Voluntary Pension Funds, it is understood that Article 18a of the Securities Law will apply also to pension fund management companies. The SEC has also explained that Article 18a of the Securities Law overrides Article 148 of the Law on Investment Funds which provides that the Commission is obliged to keep confidential information received in the course of its duties. So it appears that the Commission is able to cooperate with its foreign counterparts, but only to the extent that its counterpart its responsible for the supervision of trade in securities.

Insurance Supervision Agency

1534. Article 128(1) of the Insurance Law states that the regulatory authority shall cooperate with other supervisory and regulatory authorities (understood to apply also to authorities outside Montenegro) in order to carry out its supervisory and regulatory role efficiently, with the objective to encourage a harmonised development of a network for supervision of financial institutions, in accordance with agreements concluded (memoranda of understanding).

1535. Article 128(2) of the Insurance Law states that supervisory or regulatory authorities may convey information obtained from the ISA to other regulatory authorities only with the prior approval of the Agency.

1536. Article 128(3) of the Insurance Law states that exchange of information in accordance with concluded agreements referred to in paragraph 1 shall not be considered as disclosure of confidential information.

1537. Since its establishment, the Agency has taken steps to strengthen cooperation through bilateral cooperation with regulators in Austria, Bosnia and Herzegovina, Croatia, Kosovo*, "the former Yugoslav Republic of Macedonia", Serbia, Slovenia, and Srpska.

1538. Memoranda of understanding have been signed with regulators in Austria, Croatia, Kosovo*, "the former Yugoslav Republic of Macedonia" and Slovenia. Copies of these agreements are published on the Agency's website: www.ano.me/en. Those agreements with Austria and Slovenia are of greatest importance since a number of reporting entities are parts of groups based in Austria and Slovenia.

Agency for Telecommunication and Postal Services

1539. Article 66 of the Postal Services Act allows the Agency for Telecommunication and Postal Services to cooperate only with postal operators and other authorities and organisations with respect to the protection of customers and postal services market.

1540. Article 65(1) sub-paragraphs 6 and 7 of the Postal Services Act states that the Agency shall cooperate with the authorities and bodies of the Universal Postal Union and the European Union, as well as with regulatory authorities of the Member States of the European Union and other countries.

1541. However, there provisions are not understood to apply in respect of the Agency's oversight responsibilities under Article 86 of the LPMLTF.

APMLTF

1542. Whereas Article 63 of the Law on Inspection Supervision provides for inspection bodies to ensure mutual cooperation as well as to cooperate with other authorities and organisations, this is not understood to refer to supervisors outside Montenegro.

1543. Articles 60 and 61 of the LPMLTF allow the APMLTF (as competent authority) to provide data, information and documentation about persons or transactions to a foreign competent AML/CFT authority. However, both articles limit the provision of information to cases where there are *reasonable grounds for suspecting money laundering or terrorist financing*. So, for example, it would not be possible for the APMLTF to raise concerns about a reporting entity's compliance with the LPMLTF, where that entity was part of a group operating outside Montenegro. Notwithstanding this limitation, statistics show that information has been provided by the APMLTF under Article 60 (in its role as competent supervisory authority) in 2010 (16 times), 2011 (5 times), 2012 (29 times) and 2013 (57 times)

Law enforcement authorities

The APMLTF

1544. Articles 58 – 63 of the LPMLTF cover provisions with regard to international cooperation with foreign FIUs. According to Article 58, the APMLTF shall carry out a verification if the foreign competent authority to which it shall forward the 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 before submitting personal data to the foreign competent authority for prevention of money laundering and terrorist financing.

1545. According to Articles 59 and 60 the APMLTF is empowered to request foreign counterparts for the submission of data and information as wells as provide such upon a request from a foreign counterpart for analysis purposes only, under reciprocity conditions. The data and information shall only be used for the purposes that are in accordance with the conditions and limits that have been mutually established.

1546. Article 61 empowers the APMLTF to provide a foreign counterpart with data and information on a self-initiative, spontaneous basis. However, it can define conditions and limits under which information is to be used by the foreign counterpart.

1547. Table 22 shows the number of incoming and outgoing requests to and from the APMLTF on a FIU-to-FIU basis from 2008 to 2013.

International co-operation	2008	2009	2010	2011	2012	2013	Total
INCOMING REQUESTS							
Foreign requests received by the FIU	**39**	**51**	**49**	**46**	**26**	**40**	**251**
Foreign requests executed by the FIU	**39**	**51**	**49**	**46**	**26**	**40**	**251**
Foreign requests refused by the FIU	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Spontaneous sharing of information received by the FIU	**2**	**/**	**/**	**1**	**2**	**1**	**6**
TOTAL (incoming requests and information)	**39**	**51**	**49**	**46**	**26**	**40**	**251**
Average number of days to	**30 days**						

respond to requests from foreign FIUs							
Refusal grounds applied	/	/	/	/	/	/	/
OUTGOING REQUESTS							
Requests sent by the FIU	**60**	**107**	**111**	**611**	**176**	**216**	**1181**
Spontaneous sharing of information sent by the FIU	/	/	**1**	/	**2**	**2**	**5**
TOTAL(outgoing requests and information)	**60**	**107**	**111**	**611**	**176**	**216**	**1181**

1548. Potential reasons for refusal of submission of required data and information are according to Article 60 para 2 LPMLTF:

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.

1549. In the period 2008 - 2013 no foreign requests were refused by the APMLTF. Table 22 shows a rather low number of incoming requests to the APMLTF of an average of 35 requests per annum. The number of outgoing requests varies highly from year to year and average 213 request to foreign counterparts per annum. All requests concern money laundering cases exclusively.

1550. The Top 5 jurisdictions the APMLTF has sent requests to are:

1. Russia
2. Serbia
3. British Virgin Islands
4. Switzerland
5. Cyprus

1551. The Top 5 jurisdictions the APMLTF has received requests from are:

1. Russia
2. Serbia
3. Cyprus
4. Croatia
5. Slovenia

1552. The APMLTF may take up to 60 days (maximum) to respond to an incoming request made by a foreign FIU, but on average it provides information within 30 days as recommended by the Egmont Group Operational Guidance Paper.

1553. When asked about the number of cases with a large international context in 2011, the year with the highest number of outgoing requests made by the APMLTF, namely 611, the authorities replied that these requests were related to five cases analysed by the APMLTF. Taking into

account that the incoming response rate to these requests was very low the evaluators concluded that this number seemed to be induced by a "fishing expedition" exercise.

1554. The authorities confirmed this assumption during the meeting on-site and claimed that it was not possible for them to otherwise find any additional information on the case.

1555. The APMLTF has been a full Egmont Group member since July 2005. In cooperating with its foreign counterparts the APMLTF has regard to the Egmont Principles of Information Exchange. It is currently not subject to any compliance procedures within the Egmont Group.

1556. Article 58 Para 2 LPMLTF enables the APMLTF to agree MOUs on the exchange of information with foreign counterparts. Annex 6 provides a list of MOUs signed by the LPMLTF.

The Police

1557. According to Article 48 of the Law on Internal Affairs the Police are empowered to exchange data spontaneously or upon a request of another country or an international organization, based on the principle of reciprocity, while applying proper measures for protection of personal data. Data obtained from another country can be submitted to a third country only if the country providing the original data agrees.

1558. The Police exchanges intelligence on cross border crime primarily with countries within the region but also with other countries, international organizations and institutions fighting cross border crime such as INTERPOL and CARIN.

1559. The following table 23 shows the number of incoming and outgoing requests received and sent by the Police in the period from 2008 – 2013. The numbers include requests via the Interpol framework as well as CARIN to which Montenegro has been granted observer status since 2011.

International co-operation * the provided numbers refer to money laundering and tracing property	2008		2009		2010		2011		2012		2013	
INCOMING REQUESTS	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**
Foreign requests received by law enforcement authorities related to ML (this number refers to requests and replies received)	221		162		179		238		268		149	
Foreign requests executed												
Foreign requests refused	0		0		0		0		0		0	
TOTAL												
Average time of execution (days)	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**	**20 days**

OUTGOING REQUESTS	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**
Number of requests sent abroad by law enforcement authorities	203		139		173		205		230		149	
Number of requests sent and executed												
Number of requests sent and refused	0		0		0		0		0		0	
TOTAL	**424**		**301**		**352**		**443**		**498**		**298**	

1560. The provided number for incoming and outgoing requests in Table 23 is not too volatile with an average of around 200 incoming and 180 outgoing requests per annum from 2008 – 2013. All incoming and outgoing requests concern money laundering exclusively and no requests have been refused during the mentioned period.

1561. It takes the Police an average of around 20 days to answer foreign requests, which is a reasonable amount of time, considering that in many cases before answering a foreign request the Police has to ask (in some instances several) domestic authorities for additional information, such as the APMLTF, Customs and other authorities.

Customs Administration

1562. The Customs Administration of Montenegro is a member of the SELEC (formerly SECI) cooperation initiative in Southeast Europe with regional centre in Bucharest, Romania.

1563. It is represented in the regional intelligence office for east and central Europe (RILO ECE).

1564. Within RILO ECE the Customs Enforcement Network (CEN) is located, which runs a database where all member states enter data on all major seizures of goods.

1565. The customs administration exchanges intelligence on cross border crime primarily with countries within the region but also with other countries, international organizations and institutions fighting cross border crime such as OLAF, SELEC, EUROPOL and INTERPOL.

1566. Furthermore, it is signatory to 28 bilateral agreements on cooperation and mutual assistance in customs matters with other countries, out of which 12 with the EU countries.

1567. In the period under review, the authorities indicated that such exchanges have not taken place in relation to ML/FT.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

Supervisory authorities

Central Bank

1568. The Central Bank has explained that Article 110(2) of the Banking Law may be used to conduct joint examinations with foreign counterparts. This article permits the Central Bank to hire non-employees to perform "individual duties in the process of bank supervision" and, in line with a memorandum on cooperation concluded with a particular home supervisory authority, would allow officers of the home supervisor of the parent bank to be included in the Central Bank's inspection team.

1569. The Central Bank has explained that, in a case where an overseas regulator wishes to have access to information held in a Montenegrin bank, it would first contact that particular bank. Where information is not forthcoming, the Central Bank would use its powers. More proactively, the Central Bank explained that it has conducted a joint on-site examination of NLB Bank with Slovenian inspectors. No problems have been identified cooperating with other supervisors.

Securities and Exchange Commission

1570. It appears that provisions in Article 9 of the Investment Management Company Rules, Article 9 of the Pension Management Company Rules, and Article 110 of the Securities Law may be used to conduct examinations on behalf of foreign counterparts. However, in the case of latter, Article 110 is limited to ascertaining whether a reporting entity is complying with any provision or requirement under the Securities Law, Rules made thereunder or terms and conditions of its licence – which in practice, may limit the Commission's capacity to conduct an examination on behalf of a foreign authority.

1571. However, the Commission has explained that the examinations of securities market participants is conducted: on its own initiative; on the initiative of members of the Commission; at the request of owners and potential owners of securities, the stock exchange, the CDA, or

participants in the securities market; or at the request of another competent authority, organisation, or association.

1572. It says that it may also inspect the operations of securities market participants on the basis of proposals by foreign institutions responsible for supervision of securities markets. The Commission has explained that this kind of cooperation is expected of a signatory to IOSCO's multilateral MOU.

Insurance Supervision Agency

1573. It appears that Article 118 of the Insurance Law may be used to conduct examinations on behalf of foreign counterparts.

1574. Article 115(1) of the Insurance Law also provides for the ISA to exercise supervision in accordance with the Insurance Law and Core Principles. In particular, Article 115(2) of the Insurance Law states that the ISA may inspect business records of legal persons which are related to an insurance company, e.g. its parent company. Article 115(3) states that, in cases where another supervisory body is responsible for supervising such legal persons, the Agency will exercise supervision in collaboration with the other supervisory body. This may be achieved through joint examinations or collection of information by the Agency (as set out in memoranda of understanding).

Agency for Telecommunication and Postal Services

1575. As described in paragraph 1541 above, it is unlikely that the Agency for Telecommunication and Postal Services could conduct examinations of non-postal activities of post offices (such as making and receiving funds as sub-agent in Montenegro for Western Union) on behalf of foreign counterparts.

APMLTF

1576. It appears that Article 21 of the Law on Inspection Supervision may be used to conduct examinations on behalf of foreign counterparts.

Law enforcement authorities

APMLT

1577. According to Article 60 the APMLTF is empowered to provide data, information and documentation about persons or transactions upon a request from a foreign counterpart for analysis purposes only, under reciprocity conditions. The data and information shall only be used for the purposes that are in accordance with the conditions and limits that have been mutually established.

1578. As already discussed under Criteria 40.1 – 40.3 the APMLTF has done so frequently in recent years and has never rejected a foreign request for any reasons.

1579. When receiving a request the APMLTF first searches its own database. If necessary, the APMLTF approaches other state authorities or public power holders in accordance with Article 50 LPMLTF via written request to provide it with additional information. The request is always made in written form as the APMLTF has no direct access to law enforcement or other administrative databases except for the Commercial Registry.

1580. In addition, Article 62 empowers the APMLTF to temporarily suspend a transaction for up to 72 hours upon written initiative by a foreign counterpart. The authorities do not keep records on the number of such initiatives. However, they evaluators were told that there were at least two cases in which the APMLTF successfully suspended transactions on behalf of a foreign FIU. Numbers on how many requests were received and rejected could not be made available to the evaluation team.

The Police

1581. The Police is authorised to conduct investigations on behalf of foreign counterparts.

1582. If related data and information held by a foreign FIU counterpart are sent to the APMLTF investigations can formally be launched by submitting the intelligence gathered to the law enforcement authorities in charge of investigating money laundering and terrorist financing.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

Supervisory authorities

1583. On the basis of the legislative provisions summarised at paragraphs 1525 to 1538 above, it does not appear that disproportionate or restrictive conditions are placed on exchange of information.

Law enforcement authorities

1584. All provisions regarding the exchange of information in the field of law enforcement require a verification of equal data protection safeguards with foreign counterparts prior to the exchange itself. It is a common practice to make use of such a precondition. Hence, there are no refusal grounds stipulated in the law that relate to a refusal when data and information requested are related to tax matters.

1585. In practice, no foreign counterpart has complained about this practice or reported about negative experiences regarding the exchange of information with the Montenegrin law enforcement authorities when asked by MONEYVAL prior to the on-site visit.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

Supervisory authorities

1586. On the basis of the legislative provisions summarised at paragraphs 1525 to 1538 above, it does not appear that cooperation might be refused on the sole ground that a request is considered to involve fiscal matters.

Law enforcement authorities

1587. There are no restrictions in Montenegrin law regarding the exchange of information of law enforcement authorities with foreign counterparts.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

Supervisory authorities

On the basis of the legislative provisions summarised at paragraphs 1525 to 1534 above, it does not appear that cooperation might be refused on the basis that laws impose secrecy or confidentiality provisions.

Law enforcement authorities

1588. There are no restrictions in Montenegrin law regarding the exchange of information of law enforcement authorities with foreign counterparts, i.e. no restrictions in relation to the professional secrecy or confidentiality laws or provisions.

Safeguards in use of exchanged information (c.40.9)

Supervisory authorities

Insurance Supervision Agency

1589. Article 189 of the Insurance Law provides for confidentiality in dealing with information collected in respect of the Agency's supervisory functions, and prohibits its sharing with

unauthorised persons. Other internal procedures in the Agency also provide for the same obligation.

Agency for Telecommunication and Postal Services

1590. Article 44 of the Statute of the Agency prescribes that all employees of the Agency, as well as other legal and natural persons whom the Agency has engaged for performing certain tasks, are obliged to maintain the confidentiality of the data, which is designated as such by an official act of the competent authority, or a business secret, during and after the termination of their employment in the Agency, as long as this information is considered confidential or until they are released from this obligation by a special decision.

1591. Details of controls and safeguards established to ensure that information received from competent authorities is *used* only in an authorised manner have not been provided.

Other supervisors

1592. Details of controls and safeguards established to ensure that information received from competent authorities is *used* only in an authorised manner have not been provided.

Law enforcement authorities

1593. The legal framework governing the protection of data received by the APMLTF is set out under Chapter VII of the LPMLTF 'Records, Saving and Protecting Data'. Article 80 provides that all data, information and documentation collected by the APMLTF shall be designated the appropriate degree of confidentiality and must not be made available to third parties. Additionally, the APMLTF is not obliged to confirm or deny the existence of confidential data. Pursuant to Article 82, the APMLTF may only use data, information and documentation it has received for the purposes provided for by the law. Every employee of the APMLTF is required to sign a statement upon their appointment, binding themselves to keep confidential all information that comes to their knowledge in the course of their functions.

Additional elements – Exchange of information with non counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

Supervisory authorities

1594. The ISA has explained that it would consult both its non-counterpart and the APMLTF to check whether it might exchange information. Only after such consultation would information be shared with a non-counterpart – so long as its dissemination was in line with the Insurance Act.

1595. Details of mechanisms in place to permit exchange of information with non-counterparts have not been provided by other supervisors.

Law enforcement authorities

1596. The aforementioned provisions in Articles 59 and 60 LPMLTF providing the legal basis for exchange of information in an international framework does not stipulate that such exchange can be conducted with foreign non-counterparts as well. The evaluation team was told on-site that such exchange cannot be conducted between non-counterparts.

1597. The same logic applies for Article 48 of the Law on Internal Affairs regarding the legal framework for international cooperation for the Police.

1598. With regards to Criterion 40.11, according to Article 50 LPMLTF all state authorities (including public power holders) are obliged to provide the APMLTF with all data, information and documentation the APMLTF deems necessary to detect money laundering and terrorist financing in the course of analysis it conducts. The same provision applies to persons the APMLTF suspects to be related to or learned about during the course of the APMLTF`s analysis.

State authorities are then to follow the APMLTF`s request without delay and no later than eight days after the request has been received.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5)(rated LC in the 3rd round report)

1599. The provisions which apply to ML apply in the same manner to FT in the context of SR V.

Effectiveness and efficiency

Supervisory authorities

1600. With the exception of statistics provided on the APMLTF's use of Articles 60 and 61 of the LPMLTF, no information has been provided on incoming requests for assistance from overseas supervisory authorities, or outgoing requests for assistance from overseas supervisory authorities. As a result, it is not possible to comment on the effectiveness and efficiency of cooperation.

APMLTF

1601. All in all, the APMLTF has a robust legal framework regarding the exchange of information internationally. It provides foreign counterparts with a wide range of international cooperation.

1602. The numbers of received requests are rather low on a yearly basis, which indicates the foreign counterparts rarely need additional information from the APMLTF in order to conduct their analysis domestically. On the other hand, the number of requests sent out to foreign counterparts is much higher, which indicates that the Montenegrin authorities regularly seek information from foreign FIUs in order to conduct their analysis domestically and to have enough base to forward the analysis to the competent law enforcement authorities for investigation.

1603. The average processing time of 30 days to answer the foreign requests is in line with accepted best practice.

1604. It is debatable whether the APMLTF is allowed to exchange information on the underlying predicate offences related to money laundering as Article 60 LPMLTF restricts the scope of data, information and documentation that can be provided to foreign counterparts to "persons or transactions". However, the evaluators are of the opinion that this formulation suffices and can be interpreted in a way that allows the authority to exchange information related to the underlying predicate offences as well.

1605. In general, the conditions for exchanges of information are not disproportionate or unduly restrictive, i.e. by imposed secrecy or confidentiality provisions. The fact that requests might also involve fiscal matter does not establish a ground for refusal of such.

1606. There are safeguards in place to ensure that information received by the APMLTF is used only in an authorised manner.

The Police

1607. The Police exchange information regularly in the international context via the Interpol and CARIN networks.

1608. The time it takes to process an incoming request is proportionate and effective. All requests sent to the Police have been processed and none have been refused so far.

1609. Regarding applicable safeguards to prevent misuse of information the same issues that have arisen in the analysis and discussion part concerning the APMLTF (Rec. 26 and 40) are equally applicable to the Police.

Customs

1610. The effectiveness of the international cooperation framework related to the Customs Authority could not be assessed due to the complete absence of statistics.

6.4.2 Recommendation and comments

APMLTF

1611. The APMLTF should:

- Consider amending Article 60 LPMLTF in a way that allows the APMLTF to exchange information on both:

  - data, information and documentation related to money laundering

  - data, information and documentation related to underlying predicate offences

1612. The Police should:

- Introduce a clear legal basis for conducting investigations on behalf of foreign counterparts

1613. The authorities should ensure that:

- The Central Bank is empowered under Article 107 of the Banking Law to exchange information with foreign institutions that supervise credit and guarantee operations, microcredit financial institutions, and more general lending that are not also responsible for bank supervision;
- The Securities and Exchange Commission can share information spontaneously under Article 18a of the Securities Law and has a general power to conduct an examination under the Securities Law on behalf of a foreign authority;
- The Agency for Telecommunication and Postal Services can cooperate and exchange information with foreign counterparts on AML/CFT issues; and
- The APMLTF has a general power to exchange information with foreign supervisors responsible for AML/CFT supervision, whether or not money laundering or terrorist financing are reasonably suspected.

6.4.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	• Clear and effective gateways are not in place to facilitate and allow for exchanges of information directly between counterparts: o The Central Bank is empowered to exchange information outside Montenegro only with "foreign institutions responsible for bank supervision". (40.2) o The Agency for Telecommunication and Postal Services cannot cooperate or exchange information with foreign counterparts on AML/CFT issues. (40.2) o The APMLTF may not exchange information for supervisory purposes, except where there are reasonable grounds for suspecting money laundering or terrorist financing. (40.2) • The SEC cannot share information spontaneously under the

		Securities Law or the Law on Voluntary Pension Funds. (40.3) • The SEC does not have a general power to conduct an examination under the Securities Law on behalf of a foreign authority. (40.5) • Insufficient details have been provided of controls and safeguards in place to ensure that information received by competent supervisory authorities is used only in an authorised manner. (40.9) **Effectiveness** • With the exception of the APMLTF, assistance is not requested from, or by, competent supervisory authorities.
SR.V	**PC**	• Clear and effective gateways are not in place to facilitate and allow for exchanges of information directly between counterparts: o The Central Bank is empowered to exchange information outside Montenegro only with "foreign institutions responsible for bank supervision". (40.2) o The Agency for Telecommunication and Postal Services cannot cooperate or exchange information with foreign counterparts on AML/CFT issues. (40.2) o The APMLTF may not exchange information for supervisory purposes, except where there are reasonable grounds for suspecting money laundering or terrorist financing. (40.2) • The SEC cannot share information spontaneously under the Securities Law or the Law on Voluntary Pension Funds. (40.3) • The SEC does not have a general power to conduct an examination under the Securities Law on behalf of a foreign authority. (40.5) • Insufficient details have been provided of controls and safeguards in place to ensure that information received by competent supervisory authorities is used only in an authorised manner. (40.9) **Effectiveness** • With the exception of the APMLTF, assistance is not requested from, or by, competent supervisory authorities.

7 OTHER ISSUES

7.1 Resources and Statistics

7.1.1 Description and analysis

Recommendation 30 (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

1614. Recommendation 30 was rated 'LC' in the 3rd Round Report based on the following factors:

- The APMLTF was 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.

1615. Overall, given that at the time of the 3rd evaluation round report, the framework for AML/CT measures was still in the process of being developed, the evaluators considered that LEAs and supervisors had been provided with adequate financial, human and technical resources, with the exception of the APMLTF. Integrity of the employees seemed to be guaranteed under various legal provisions. Training activities, on the other hand, were not considered adequate.

FIU

1616. Since the time of the 3rd evaluation round report, the APMLTF's budget has been decreased considerably, due to the financial crisis that impacted all state authorities' budget. As a result there are still vacancies within the structure of the APMLTF, as at the time of the 3rd round. In this regard, the evaluators observed a certain disproportion in the distribution of human resources, given that only 8 out of 38 employees are assigned to APMLTF's core business activities. Moreover, the high turnover of the staff members, due to the low level of salaries, represents a significant problem.

1617. During the on-site visit, all employees showed a high level of integrity, also thanks to the strict measures required under the Law on Civil Servants and State Employees. In accordance with Article 68 of this Law, in 2013 the APMLTF designated an integrity manager among the staff members and charged him with the adoption of an integrity plan.

1618. The training of APMLTF's staff is overall very satisfactory, with a number of events and workshops being held, even if a higher attendance to these training activities is still to be ensured.

Law enforcement and prosecution agencies

1619. Concerning the Higher State Prosecutor's Office and the Supreme Prosecutor's Office, in the evaluators' view, there was no need to re-address the previous recommendation to increase their human resources: it emerged from the on-site visit that the representatives of the prosecution office are satisfied with their budget as well as the number of their staff. On the contrary, the Police Directorate representatives stated that personnel are limited, considering that there are only 10 employees working in the two police departments combined. Therefore, the evaluators consider that the staffing should be increased.

1620. The integrity of the competent authorities is envisaged under the Law on the State Prosecutor's Office and the Law on Internal Affairs, respectively. In general, the evaluators observed that all the prosecutorial authorities representatives met on-site appeared to have a high standard of integrity. The problem of corruption within the law enforcement authorities, spread particularly by the public media, is - according to the representatives – diminished, but remains an issue to be monitored.

1621. Both the Higher State Prosecutor's Office and the Supreme Prosecutor's Office participated in training programmes in the field of money laundering and terrorist financing. On the other hand, only the Directors of the two Criminal Police Departments participated to training activities. Therefore, the evaluators consider that also the police officers involved in the investigations should receive complete training.

Supervisory authorities

1622. At the end of 2013, the Central Bank employed 335 staff, of which 49 were allocated to the Banking Supervision Department. According to the representatives met on-site, the Central Bank has sufficient resources to undertake its supervisory tasks. The SEC employs 31 staff members (including chairman, deputy chairman, and commissioners), whilst it's Rules on internal organisation and systemisation provide for 42 employees. The Insurance Supervisory Agency employs a total of 20 staff. Finally, the Agency for Telecommunications and Postal Services employs 2 staff members.

1623. In general, even if AML/CFT training is provided for by all supervisors, it does not seem to be widely offered to employees. For instance, this is the case of Central Bank employees, also due to the very small budget. The SEC, instead, achieved a wider commitment in training activities and also adopted a training plan for 2014.

1624. All the supervisory authorities have an Ethical Code, setting high professional standards. On the other hand, criminal records are not checked on a regular basis before hiring staff.

1625. Specifically in relation to the APMLTF, please see the paragraph above. For further information please refer to Section 3.7 of this report.

DNFBP Supervisor

1626. A significant part of DNFBP representatives are supervised by the APLMTF, therefore reference may be made to the paragraph above.

1627. The other relevant DNFBP supervisory authorities are the Administration for Inspection Affairs, responsible for inspecting casinos, the Notary Chamber and the Bar Association for notaries and lawyers and the Ministry of Finance for accountants and auditors. It is not clear whether resources are sufficient. Also the level of training provided is not adequate.

Customs

1628. As a consequence of the financial crisis, the Customer authority has not hired any new staff. Also, training activities are revealed as insufficient. From the 1 January 2013, a Code of Ethics is in place, setting ethical standards and code of conduct of customs officers and administration employees.

Policy makers

1629. The evaluators were not in the position to assess the adequacy of resources and training level of the members of the National Commission and the Inter-institutional working group, since the evaluation team was not given the chance to meet with them and no further information was provided.

Recommendation 32 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1630. Recommendation 32 was rated 'PC' in the 3rd Mutual Evaluation Report based on the following deficiencies:

- 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.

Review of the effectiveness of the AML/CFT system on a regular basis (c. 32.1)

1631. Although there is a high level political will to give importance to the effectiveness of the Montenegrin AML/CFT regime, there is a clear lack of periodic review mechanisms of the latter. No formal nor informal risk assessment regard AML/CFT issues and challenges has been conducted as of yet which becomes very evident when asking representatives of different authorities about the most predominant AML/CFT risks the Montenegrin regime is prone to, as the evaluation team has done in all meetings with the authorities as well as the private sector.

1632. The evaluators were given very divergent answers from different authorities to the same question. What seemed to be on top of the AML/CFT threat list for one authority was not perceived as a threat at all by other authorities and vice versa. This indicates that there is a lack of a periodically applied mechanism to review proper and effective implementation of adopted measures in the field of AML/CFT.

1633. The lack of such understanding and awareness becomes even clearer when discussing the same issues with the private sector representatives. In these meeting the evaluators were given much more cohesive and homogeneous answers to the same questions. According to them the main AML/CFT risks in Montenegro were the real estate and gambling sector.

1634. With the lack of a sufficient and well established feedback mechanism in strategic matters between authorities and the private sector the divergent understanding of the risks for AML/CFT between them can have a negative influence on the system as a whole.

Statistics – c. 32.2

1635. The competent authorities maintain statistics on a number of matters relevant to the effectiveness and efficiency of AML/CFT systems, except for the following:

- Complete statistics on disseminated STRs;
- Complete statistics on confiscation and provisional measures for ML and predicate offences;
- MLA statistics (for the years 2009-2012);
- Complete statistics on numbers of supervisory examinations have been presented by the authorities

7.1.2 Recommendations and comments

Recommendation 30

1636. The authorities should:

- As a matter of priority, raise the salaries of FIU staff to a competitive level to avoid high fluctuation of staff.
- Increase number of staff of the APMLTF to occupy all planned job positions according to the adopted governmental decree and allocate staff more appropriately to better assist the analytical departments (STR & CTR) which perform the core tasks of the APMLTF.
- Significantly increase staffing of the Criminal Police Directorate in both, the Economic Crime Suppression Section and the Section for Combatting Organized Crime and Corruption to the degree necessary to allow officers to dedicate their highest possible efforts to their tasks.

- Introduce a cohesive and broad training programme in the fields of money laundering and terrorist financing for police officers dedicated to investigate financial crime.
- Consider conducting periodic reviews on the influence of corruptive elements in law enforcement authorities and identify a targeted action plan to remedy its negative effects.
- Provide all Customs Officers with adequate training programs related to money laundering and terrorist financing on a regular basis.
- Consider raising the number of staff within the Customs Authority in general to fully support Montenegro`s obligations under Special Recommendation IX.
- Use the inter-institutional fora (National Commission and Working Group) for training related purposes and liaise with the private sector in that regard.
- Perform criminal checks at the time of employment of staff of supervisory authorities and where staff change roles.
- Review the coverage and the nature of AML/CFT supervisor training and agree an action, in order to ensure that (at the very least) it is delivered to all relevant supervisory staff.
- The current level of resourcing in the Reporting Entities Control Department of the APMLTF should be reviewed in order to determine whether it is consistent with its statutory responsibilities under the LPMLTF.
- Notwithstanding other provisions in Articles 171 and 280 of the Criminal Code, Article 189 of the Insurance Law should be amended to extend the period for which data on persons over which the Agency exercises supervision is kept confidential. Currently it is confidential only for a period that expires three years after a person terminates employment with the Agency.
- The electronic computerised database for MLA requests, as foreseen by the authorities, should be developed as a matter of urgency.

Recommendation 32

1637. The authorities should:

- Utilise the Justice Informative System to maintain more detailed statistics with regard to ML investigations, prosecutions and proceedings.
- Maintain a breakdown of statistics on individual cases disseminated to law enforcement authorities.
- Consider maintaining statistics on requests for information sent to other domestic authorities and reporting entities and action taken by police, national security agency and tax administration on the basis of FIU disseminations.
- Consider introducing an intra-agency database that allows competent authorities to access directly or indirectly law enforcement information in a prompt manner, in order to ensure that all statistics are properly kept and can be double-checked if necessary, in the case that discrepancies occur.
- Consider maintaining statistics on false declarations and non-declarations.
- Keep records on notifications to foreign competent authorities with regards to unusual cross-border movement of gold, precious metal or precious stones
- Establish a review mechanism of the AML/CFT regime in order to properly assess vulnerabilities and threats to the current system.
- The basis for collecting and analysing statistics on supervisory examinations should be reviewed in order to ensure that they cover all competent supervisory bodies and that statistics are complete and accurate.

7.1.3 Compliance with Recommendations 30 and 32

	Rating	Summary of factors underlying rating
R.30	**PC**	*APMLTF* • Inadequate allocation of staff at the in relation to tasks and activities performed (analytics department in relation to other departments); • Insufficient IT and human resources have a negative impact on the analysis of STRs, CTRs and other financial information; *Police* •Number of staff in Criminal Police Department is insufficient; • Training of police officers in Criminal Police Department is inadequate; *Customs* • Lack of adequate training of Customs Officers; • Number of staff is too low in order to fully support all obligations under SR. IX; *Policy Makers* • Adequacy of resources and training level of Members of National Commission and intra-institutional working group could not be assessed; *Supervisors* • The APMLTF is responsible for overseeing a significant number of reporting entities and has only five staff available to do so; • Within the CBM criminal record checks are not routinely performed at the time of employment of staff; • Details of training provided suggest that AML/CFT training is not offered widely within the competent supervisory bodies; • Details of training provided to employees suggest that AML/CFT training tends to be focussed on the APMLTF's activities as a financial intelligence unit, rather than supervisor; • High turnover of staff in APMLTF has an adverse impact on effectiveness.
R.32	**PC**[63]	• No review mechanism of the AML/CFT system on a regular basis; • Unclear whether statistics on confiscation and provisional measures for ML and predicate offences; • Incomplete statistics on the dissemination process maintained by

[63] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3rd round report on 20, 38 and 39.

		the FIU; • No MLA statistics for the years 2009-2012 were provided; • Incomplete statistics on numbers of supervisory examinations have been presented by the authorities.

7.2 Other Relevant AML/CFT Measures or Issues

7.3 General Framework for AML/CFT System (see also section 1.1)

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

8 Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Montenegro. It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.

Forty Recommendations	Rating	Summary of factors underlying rating[64]
Legal systems		
1. Money laundering offence	**PC**	• Not all types of property are covered by the ML offence; • The concealment or disguise of rights with respect to property is not covered. **Effectiveness** • Very low number of ML investigations, prosecutions and convictions; • Concerns over evidential thresholds to establish underlying predicate criminality; • Underutilisation of FIU generated reports for the prosecution of ML resulting in convictions; • Issues regarding timeliness of ML proceedings.
2. Money laundering offence Mental element and corporate liability	**LC**	**Effectiveness** • The sanctions that have been actually applied by the Courts for ML are not dissuasive and effective; • No ML investigations, prosecutions or convictions for legal persons.
3. Confiscation and provisional measures	**PC**	• The absence of a definition of property in the CC may restrict the widest use of the confiscation regime; • The confiscation of proceeds is not adequately covered;

[64] These factors are only required to be set out when the rating is less than Compliant.

		• No requirement to confiscate property of corresponding value to laundered property and instrumentalities and the requirement to confiscate property of corresponding value to proceeds is inadequate; • No requirement to confiscate property that is derived indirectly from proceeds; including income or profits; • No power to prevent or void actions which may prejudice the authorities' ability to recover property subject to confiscation. **Effectiveness** • No information was provided on confiscation measures for predicate offences; • No information was provided on provisional measures applied for predicate offences; • Very low number of provisional measures and confiscation orders for ML offences.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• There is no clear provision that financial institutions are authorized to share information on identification/verification information of their clients for the purpose of Recommendation 7, 9 and SR.VII; **Effectiveness** • Requirements of Data Protection Act might jeopardize information sharing as required under FATF recommendation.
5. Customer due diligence	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF if lawfully conducted in Montenegro; • Reporting entities are not required to undertake full CDD measures when carrying out occasional transactions that are wire transfers; (c.5.2) • For customers that are foreign legal persons, reporting entities are not required to verify that any person purporting to act on behalf of the customer is so authorised, or to obtain information on directors or provisions regulating the power to bind the legal person; (c.5.4) • For customers that are legal persons, reporting entities are not always required to verify the

		identity of persons purporting to act on behalf of such customers; (c.5.4) • For customers that are limited partnerships, legal entities (but not persons) or legal arrangements, reporting entities are not required to verify that any person purporting to act is so authorised, to verify the legal status, to obtain information concerning legal form, or to collect information on provisions regulating the power to bind; (c.5.4) • Reporting entities are not required to take reasonable measures to understand the ownership and control structure for customers that are limited partnerships or legal arrangements, or to determine who are the natural persons that are the ultimate owners or controllers of limited partnerships, legal entities (but not persons) or legal arrangements; (c.5.5) • Simplified measures can be applied in cases where risks are not lower; (c.5.9) • Where simplified measures can be applied, customers are not subject to the full range of CDD measures; (c.5.9) • The application of simplified CDD measures is not limited to countries that are in compliance with and which have effectively implemented the FATF Recommendations; (c.5.10). • Simplified CDD measures may be applied to a customer notwithstanding that there may be specific higher risks; (5.11) • Where a reporting entity is unable to apply required CDD measures, it does not commit an offence where it subsequently establishes a relationship; (c.5.15) • Where a reporting entity has already commenced a business relationship and is unable to comply with required CDD measures, it is not required to terminate the business relationship; (c. 5.16) **<u>Effectiveness</u>** • Reporting entities are still inclined to assume that information held at the Registry (and other public registries) will always reflect the beneficial ownership of a legal person; (5.4) • Whereas simplified identification measures may be applied by a reporting entity in a case where a customer is an organisation whose securities are traded on an organised market or stock exchange

		in a state where international standards are applied at the same or higher level than the EU, there is no explanation of which standards are to be considered; (5.9) • While the law requires reporting entities to refuse to establish a business relationship with a client or execute a transaction, if the client's identity cannot be determined with sufficient certainty, the guidelines published by the SEC and ISA state that reporting entities *may* refuse to establish a business relationship which may give rise to ambiguity; (5.15) • Banks highlighted possible barriers to the termination of existing business relationships. One cited the need for the prior approval of a customer and a second said that there would be problems where funds remained on an account; (5.16) • Not all banks have refused to establish or terminate a relationship on the basis notwithstanding that it was difficult to establish who the beneficial owner was. Whereas this may reflect cooperative dialogue, it may also suggest that CDD measures are not applied effectively; (5.15 and 5.16)
6. Politically exposed persons	**PC**	• Requirement to adopt appropriate risk management systems does not include determination of whether a potential customer or a beneficial owner represent a PEP; • No requirement to obtain senior management approval once a customer becomes a PEP to continue business relationship; • No clear requirement to establish the source of wealth of a PEP. No formal requirement to establish the source of wealth and source of funds of a beneficial owner who is a PEP. **<u>Effectiveness</u>** • Excessive reliance on information submitted by the customer to determine whether the customer is a PEP; • Insufficient information obtained on the source of wealth and funds of PEPs; • Senior management approval not obtained when establishing business relationships or conducting transactions with PEPs; • Insurance companies interviewed showed limited

		understanding of PEP requirements.
7. *Correspondent banking*	***LC***	
8. New technologies and non face-to-face business	**C**	
9. *Third parties and introducers*	***N/A***	
10. Record keeping	**C**	
11. Unusual transactions	**PC**	• Complex and unusual patters of transactions are not covered; • No obligation for financial institutions to examine as far as possible the background and purpose of complex and unusual transactions; • Record-keeping obligations do not extend to findings on unusual transactions. **Effectiveness** • Limited and confusing guidance regarding the definition of unusual transactions and obligations related to such transactions has a direct impact on effectiveness of implementation of requirements established under recommendation 11; • FI's do not seem to differentiate obligations deriving from unusual transactions and suspicious transactions.
12. DNFBPS – R.5, 6, 8-11[65]	**NC**	• The legal framework does not cover trust and company service providers; • Deficiencies outlined in R5 also apply to DNFBPs; ***Applying Recommendation 5*** • CDD requirements do not apply to online casinos; • CDD obligations for lawyers and notaries are limited in scope and do not cover the whole range of CDD obligations; • No obligation for DNFBPs to determine the beneficial owners of legal arrangements; • Weak implementation of CDD measures of the 2 000 Euro threshold by casinos;

[65] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 9.

		• Weak implementation of CDD measures in situations where the transaction is carried out in a single operation or in several operations that appear to be linked by casinos; • Weak implementation of obligations related to beneficial ownership by DNFBP sector representatives; • The obligations on beneficial ownership applicable to lawyers and notaries do not include the requirement to satisfy themselves that they know who the beneficial owner is. ***Applying Recommendation 6*** • Lack of guidance on determining whether a customer is a PEP and undertaking the necessary additional measures; • Lawyers and notaries are not required to establish whether a customer is a PEP; • Weak implementation of CDD measures with respect to PEPs. ***Applying Recommendation 8*** • No guidance on the use of new technologies in DNFBP sector; • Limited scope of CDD obligations for casinos undertaking online activities undermine obligation of casinos to eliminate money laundering risks that arise from new technologies; • Lawyers and notaries are not required to pay special attention to risks associated with new technologies in their activities; ***Applying Recommendation 10*** • Record-keeping obligations do not apply to online activities of casinos; • Record-keeping obligations for lawyers and notaries do not include all the necessary information subject to record-keeping under Recommendation 10. ***Applying Recommendation 11*** • Obligation to analyse all unusual and complex transactions is not in line with FATF requirements; • Lawyers and notaries are not required to undertake obligations with respect to unusual transactions and to analyse all complex

		transactions or unusual patters of transactions; • Lack of guidance on unusual transactions and obligations associated with such transactions; • Weak implementation of analyses of such transactions by DNFBP sector.
13. Suspicious transaction reporting	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF and AML/CFT supervision if lawfully conducted in Montenegro; • The reporting requirement only refers to "*transactions*" rather than funds; • The reporting requirement only refers to "*suspicion of money laundering or terrorist financing*" rather than "*suspicions of funds that are the proceeds of a criminal activity*"; • TF reporting obligation does not cover funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism*. **Effectiveness** Several effectiveness issues due to • (1) The low number of STRs filed apart from banks, (2) the disproportionate reporting of STRs throughout the banking sector, (3) the inadequate understanding of the reporting requirement throughout all financial sectors, (4) the number of CTRs identified as STRs by the APMLTF that should have been reported as STRs, (5) quality of STRs called into question; • Attempted transactions are not reported in all circumstances, although technically covered.
14. *Protection and no tipping-off*	***C***	
15. *Internal controls, compliance and audit*	***LC***	
16. DNFBPS – R.13-15 & 21[66]	**PC**	***Applying Recommendation 13*** • Regarding casinos and real estate agents the same

[66] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 14 and 15.

		deficiencies described in R.13 apply; • Reporting obligation for lawyers and notaries unduly restricted. **Effectiveness** • Inadequate understanding of the reporting requirement by the gambling sector; • Very low number of reporting raises concerns regarding effectiveness of the system, especially with regard to the high-risk real estate sector. ***Applying Recommendation 21*** • Poor implementation of compliance with requirements paying special attention to transactions with countries which do not or insufficiently apply FATF recommendations; • Poor guidance on effective measures for ensuring that DNFBP sector is aware about weaknesses in the AML/CFT systems of other countries.
17. Sanctions	**PC**	• Effective, proportionate and dissuasive sanctions are not available since: o The Law on Misdemeanours provides that proceedings cannot be initiated or conducted in the event that one year has passed from the date that the misdemeanour is committed; o The maximum fine that may be applied directly by the APMLTF to a legal person, entrepreneur or individual is low; o Administrative sanctions may not be applied to a branch of a foreign bank, branch of a foreign investment management company, or branch of a foreign company that manages pension funds; o The SEC may apply sanctions only where a reporting entity fails to remediate a misdemeanour. (17.1) • The range of sanctions available to the APMLTF is not broad and proportionate since they are limited to the elimination of irregularities and fines. (17.4) **Effectiveness** • A person may be prohibited from performing business activities for up to 2 years under the LPMLTF, which is in excess of the six-month period that is prescribed in Article 42 of the Law on Misdemeanours. This appears to be ultra vires; (17.1)

		• Whereas examinations of banks identify AML/CFT infringements, the number of administrative sanctions applied by the Central Bank in recent years has been very low (one in 2011, none in 2012 and none in 2013); (17.1) • Whereas action is regularly taken by the APMLTF under the Law on Misdemeanours in respect of the non-financial sector, just seven petitions (for 2012 and 2013) have been initiated by the APMLTF under Article 143 in respect of the financial sector; (17.1) • Whereas the APMLTF has submitted in excess of 100 requests to initiate misdemeanour proceedings, just 18 have led to decisions to fine. (17.2) • Whereas the Law on Misdemeanours allows the court to make a public announcement of a decision, it is not clear that such a power could be used to publicise a fine or prohibition made under the LPMLTF (on the basis that it may be difficult to show how this would be beneficial to the public). (17.4)
18. *Shell banks*	***C***	
19. *Other forms of reporting*	***C***	
20. *Other DNFBPS and secure transaction techniques*	***LC***	
21. Special attention for higher risk countries	**NC**	• There are no directly enforceable requirements for reporting entities to give special attention to business relationships and transactions with persons from, or in, countries which do not apply, or insufficiently apply, the FATF Recommendations; • There are no enforceable requirements to examine as far as possible, the background and purpose of transactions with persons from, or in, countries which do not, or insufficiently, apply the FATF Recommendations which have no apparent economic or visible lawful purpose, to set forth in writing the findings of such examinations and to keep such findings available for competent authorities and auditors; • With the exception of banks, no information has been provided on what counter-measures could be applied to a country that continues not to apply, or insufficiently apply, the FATF

		Recommendations.
22. *Foreign branches and subsidiaries*	***C***	
23. Regulation, supervision and monitoring	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF and AML/CFT supervision if lawfully conducted in Montenegro; (23.1) • The SEC, under the Securities Law and the Law on Voluntary Pension Funds, and the APMLTF, in relation to those financial institutions under its supervision, cannot take the necessary legal or regulatory measures to prevent criminals of their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in reporting entities for which they have supervisory responsibility; (23.3) • Not all persons that are recognised in legislation as being able to provide a money or value transfer service, or money or currency changing service must be licenced or registered or subject to effective monitoring systems. (23.5 and 23.6) **Effectiveness** • The Central Bank does not supervise microcredit financial institutions directly for AML/CFT purposes; (23.1) • Notwithstanding the ISA had the responsibility to oversee agents and brokers from 2012, it did not include such reporting entities in the scope of on-site examinations until 2014; (23.1) • The Agency for Telecommunication and Postal Services has not sought to exercise any supervision of post offices that are sub-agents in Montenegro of Western Union; (23.1) • The low number of AML/CFT infringements that have been identified (just one in 2012 and 2013) by the SEC, suggests that on-site examinations may have been insufficiently focussed on AML/CFT matters; (23.1) • Whereas the Central Bank and ISA administer legislation that requires both to give their prior approval to persons who are to hold a controlling interest in a reporting entity, sit on its management board, this is not so for the SEC.

24. DNFBPS - Regulation, supervision and monitoring	**PC**	• There are no mechanisms in place to prevent criminals and their associates to own or control a casino because fit and proper requirement under the law is limited to offenses towards payment system and does not cover beneficial owners of casinos; • Casinos are not subject to effective, proportionate, and dissuasive sanctions for AML/CFT breaches; • There is no sanctioning regime for lawyers, notaries, auditors and accountants; • There are no supervisory powers specifically defined for lawyers, notaries, auditors and accountants to conduct AML/CFT supervision. **Effectiveness** • No specific regulation setting out the areas to be inspected during on-site inspections of DNBFPs.
25. *Guidelines and Feedback*	***LC***	
Institutional and other measures		
26. The FIU	**PC**	• The APMLTF does not publicly release reports on trends and typologies. **Effectiveness** • Low number of requests for administrative, financial and law enforcement information undermines the analytical and dissemination process; • The dissemination process does not ensure that effective action is taken by the most appropriate law enforcement authority in all cases; • No review by the FIU to determine whether the analytical output is adequate.
27. Law enforcement authorities	**PC**	**Effectiveness** • No effective law enforcement policy for the investigation of ML/FT offences; • Very low number of ML/FT investigations; • Limited understanding by law enforcement authorities of purpose of FIU disseminations.
28. Powers of competent authorities	**C**	

29. Supervisors	**LC**	• It has not been demonstrated that the Agency for Telecommunication and Postal Services has powers to monitor and ensure compliance in respect of non-postal activities such as making and receiving transfers of funds, as sub-agent in Montenegro for Western Union; (29.1) • The SEC does not have clear authority to conduct examinations of stockbrokers for AML/CFT purposes. (29.2)
30. Resources, integrity and training	**PC**	*APMLTF* • Inadequate allocation of staff at the in relation to tasks and activities performed (analytics department in relation to other departments); • Insufficient IT and human resources have a negative impact on the analysis of STRs, CTRs and other financial information; *Police* • Number of staff in Criminal Police Department is insufficient; • Training of police officers in Criminal Police Department is inadequate; *Customs* • Lack of adequate training of Customs Officers; • Number of staff is too low in order to fully support all obligations under SR. IX; *Policy Makers* • Adequacy of resources and training level of Members of National Commission and intra-institutional working group could not be assessed; *Supervisors* • The APMLTF is responsible for overseeing a significant number of reporting entities and has only five staff available to do so; • Within the CBM criminal record checks are not routinely performed at the time of employment of staff; • Details of training provided suggest that AML/CFT training is not offered widely within the competent supervisory bodies; • Details of training provided to employees suggest that AML/CFT training tends to be focussed on the APMLTF's activities as a financial

		intelligence unit, rather than supervisor; • High turnover of staff in APMLTF has an adverse impact on effectiveness.
31. National co-operation	**PC**	• Lack of inter-institutional body in relation to operational cooperation and coordination before the end of 2013; • Cooperation between APMLTF, Prosecutors (High State Prosecutor & Supreme Prosecutor`s Office) and Police needs enhancement. **Effectiveness**: • Effectiveness of national cooperation on a strategic level could not be fully assessed since the evaluation team did not have the opportunity to meet with the members of the National Commission; • Effectiveness of national cooperation on an operational level could not be assessed.
32. Statistics[67]	**PC**	• No review mechanism of the AML/CFT system on a regular basis; • Unclear whether statistics on confiscation and provisional measures for ML and predicate offences; • Incomplete statistics on the dissemination process maintained by the FIU; • No MLA statistics for the years 2009-2012 were provided; • Incomplete statistics on numbers of supervisory examinations have been presented by the authorities.
33. Legal persons – beneficial owners	**PC**	• Banks are not required to establish who the beneficial owner of a limited partnership is. (33.1) • No explanation has been provided as to the basis for monitoring and enforcing compliance with the requirement placed on business organisations to open a bank account in Montenegro. (33.1) • A limited liability company does not commit an offence when it fails to keep a list of its shareholders. Nor is an entry in such a list stated in legislation as being conclusive proof of

[67] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 20, 38 and 39.

		ownership. (33.3) **Effectiveness** • Banks consider that they meet the requirement in Article 20(4) of the LPMLTF to establish who is the beneficial owner of a joint stock company or limited liability company by: comparing information provided by the customer to information held at the Central Depositary Agency or Central Business Registry on legal ownership of companies; and Internet checks.
34. *Legal arrangements – beneficial owners*	***N/A***	
International Co-operation		
35. Conventions	**LC**	• Minor deficiencies remain in the implementation of several provisions of the Vienna and Palermo Conventions; • The TF Convention has been ratified, but deficiencies remain in the implementation of certain provisions of the Convention.
36. Mutual legal assistance (MLA)	**LC**	• MLA is restricted only to *"property obtained by criminal activity";* **Effectiveness** • The data provided were not sufficient to show the effectiveness of the system.
37. *Dual criminality*	***LC***	
38. *MLA on confiscation and freezing*	***LC***	
39. *Extradition*	***LC***	
40. Other forms of co-operation	**PC**	• Clear and effective gateways are not in place to facilitate and allow for exchanges of information directly between counterparts: o The Central Bank is empowered to exchange information outside Montenegro only with "foreign institutions responsible for bank supervision". (40.2) o The Agency for Telecommunication and Postal Services cannot cooperate or exchange information with foreign counterparts on AML/CFT issues. (40.2) o The APMLTF may not exchange information

		for supervisory purposes, except where there are reasonable grounds for suspecting money laundering or terrorist financing. (40.2) • The SEC cannot share information spontaneously under the Securities Law or the Law on Voluntary Pension Funds; (40.3) • The SEC does not have a general power to conduct an examination under the Securities Law on behalf of a foreign authority; (40.5) • Insufficient details have been provided of controls and safeguards in place to ensure that information received by competent supervisory authorities is used only in an authorised manner; (40.9) **Effectiveness** • With the exception of the APMLTF, assistance is not requested from, or by, competent supervisory authorities.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Deficiencies remain in the implementation of certain provisions of the TF Convention; • There are no laws and procedures for the application of S/RES/1267(1999) and S/RES/1373(2001).
SR.II Criminalise terrorist financing	**PC**	• The FT offence is limited in scope, as it does not cover all the acts listed in the Annex Conventions; • The financing of the offences under the Annex Conventions, which are partially covered under Art. 447 (Terrorism), are subject to an additional purposive element; • The scope of the definition of "individual terrorist" and "terrorist organisation" is not in line with the FATF Standards; • The scope of the application of criminal liability of legal entities is limited due to the grounds provided by the Law on Criminal Liability of Legal Entities for Criminal Acts.
SR.III Freeze and confiscate terrorist assets	**NC**	• There are no specific 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 mechanism is in place to draw up a domestic list of terrorists; • No procedures are established to examine and give effect to actions initiated under freezing mechanisms of other jurisdictions; • No publicly-known procedures for de-listing, unfreezing of funds and other assets, as well as for authorising access to funds or other assets (as required by c.III.7-9); • No provisions ensuring the protection of the rights of bona fide third parties; • The guidance provided to financial institutions does not appropriately reflect the requirements of the UNSCRs. **Effectiveness** • Inadequate understanding of the purpose and the requirements of the UNSCRs by reporting entities.
SR.IV Suspicious transaction reporting	**PC**	• Not all activities or operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF and AML/CFT supervision if lawfully conducted in Montenegro; • Deficiencies in SR. II apply (in relation to predicate offences); • The reporting requirement only refers to "transactions" rather than funds; • TF reporting obligation does not cover funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism*. **Effectiveness** • Heavy reliance on indicators and non-existence of TF indicators adds to non-reporting on TF; • Attempted transactions would not be reported in all circumstances, although technically covered.
SR.V International co-operation[68]	**PC**	• MLA is restricted only to *"property obtained by criminal activity";* • Clear and effective gateways are not in place to

[68] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37, 38 and 39.

		facilitate and allow for exchanges of information directly between counterparts: o The Central Bank is empowered to exchange information outside Montenegro only with "foreign institutions responsible for bank supervision". (40.2) o The Agency for Telecommunication and Postal Services cannot cooperate or exchange information with foreign counterparts on AML/CFT issues. (40.2) o The APMLTF may not exchange information for supervisory purposes, except where there are reasonable grounds for suspecting money laundering or terrorist financing. (40.2) • The SEC cannot share information spontaneously under the Securities Law or the Law on Voluntary Pension Funds; (40.3) • The SEC does not have a general power to conduct an examination under the Securities Law on behalf of a foreign authority; (40.5) • Insufficient details have been provided of controls and safeguards in place to ensure that information received by competent supervisory authorities is used only in an authorised manner; (40.9) **Effectiveness** • With the exception of the APMLTF, assistance is not requested from, or by, competent supervisory authorities.
SR.VI AML requirements for money/value transfer services	**NC**	• There is no supervisory system established to oversee some forms of MVT operations; • No requirements with respect to fitness and propriety requirements for managers and owners of MVT service operators; • The Central bank lacks the legal powers to impose proportional and dissuasive sanctions on MVT service providers for violations of requirements established under the LPMLTF. **Effectiveness** • The Payment System Law adopted in 2014 will become effective in January 2015, therefore its effectiveness could not be assessed.
SR.VII Wire transfer rules	**PC**	• Record-keeping requirements in Articles 21 and 70 do not extend to wire transfers regulated by Article 12a of the LPMLTF. (VII.1)

		• There is no overriding requirement to verify an originator's identity using documentation that is reliable and independent. (VII.1) • Legislation is not in place to permit supervision of all organizations able to perform payment transactions. (VII.6) • It is not clear what legal basis the Agency for Telecommunication and Postal Services has to monitor compliance by post offices (agents for Western Union) with Article 12a of the LPMLTF, nor what sanctions are available to deal with a failure to comply with wire transfer requirements. (VII.6) **Effectiveness** • The requirement to perform checks on incoming wire transfers did not appear to be understood by one of the banks visited during the onsite visit.
SR.VIII Non-profit organisations	**PC**	• No mechanism is in place for conducting comprehensive assessments and periodic reassessments of the NPO sector; • No outreach undertaken to the NPO sector for raising awareness about the potential risk of terrorist abuse and about the available measures to protect against such abuse, and promoting the transparency, accountability, integrity and public confidence in the administration and management of all NPOs; • There is no supervision in place to sanction violations of the provisions of the Law on NGOs; • No requirement to maintain records of domestic and international transactions; annual financial statements are not required to contain detailed breakdowns of incomes and expenditures of the NGOs. **Effectiveness** • It has not been demonstrated that NPOs, which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities have been identified, and are adequately supervised or monitored.
SR.IX Cross Border declaration and disclosure	**PC**	• No power to obtain further information from the bearer in case of false declarations/failure to declare; • No power to stop or restrain currency or bearer

		negotiable instruments; • Sanctions are neither proportionate nor dissuasive; • Deficiencies from R.3 and SR. III apply; • Inadequate and insufficient level of training provided to Customs Authority. **Effectiveness** • The limited information available (notifications by Customs to APMLTF) does not enable an adequate assessment of effectiveness; • Sanctions imposed appear to be low; • Lack of understanding of ML/TF risks associated with cross-border transportation of cash.

9 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)	***Recommendation 1*** • The authorities are encouraged to proceed with the national risk assessment. The extent to which money laundering is being properly investigated and prosecuted should be assessed in light of the results of the risk assessment. Efforts should be focussed on those areas which present the highest ML risks. • The perception among law enforcement authorities and the judiciary of the importance of the added value of money laundering prosecutions should be enhanced. The relevant authorities should identify and analyse the difficulties encountered in ML investigations and prosecutions. Measures should be taken to ensure that ML cases are investigated and prosecuted in a timely manner. • The authorities should address the following technical shortcomings in relation to the ML offence: – a definition of property applicable to the ML offence should be introduced in the CC; – *"The conversion or transfer of property…for the purpose of…helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action*" should be specifically included in the ML offence; – The acts of concealment and misrepresentation within the ML offence should be extended to the '*rights with respect to property'.* • Jurisprudence should be developed in order to avoid the obligation of proving a concrete predicate offence in ML prosecutions. • The efforts and competencies of law enforcement and the judiciary should be more coordinated and enhanced in order to ensure a higher interest in the fight against ML, as well as more effective and timely investigations, prosecutions and proceedings. A more pro-active approach towards prosecution of ML cases should be promoted. The law enforcement should put to higher use the information received from the FIU. • The definitions of money laundering in the different pieces

	of legislation should be aligned. • While it is commendable that the authorities have ratified and implemented the Warsaw Convention, the evaluation team urges the authorities to make full use of the additional tools provided by the Convention, such as for instance the application of provision for criminalization of negligent ML under Article 268(5) of CC. ***Recommendation 2*** • More priority should be given to the investigation and prosecution of legal entities for ML offence. • The importance of the protected value of the ML offence should be reflected more significantly in the sanctions applied.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Given the fact that there were no cases of TF in Montenegro, the authorities claimed that the risk of TF is very low. However, the authorities are invited to assess the risk of TF in Montenegro not only based on the legislation in place, but also in relation to the conducts, which should be designated as terrorist acts pursuant to international requirements. • The authorities should amend the legislation in order to criminalise all the offences listed in the treaties from the Annex to the TF Convention, to bring them in line with the Conventions, and to include these offences as terrorist acts for the purposes of Art. 449 of the CC. • The financing of the offences under the Annex Conventions, which are partially covered under Art. 447 (Terrorism), should be criminalised without being subject to be committed *with the intention to intimidate the citizens or to coerce Montenegro, a foreign state or an international organisation to act or refrain from acting, or to seriously endanger or violate the basic constitutional, political, economic or social structures of Montenegro, a foreign state or of an international organisation".* • The grounds of criminal liability of legal entities should be broadened so as to include cases when the legal entity doesn't commit the TF offence with the intention to obtain any gain for legal entity. • The scope of the terms "individual terrorist" and "terrorist organisation" should clearly cover the scope of these terms envisaged by the FATF standards, including contribution to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made *with the knowledge of the intention of the group to commit a terrorist act*.

	• Criminal liability for the co-principal should be provided for the cases when the co-principal commits the TF offence with the prior arrangement without any limitation of making significant contribution to the commission on the crime. • A more pro-active approach should be adopted by all the involved authorities in the detection of TF risks and their assessment and mitigation. The cooperation between national authorities should be enhanced in this matter, specifically between the prevention, intelligence and law enforcement authorities.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The authorities should amend the law to include the ability of confiscation of proceeds of crime obtained indirectly. • The authorities should also introduce the following measures: – Confiscation of property of corresponding value to proceeds based on a confiscation order (rather than an order of payment on the perpetrator); – Confiscation of property of corresponding value to laundered property and instrumentalities; – Power to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. – Remove the limitations regarding seizure of objects "(5) The following objects cannot be provisionally seized regarding persons that are exempted from the duty to testify pursuant to Article 109 of the CPC (e.g. family members) • The restrictions applicable to provisional measures under Article 85 paragraphs 5 and 6 should be removed. • The authorities should, as a matter of priority, establish a policy for the confiscation of property in ML, FT and predicate offences. This should include specialised training to law enforcement and prosecutorial authorities in the identification and tracing of funds.
2.4 Freezing of funds used for terrorist financing (SR.III)	• It is recommended to the authorities to review the draft law in the light of the UNSCRs and the FATF standards and ensure that the following measures are implemented in line with the international requirements: – Measures ensuring the automatic freezing of funds as required under S/RES/1267 and 1373 or under procedures initiated by third countries should be put in place;

	– Definition of funds and other assets used for these purposes should be compliant with the requirements under SR.III; – A mechanism should be established to draw up domestic lists; – Procedures should be put in place for the examination and giving effect to freezing mechanisms of other jurisdictions; – Effective publicly-known procedures should be established for examining requests for de-listing by the persons concerned, for unfreezing of funds and other assets of de-listed persons and bodies, for unblocking in a timely manner funds and other assets of persons or bodies inadvertently affected by freezing arrangements, after verification that the person or body concerned is not a designated person, and for authorising access to funds and other assets that were frozen and have been determined to be necessary for basic expenses, etc.; – Ensure that the rights of bona fide third parties are protected within the new regime; – Introduce a specific and effective system for monitoring compliance with the new regime • The definition of funds and other assets under criminal legislation, to which applies the general framework for confiscation and provisional measures, should be brought it in line with the requirements under SR.III. • Guidance to the financial sector issued by authorities should contain requirements compatible with the measures taken under the UNSCRs, as well as the authorities should ensure that the reporting entities fully understand the nature and purpose of such measures.
2.5 The Financial Intelligence Unit and its functions (R.26)	The authorities should: • Amend Articles 48, 49 and 50 of the LPMLTF to ensure that the AMPLTF is permitted to request information from domestic authorities and reporting entities when it estimates that there are grounds (not reasonable grounds) of an ML/FT suspicion for the purpose of performing its duties under the LPMLTF. • Determine the reasons for the low number of requests for financial, administrative and law enforcement information and ensure that full use of all accessible data and information is made in the performance of the analysis function. • Review the practice to automatically send requests for additional information to a large number of reporting entities upon opening an analytical case and consider

	introducing a more targeted and selective approach when querying reporting entities. • With a view to enhancing the analysis and dissemination processes, ensure that the APMLTF's internal methodology sets out the procedure to be followed from the moment an STR/CTR/other information is received until the dissemination of an analytical report. The authorities should consider including the following within the methodology: the criteria on the basis of which a case is to be opened following the receipt of an STR/CTR, the manner in which cases are to be prioritised, circumstances in which financial, administrative and law enforcement information is to be sought and additional information from reporting entities is to be requested, the manner in which CTRs are to be utilised for analytical purposes, a detailed methodology for the analysis of STRs/CTRs, the length of time within which the analysis of an STR/CTR is to be conducted, the manner in which a decision to disseminate a case is to be taken and dissemination criteria to determine the most appropriate law enforcement authority in each case. • Introduce, as soon as possible, a suitable IT system to ensure that: o sophisticated analytical and visualisation tools are available for the analytical department (STRs & CTRs) to further enhance the extent of the APMLTF`s analytical output; and o all relevant statistics for the upcoming national risk assessment as well as future evaluations and (domestic) assessments of effectiveness of the APMLTF`s work are available and easily accessible. • Assess whether the analytical function of the APMLTF is effective in practice and establish to the widest extent possible the causes for the lack of effective action being taken by the authorities concerned on the basis of the analytical reports disseminated by the APMLTF. • Establish a clear feedback mechanism between the APMLTF and law enforcement authorities (including the Prosecutor's Office, the Police, the National Security Agency and the Tax Administration) on the outcome and quality of FIU notifications. • Consider conducting strategic analysis and publicly release reports on trends and typologies as required under c.26.8.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	The authorities should: • Set out and implement a concrete law enforcement policy

	for the proactive (financial) investigation of ML/FT. • Enhance to the highest degree intra-agency cooperation with regard to financial investigations. • Conduct a comprehensive in-depth review of the current financial investigation procedure and establish a feedback mechanism to ensure that all involved authorities are aware of the needs and capabilities of their domestic counterparts, especially with regards to the low number of investigation initiated as a result of FIU notifications. • Ensure that the joint investigation team established in 2010 also adequately targets ML/FT offences.
2.7 Cross Border Declaration or Disclosure (SR.IX)	Authorities should: • Consider assessing the risks of money laundering and terrorist financing through transportation of currency and bearer negotiable instruments across borders, especially by sea, air and by cash couriers; ideally, at an inter-institutional level. • Enhance awareness of the declaration obligation for carriers at all border crossing points, i.e. by land, sea and air • Introduce a clear legal basis to empower Customs Authority to obtain further information from the bearer about the origin and intended use in case of false declarations/failure to declare currency and bearer negotiable instruments. • Introduce a clear legal basis that empowers the Customs Authority 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, in cases, where: (i) there is a suspicion of money laundering or terrorist financing or (ii) there is a false declaration. • Introduce a clear legal basis which would empower the Customs Authority to retain identification data of the bearer in cases of: (i) a false declaration, (ii) a suspicion of money laundering or terrorist financing. • Amend the range of sanctions available when imposing a pecuniary fine in a way that the sanction be proportionate to the severity of the situation as well as enough dissuasive by significantly raising the upper range of sanctions (i.e. in proportion to the undeclared/falsely declared amount of cash or bearer negotiable instruments) • Raise more awareness with regard to UNSCR 1267 and 1373 among customs officers • Consider implementing the measure set out in the Best

	Practices Paper for SR. IX • Consider introducing a computerized database which would allow authorities to exchange data and information more efficiently and furthermore facilitate record keeping
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	**Recommendation 5** • Guidelines on the application of a risk-based approach published by the ISA should be extended to insurance intermediaries and agents. • Guidelines on the application of a risk-based approach should be published by the Agency for Telecommunication and Postal Services in respect of the transfer of money or value. • Article 31 of the LPMLTF should be slightly amended to clarify that the prohibition on the use of fictitious names applies to all reporting entities (and not just banks). In particular, the authorities may consider including the word 'including' in the bracketed text. (5.1) • Reporting entities should be required to undertake full CDD measures when carrying out occasional transactions that are wire transfers (in addition to those set out in Article 12a of the LPMLTF). (5.2) • In the case of a business relationship that has been established making use of exemptions or simplified identification measures, reporting entities should be required to undertake full CDD measures where there are subsequently reasonable grounds for suspicion of money laundering or terrorist financing. (5.2) • CDD measures required under Articles 10, 14 and 15 of the LPMLTF should include a clear reference back to Article 5, which defines customer identification. (5.3 and 5.5) • Article 10 of the LPMLTF should address the timing of requirements to verify the identity of the legal representative and "authorized person" of a customer that is a legal person (as it currently refers only to obtaining data). (5.4) • Article 16 of the LPMLTF should include a clear requirement to verify that a legal representative of a customer who is a legal person is authorised to act on behalf of the customer. Whilst this may be the effect of the requirement in Article 15(1) to establish and verify the

	identity of a Montenegrin company, the same cannot be said for a foreign company. (5.4) • Article 17(2) of the LPMLTF should clearly require a reporting entity to verify that an "authorized person" is authorised to act in the case of an occasional transaction with a legal person (as well as in the course of a continuing business relationship). Whilst this may be the effect of the requirement in Article 15(1) to establish and verify the identity of a Montenegrin company, the same cannot be said for a foreign company. • Article 17(3) of the LPMLTF should establish a clear requirement to obtain data on, and verify the identity of, an "authorized person" of a customer that is a legal person when carrying out an occasional transaction under Article 9(1) item 2. (5.4). • Article 15 of the LPMLTF should explicitly provide for the collection of information on directors (in addition to the executive director) and include provisions regulating the power to bind the legal person. (5.4) • In the case of a relationship or transaction in respect of a limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust), there should be a requirement in the LPMLTF to verify the authority of the person purporting to act on its behalf, to verify the legal status of the limited partnership or legal arrangement, to obtain information concerning its legal form, and to collect information on the provisions regulating the power to bind the limited partnership or legal arrangement. (5.4) • Article 20 of the LPMLTF should clearly require a reporting entity to understand the ownership structure of a business relationship or occasional transaction in respect of a legal entity that is not a legal person, limited partnership or legal arrangement and explain what information on beneficial ownership is to be collected (c5.5) • Article 10 of the LPMLTF should require a reporting entity to identify the beneficial owner of a legal entity that is not a legal person, limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust), and take reasonable steps to obtain sufficient identification data to verify identity. (c.5.5) • Consequential changes should also be made to Article 19 of the LPMLTF, which defines who is to be understood to be the "beneficial owner". (c.5.5) • An express provision should be added to Article 22 of the LPMLTF to scrutinise transactions to ensure that they are

	consistent with the customer's risk profile. (c.5.7) • The frequency of monitoring measures explained on page 31 of guidelines published by the APMLTF should be reviewed in order to ensure that they are consistent with the need to regularly monitor customer business activities (which is explained at page 28). (5.7) • Guidance should be published by the CBM and SEC on *ways* of monitoring a customer's business activities. (5.7) • Article 25(3) of the LPMLTF should require a reporting entity to perform enhanced CDD for higher rather than high risk categories of customer, business relationships or transactions (rather than high). (c.5.8) • Guidelines on risk analysis published by the competent supervisory bodies should address all of the higher risk areas and threats identified in the national strategy and response to the MEQ. (5.8) • Simplified identification measures applied under Article 29(1) of the LPMLTF should be limited to circumstances where a reporting entity has assessed that there are low risks, which may not be the case for all the customers types listed in that article. (5.9) • The list of countries published under Article 29(2) of the LPMLTF should be reviewed in order to ensure that all apply international AML/CFT standards that are at the same level as, or higher than, EU standards. The methodology followed to assess the application of standards overseas should be clarified and published and cover also standards that apply to securities regulation (Article 29(1) – item 3). (c.5.9) • Article 29 of the LPMLTF should be amended to exclude customers who are organisers of lotteries and games of chance. (c.5.9) • The scope of CDD exemptions set out in Article 13 of the LPMLTF and scope of simplified identification measures under Article 29 of the LPMLTF should be reviewed and revised such that simplified measures are applied across the full range of CDD measures. (c.5.9) • Concessions in Articles 13 and 29(1) item 3 of the LPMLTF should not be applied to any customer that is resident in a country that is not in compliance with and has not effectively implemented the FATF Recommendations. (5.10) • Concessions in Articles 13 and 29 of the LPMLTF should not be applied in scenarios where higher risks apply. (5.11) • In the very limited circumstances set out in Article 11(3)

	of the LPMLTF, there should be a requirement for a reporting entity permitted to utilise a business relationship prior to verification to adopt risk management procedures concerning the conditions in which verification may be delayed. (5.14) • It should be an offence under Article 12(2) of the LPMLTF to establish a relationship in a case where evidence of identity cannot be obtained (in the same way that an offence is committed where evidence of identity cannot be obtained for an occasional transaction). (5.15) • Guidelines published by the SEC and ISA should be revised to reflect the prohibition in Article 12 of the LPMLTF on establishing a relationship or executing an occasional transaction when evidence of the client's identity cannot be obtained. (5.15). • Where a reporting entity has already established a business relationship but delayed verification of the identity of a beneficiary (under an insurance contract) under Article 11(3) of the LPMLTF, there should be a requirement to subsequently terminate that relationship when it is not possible to apply CDD measures. (5.16) • There should be a requirement to terminate an existing business relationship where a reporting entity has doubts about the veracity or adequacy of previously obtained customer identification information, or during the remediation of CDD for existing customers, or where the reporting entity is unable to apply CDD measures. (5.16) **Recommendation 6** • Authorities should further broaden the scope of Article 27(4) to encompass requirement of identifying whether a potential customer and a beneficial owner is a PEP or not. • There should be requirement to obtain approval from senior management to continue a business relationship when an existing customer becomes a PEP. • A clear requirement to establish the source of wealth of PEP should be introduced in the LPMLTF. • Requirement to establish the source of wealth and source of funds in case a beneficial owner is a PEP should be introduced in LPMLTF. • The definition of a PEP should apply to those persons who cease to hold a prominent public function beyond the one year period. **Recommendation 8** • Authorities should require financial institutions to have policies and procedures aimed at addressing risks associated with non-face to face customer relationships.

	• Authorities should provide more guidance to insurance and securities market participants regarding policies and procedures necessary to address potential risks of misuse of technological developments in ML/TF. • The non face-to-face requirements should also apply when conducting ongoing due diligence. • Authorities should ensure clarifying the applicability of Article 28 of LPMLTF to ensure that the same CDD measures and procedures are applicable for opening of accounts through distance means e.g. representative offices.
3.3 Third parties and introduced business (R.9)	
3.4 Financial institution secrecy or confidentiality (R.4)	• The authorities should ensure that Data Protection requirements do not impede information sharing obligations under the LPMLTF and relevant sectoral laws. • Include explicit exemption from banking secrecy requirement with respect to information exchange for the purpose of sharing information with correspondent banks. • For the purpose of ensuring full compliance with FATF recommendation 4, it is recommended to amend Article 85 of the Banking law which defines exceptions to the banking secrecy protection to enable financial institution share information for the purpose of R7, R9 and SRVII.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** • The authorities should consider amending the LPMLTF to explicitly require the type and identifying number of any account involved in a transaction to be recorded and kept. (10.1) • The authorities should consider amending Article 83 of the LPMLTF to allow competent authorities to request records on transactions and identification data to be held for a period longer than ten years. (10.1 and 10.2) • The authorities should consider amending the LPMLTF to explicitly require transactions records to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. (10.1) • The authorities should consider amending the LPMLTF to make it clearer that reporting entities are required keep account files and business correspondence for at least five years following the termination of an account or business relationship. This recommendation is being made since the requirement appears to be covered, albeit in a fragmented fashion within various provisions in the LPMLTF and

	Law on Archive Business. (10.2) • The authorities should consider amending the LPMLTF to require reporting entities to ensure that, when requested under established jurisdiction, records and information can be made available to competent bodies on a timely basis. (10.3) ***Special Recommendation VII*** • Record-keeping requirements in Articles 21 and 70 should extend to wire transfers regulated by Article 12a of the LPMLTF. (VII.1) • Identification measures required under Article 12a of the LPMLTF should include a clear reference back to Article 5, which defines customer identification. (VII.1) • Article 93 of the LPMLTF should include an offence for failing to make a report when a reporting entity considers that there is suspicion of money laundering or terrorist financing due to lack of accurate or complete data on the sender of a wire transfer. (VII.5) • Legislation should permit supervision of all organizations performing payment transactions. (VII.6)
3.6 Monitoring of transactions and relationships (R.11 & 21)	Authorities should: • Include reference to all complex and unusual patters of transactions in Article 33a; • Amend the provision regarding unusual transactions to ensure that FI's are required to examine as far as possible the background and purpose of such transactions. • Amend record-keeping provision in the Law to clearly refer to the obligation of FI's to keep the records on such transactions. • Provide further guidance to financial sector regarding the determination, analyses and examination of such transactions. ***Recommendation 21*** • There should be directly enforceable requirements for reporting entities to give special attention to business relationships and transactions with persons from, or in, countries which do not apply, or insufficiently apply, the FATF Recommendations. • There should be enforceable requirements to examine as far as possible, the background and purpose of transactions with persons from, or in, countries which do not, or insufficiently, apply the FATF Recommendations which have no apparent economic or visible lawful purpose, to set forth in writing the findings of such examinations and to keep such findings available for

	competent authorities and auditors for at least five years. • Counter-measures should be available for application by all reporting entities to a country that continues not to apply, or insufficiently apply, the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13,14& SR.IV)	Authorities should: • Amend current Article 33 LPMLTF to refer to "funds" rather than "transactions" • Amend current Article 33 LPMLTF to refer to "criminal activity" rather than only to "suspicions for money laundering or terrorist financing" • Amend TF reporting obligation to refer to funds related or linked to *terrorist organisations* and *those who finance terrorism;* and funds used by *those who finance terrorism* as required by 13.2 and IV.1; • Analogously amend the FIU-Guideline as well as the list of indicators to reflect these amendments in due manner • Further stipulate in Article 33 LPMLTF how attempted transactions are covered • Introduce a mechanism of regular awareness raising and training regarding the reporting requirement provided to reporting entities (dealing also with the clear distinction between unusual and suspicious transactions, as well as CTRs and STRs), especially with the non-banking sectors • Explore why some larger banks file a relatively small amount of STRs in comparison to others • Expand the list of indicators to include indicators related to terrorist financing • Consider deleting Article 45 LPMLTF in order to ascertain that reporting entities do not only rely on the list of indicators (which could then only be considered as guidance rather than "law") • Introduce a clear provision which covers sanctions in cases of non-reporting
3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)	
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 and 17)	***Recommendation 23*** • The scope of Article 4 of the LPMLTF should be extended to cover all activities or operations covered by the FATF's definition of financial institution. Gaps are explained at paragraph 476. • Guidelines covering risk analysis should be published by the Agency for Telecommunication and Postal Services. • Legislation should be amended or introduced to allow the competent supervisory authorities identified in Article 86 of the LPMLTF to exercise statutory functions where this is currently not possible (including those responsible for money or value transfer). See paragraph 475. • A clear legal basis should be introduced to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a senior management function (including sitting on the board) in an investment management company (or branch of an overseas company), pension fund management company (or branch of an overseas company), or stock-broker (or branch of an overseas company). • Registration of a financial institution covered by Article 4 items 14 and 15 of the LPMLTF is considered to have taken place through the submission of information on the compliance officer under Article 38 of the LPMLTF. While the evaluation team accepts this indirectly achieves the requirement under criterion 23.7, it is recommended that a direct requirement is included in the LPMLTF for the reporting entity to register with the APMLTF. • The Central Bank should supervise microcredit financial institutions directly for AML/CFT purposes. • The SEC should consider the legal basis on which it supervises compliance with the LPMLTF by banks carrying on custody operations[69]. • The CBM and SEC should standardise the collection of information on those wishing to hold a significant or controlling interest or senior management function in a reporting entity. This should include information about regulatory sanctions (other than removal of an individual from his position) that may have been applied to an applicant. ***Recommendation 17*** • The application of the Law on Misdemeanours to the APMLTF should be reviewed and consideration given in

[69] The SEC no longer supervises compliance with the LPMLTF by custody banks.

	particular to: extending the period for which proceedings can be initiated beyond one-year; the level of the maximum fines that may be applied, including levels that may be applied directly by the APMLTF by Misdemeanour Orders, including in the most severe cases; and publicising a fine or prohibition made under the LPMLTF. • Legislation should be amended to allow administrative sanctions to be applied to a branch of a foreign bank, branch of a foreign investment management company, and branch of a foreign company that manages pension funds. • The basis for revocation of a licence under the Insurance Law should explicitly include failure to comply with the LPMLTF. • The SEC should be able to apply sanctions under the Law on Investment Funds, Law on Voluntary Pension Funds and Rules on Supervision of Securities Operations in any case where there is a misdemeanour (rather than just where there is a failure to rectify a misdemeanour). • The APMLTF should have a power to suspend or withdraw the licence or registration of a reporting entity that is a financial institution covered by Article 4 items 14 and 15 of the LPMLTF. Consideration should be given to allowing the APMLTF to bar individuals that work for such reporting entities from employment. ***Recommendation 29*** • The following legislation should be amended to make explicit reference to the role that the supervisor has to combat money laundering and terrorist financing: Banking Law; Law on Investment Funds; Law on Voluntary Pension Funds; Securities Law; and Insurance Law. • Article 110 of the Securities Law and Rules made thereunder should be revised in order to ensure that they provide a clear basis for the SEC to conduct examinations of stockbrokers for AML/CFT purposes • It should be an offence for a person employed to fail to provide necessary explanations to the SEC in relation to supervision conducted under the Investment Company Management Rules and Pension Company Management Rules.
3.11 Money or Value Transfer Services (SR.VI)	Authorities are recommended to: • Establish supervisory framework for MVT operations; • Maintain consolidated and up to date register of all entities undertaking MVT services; • Ensure that managers and owners of MVT service

	operators are subject to fit and proper requirements • Ensure proper sanctioning regime exists for MVT service providers for violation of obligations set out in the LPMLTF
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	***Applying Recommendation 5*** Authorities are recommended to: • Include Trust and company service providers as reporting entities under the LPMLTF • Amend LPMLTF provisions governing activities of casinos to ensure that CDD obligations are extended to cover activities of online casinos • Amend Chapter III of the LPMLTF to bring the CDD requirements for lawyers and notaries in line with Recommendation 5 • Clarify obligations of lawyers and notaries with respect to conducting enhanced due diligence • Introduce obligation for DNFBPs to establish beneficial ownership of legal arrangements • Issue more guidance on identification and verification process of beneficial ownership of foreign entities • Clarify issues related with the Data Protection Act and make clear provisions ensuring supremacy of LPMLTF identification and verification requirements over data protection requirements that would not undermine effective implementation of fulfilment of CDD obligations • Ensure that CDD obligations are effectively implemented by representatives of DNFBP sector ***Recommendation 6*** Authorities are recommended to: • Amend relevant provision in the LPMLTF with respect to the senior management approval for establishing business relationships with a PEP • Authorities should provide further guidance on responsibilities of the DNFBP sector regarding customers that are PEPs • DNFBP sector representatives should be required to obtain information on source of funds and assets sources in the event of conducting due diligence on customers

	representing PEPs • Introduce requirements for lawyers and notaries to undertake on-going due diligence with respect to PEPs ***Recommendation 8*** Authorities are recommended to: • Introduce requirement for lawyers and notaries to take actions to eliminate money laundering risks that may arise from new technologies • Introduce requirement for casinos to implement obligations under Article 28a for online activities • Provide guidance to DNFBPs with respect to risks associated with new technologies ***Recommendation 10*** Authorities are recommended to: • Extend record-keeping obligations to activities of online casinos • Lawyers and notaries record-keeping obligations shall be clarified and extended to cover all information and documents required under FATF recommendations • Ensure that DNFBPs comply with record-keeping obligations prescribed by Law • Introduce requirement for lawyers and notaries to keep record of examinations of unusual and complex transactions ***Recommendation 11*** Authorities are recommended to: • Obligation to pay special attention to unusual transactions should also include special attention to all complex transactions or unusual patters of transactions • Amend provisions in the LPMLTF regarding obligations on unusual transactions to include analyses of the background and purpose of such transactions • Introduce obligation for lawyers and notaries to analyse all unusual and complex transactions
4.2 Suspicious transaction reporting (R.16)	*Applying Recommendation 13* Authorities should: • Amend current Article 33 LPMLTF to refer to "funds" rather than "transactions". • Amend current Article 33 LPMLTF to refer to "proceeds from criminal activity" rather than only to "suspicions for money laundering or terrorist financing".

	• Analogously amend the FIU-Guideline as well as the list of indicators to reflect these amendments in due manner • Further stipulate in Article 33 LPMLTF how attempted transactions are covered and at the same time amend Article 43 Para 1 in a way that would cover reporting prior and after the execution of a transaction. • Assess whether lawyers should as well be obliged to report CTRs when dealing in real estate business, in order to get a better understanding of the high-risk real estate sector • Introduce a mechanism of regular awareness raising and training regarding the reporting requirement provided to reporting entities (dealing also with the clear distinction between unusual and suspicious transactions, as well as CTRs and STRs), especially with the gambling and real estate sector (including lawyers and notaries) *Applying Recommendation 21* Authorities are recommended to: • Provide guidance to DNFBP sector regarding risks associated with activities related to countries which do not or insufficiently apply the FATF recommendations • Ensure compliance of activities of the DNFBP sector with requirements of the LPMLTF regarding paying 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)	• Authorities are recommended to undertake AML/CFT effective supervision on activities of DNFBP sector. • Authorities are recommended to raise awareness of AML/CFT compliance in the sector. • Define specific powers of the Administration for Games of Chance to impose sanctions on casinos for violations of AML/CFT. • The Authorities should consider introducing registration or similar procedure to ensure that all DNFBP sector representatives subject to AML/CFT supervision are registered with the relevant supervisory authority and the authority has precise information with respect to the total number of reporting entities subject to its supervision. • Define powers and authority of the Notaries Chamber and the Bar Association of Lawyers to undertake supervisory authority with respect to AML/CFT. • Define specific authority of the Administration for Games of Chance for the inspection of casinos for AML/CFT

	purposes. • The authorities should undertake supervisory measures with respect to audit and accounting services. • The authorities should issue on-site inspection manuals to ensure that all areas of AML/CFT compliance are covered during on-site inspection activities. • The authorities should ensure that effective, proportionate, and dissuasive sanctions are available for violations of AML/CFT requirements by notaries, lawyers, accountants and audit service providers.
4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	• The LPMLTF should be revised to include a requirement for the beneficial owners of general partnerships and legal partnerships to be identified and verified. • Whereas the Law on Prevention of Illegal Business Operations is understood to require business organisations (companies and partnerships) to open a bank account in Montenegro, those banks may not hold information on beneficial ownership. Given the reliance that banks place on information held at the Central Business Registry or CDA, the information that they collect on the ownership of legal persons is likely to mirror information on legal ownership that is available through these registers. Banks should therefore consider additional ways of determining who are the natural persons that ultimately own or control a customer that is a legal person. • A basis for monitoring and enforcing compliance with the requirement for each legal person to open a bank account in Montenegro should be put in place. • The Law on Business Organizations should expressly provide that a limited liability company must keep a register of members, and make it an offence for failing to do so. The basis for recording a change in ownership of a part of a limited liability company should also be addressed in legislation.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	*N/A*
5.3 Non-profit organisations	• It is recommended that the Montenegrin authorities amend

(SR.VIII)	the legislation which applies to the NPO sector to ensure that all the requirements apply equally to all NPOs. • A mechanism should be established for conducting comprehensive assessments of the risks connected with the NPO sector, as well as for conducting periodic reassessments of the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities. • The authorities are encouraged to build on the experience of cooperation with representatives of NGOs on other topics, with the view to ensure comprehensive out-reach to NGOs about TF risks, as well as about the AML/CFT framework. • Clear division of competencies between the different authorities involved should be defined to especially avoid negative competency conflicts. An administrative authority should be designated to conduct supervision over the implementation of the requirements of the Law on NGOs as a matter of urgency. • Information on all senior officers of NGOs and persons, who own, control or direct their activities, should be publicly available. As for the information on the authorized persons and founders of NGOs, the information publicly available should be wide enough to enable the identification of these persons. • A clear requirement of maintaining information on domestic and international transactions for at least five years, so as it will be possible to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization, should be provided by the legislation. In addition, the requirement to issue annual records should specify that these should contain detailed breakdowns and expenditures.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31 and 32)	Authorities should: • Establish a regular meeting timetable for the National Commission • Consider using the knowledge and practical expertise of the private sector in discussions with regard to the national strategy and in determining key areas of focus • Use the inter-institutional working group to provide for a forum for in-depth discussions of issues on an operational level • Hold regular and ad-hoc meetings of the inter-institutional working group on operational issues, especially between

	the APMLTF, Prosecutors (High State Prosecutor & Supreme Prosecutor`s Office) and Police • Establish a review mechanism of the AML/CFT regime in order to properly assess vulnerabilities and threats to the current system
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	***Recommendation 35*** • The ML offence should be brought fully in line with the texts of the Vienna and Palermo Conventions. • The authorities are encouraged to take additional measures to implement fully the CFT Convention, in particular by addressing the shortcomings identified in SR.II. ***Special Recommendation I*** • The recommendations and comments provided under SR.III also apply for this section. • The definitions of the FT offence in the CC and the LPMLTF should be harmonized with each other and with international standards.
6.3 Mutual Legal Assistance (R.36 & SR.V)	• The authorities are encouraged to adopt measures, which would ensure that the principle of dual criminality will not inhibit the provision of MLA due to the identified shortcomings of the ML offence. • The authorities are encouraged to adopt measures, which would ensure that the principle of dual criminality will not inhibit the provision of MLA due to the identified shortcomings of the TF offence. • The wording of Art. 38 of the MLA Law should be brought in line with international standards.
6.4 Extradition (R.37 & 39, SR.V)	
6.5 Other Forms of Co-operation (R.40 & SR.V)	The APMLTF should: • Consider amending Article 60 LPMLTF in a way that allows the APMLTF to exchange information on both: – data, information and documentation related to money laundering – data, information and documentation related to underlying predicate offences The Police should: • Introduce a clear legal basis for conducting investigations on behalf of foreign counterparts The authorities should ensure that: • The Central Bank is empowered under Article 107 of the Banking Law to exchange information with foreign

	institutions that supervise credit and guarantee operations, microcredit financial institutions, and more general lending that are not also responsible for bank supervision; • The Securities and Exchange Commission can share information spontaneously under Article 18a of the Securities Law and has a general power to conduct an examination under the Securities Law on behalf of a foreign authority; • The Agency for Telecommunication and Postal Services can cooperate and exchange information with foreign counterparts on AML/CFT issues; and • The APMLTF has a general power to exchange information with foreign supervisors responsible for AML/CFT supervision, whether or not money laundering or terrorist financing are reasonably suspected.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	The authorities should: • As a matter of priority, raise the salaries of FIU staff to a competitive level to avoid high fluctuation of staff. • Increase number of staff of the APMLTF to occupy all planned job positions according to the adopted governmental decree and allocate staff more appropriately to better assist the analytical departments (STR & CTR) which perform the core tasks of the APMLTF. • Significantly increase staffing of the Criminal Police Directorate in both, the Economic Crime Suppression Section and the Section for Combatting Organized Crime and Corruption to the degree necessary to allow officers to dedicate their highest possible efforts to their tasks. • Introduce a cohesive and broad training programme in the fields of money laundering and terrorist financing for police officers dedicated to investigate financial crime. • Consider conducting periodic reviews on the influence of corruptive elements in law enforcement authorities and identify a targeted action plan to remedy its negative effects. • Provide all Customs Officers with adequate training programs related to money laundering and terrorist financing on a regular basis. • Consider raising the number of staff within the Customs Authority in general to fully support Montenegro`s obligations under Special Recommendation IX. • The Department of International Cooperation of the

	Ministry of Justice should be granted an appropriate number of staff with necessary expertise. • Use the inter-institutional fora (National Commission and Working Group) for training related purposes and liaise with the private sector in that regard. • Perform criminal checks at the time of employment of staff of supervisory authorities and where staff change roles. • Review the coverage and the nature of AML/CFT supervisor training and agree an action, in order to ensure that (at the very least) it is delivered to all relevant supervisory staff. • The current level of resourcing in the Reporting Entities Control Department of the APMLTF should be reviewed in order to determine whether it is consistent with its statutory responsibilities under the LPMLTF. • Notwithstanding other provisions in Articles 171 and 280 of the Criminal Code, Article 189 of the Insurance Law should be amended to extend the period for which data on persons over which the Agency exercises supervision is kept confidential. Currently it is confidential only for a period that expires three years after a person terminates employment with the Agency. • The electronic computerised database for MLA requests, as foreseen by the authorities, should be developed as a matter of urgency. The authorities also should: • Utilise the Justice Informative System to maintain more detailed statistics with regard to ML investigations, prosecutions and proceedings. • Maintain a breakdown of statistics on individual cases disseminated to law enforcement authorities. • Consider maintaining statistics on requests for information sent to other domestic authorities and reporting entities and action taken by police, national security agency and tax administration on the basis of FIU disseminations. • Consider introducing an intra-agency database that allows competent authorities to access directly or indirectly law enforcement information in a prompt manner, in order to ensure that all statistics are properly kept and can be double-checked if necessary, in the case that discrepancies occur. • Consider maintaining statistics on false declarations and non-declarations. • Keep records on notifications to foreign competent

	authorities with regards to unusual cross-border movement of gold, precious metal or precious stones • Establish a review mechanism of the AML/CFT regime in order to properly assess vulnerabilities and threats to the current system • The basis for collecting and analysing statistics on supervisory examinations should be reviewed in order to ensure that they cover all competent supervisory bodies and that statistics are complete and accurate.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Montenegro is not a member country of the European Union. It is not directly obliged to implement **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 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.

1.	**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. What is the position in your jurisdiction?
Description and Analysis	In accordance with Art. 3 of the Law on Criminal Liability of Legal Entities, "*Legal entities may be held liable for criminal offences referred to in the special section of the Criminal Code* [which include the offences of 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*." Art. 5 of the Law on Criminal Liability of Legal Entities specifies 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".* Articles 92 to 96a of the LPMLTF establish the fines to be imposed for misdemeanours related to breaching the provisions of that law. These fines range from €1,000 to €20,000 for a reporting entity who is a legal person, from €500 to €6,000 for an entrepreneur who is a reporting entity, and €200 to €2,000 for a "responsible person" (executive director of a legal person) in a legal person and natural person.
Conclusion	Montenegrin legislation provides no exception for corporate liability and extends it beyond the ML offence even to infringements of AML/CFT requirements set out under the LPMLTF.

Recommendations and Comments	None.

2.	**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. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Article 31 of the LPMLTF provides that a reporting entity (a term that includes credit and financial institutions) may not open or keep an anonymous account, a coded (numbered) or bearer passbook. In addition, Article 31 of the LPMLTF also provides that a reporting entity that is a bank may not provide another service that can indirectly or directly enable the concealment of a customer's identity. This is understood to refer to accounts in obviously fictitious names, which are not explicitly addressed in Article 31. The effect of this is that reporting entities that are not banks are not expressly prohibited from keeping accounts in a fictitious name in respect of such a service, but these accounts are always subject to CDD measures in the LPMLTF.
Conclusion	Except for reporting entities that are banks, the LPMLTF allows accounts in respect of services to be operated in fictitious names but always subject to full CDD measures.
Recommendations and Comments	None.

3.	**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 amounting to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and	Inter alia, Article 9 of the LPMLTF provides that a reporting entity shall

Analysis	conduct measures set out in Article 10 where one or more linked transactions amount to €15,000 or more.
Conclusion	Transactions and linked transactions of €15,000 are covered.
Recommendations and Comments	Guidance is not provided on what may constitute "linked transactions". Consideration should be given to providing such guidance.

4.	**Beneficial Owner**
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) 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	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	Article 19 of the LPMLTF states that a beneficial owner is the natural person who ultimately owns or controls the client and/or the natural person on whose behalf a transaction is being conducted, as well as the person that ultimately exercises control over a **legal person** or **legal arrangement**. It then goes on to say who shall be considered to be the beneficial owner of a **legal person** and a **foreign legal entity** (trust, fund and the like) – drawing on wording used in Article 3(6) of the Directive. A beneficial owner of a **business organisation** i.e. **legal person** shall be: • A natural person who indirectly or directly owns at least 25% of the shares, voting rights and other rights on the basis of which they participate in management, or own as least 25% of the capital, or who has a dominating influence in the management of the **business organisation**. • A natural person that indirectly ensures or is ensuring funds to a **business organisation** or **legal entity** and on that basis has the right to include significantly the decision making process of the managing body of the **business organisation** or **legal entity** when decisions concerning financing and business are made. A beneficial owner of a foreign **legal entity** (trust, fund and the like) that receives, manages or allocates assets for certain purposes shall be:

	• A natural person that indirectly or directly controls at least 25% of a **legal person's** assets or of a foreign **legal entity**. • A natural person, determined or determinable as a beneficiary of at least 25% of the income from property that is being managed However, there is some confusion with use of terminology which makes analysis difficult. As a result of the construction of this Article, it does not provide a definition of beneficial ownership for legal arrangements (though this was clearly the intention), and the distinction that is drawn between legal person and legal entity is not clear.
Conclusion	Both approaches are followed. There is a high level definition of beneficial ownership in Article 19 of the LPMLTF that follows the FATF definition, and then provisions that deal specifically with legal persons and legal entities that are modelled on Article 3(6) of the Directive. However, unlike Article 3(6) of the Directive, the definition of beneficial owner in Article 19 of the LPMLTF does not include a natural person on whose behalf an activity (distinct from transaction) is being conducted. Nor does it extend to legal arrangements (though this was clearly the intention) – referring only to "entities of foreign legislation". There are other differences between Article 19 of the LPMLTF and Article 3(6) of the Directive. For example: • The threshold set for ownership and control of a corporate entity in Article 3(6) of the Directive is 25% plus one share, whereas under Article 19 of the LPMLTF the threshold is at least 25% (which includes a holding of 25% which is less than 25% plus one share). • Article 19 of the LPMLTF does not provide for the case when beneficiaries of a legal entity cannot be determined, whereas Article 3(6) of the Directive provides for a class to be determined. • Article 19 of the LPMLTF provides for a natural person, determined or determinable as a beneficiary of at least 25% of the income from property that is being managed to be determined, whereas Article 3(6) of the Directive refers to the natural person who is the beneficiary or 25% or more of property of a legal arrangement or entity. Accordingly, criteria in the EU definition of "beneficial owner" are not mirrored in the LPMLTF.
Recommendations and Comments	Article 19 of the LPMLTF should be extending to cover legal arrangements.

5.	**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 Art. 3(1) or (2) of the

	Directive. Art. 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 (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	Article 4(3) of the LPMLTF provides that a Regulation can define reporting entities additional to those listed in Article 4(2) that shall be subject to measures for preventing and detecting money laundering and terrorist financing where there is a more significant risk. Conversely, a Regulation may provide that reporting entities do not need to undertake measures prescribed in the LPMLTF - in accordance with "special conditions" prescribed by international standards.
Conclusion	No Regulations have been made under Article 4(3) of the LPMLTF – the equivalent of Article 4 of the Commission Directive. No need has been identified to do so.
Recommendations and Comments	None.

6.	**Simplified Customer Due Diligence (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 should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Article 29 of the LPMLTF provides for simplified verification of a customer who is a post office or organiser of a lottery or special games of chance. The authorities have not demonstrated that such domestic customers fulfil the criteria listed in Article 3(2) of the Commission Directive.

	Article 29 of the LPMLTF also provides for simplified verification of a customer who is a post office or organiser of a lottery or special games of chance that has a registered office outside Montenegro. This is not covered by criteria listed in Article 3(2) of the Commission Directive.
Conclusion	There are instances where simplified CDD may be applied which go beyond the AML/CFT Methodology 2004 criterion 5.9.
Recommendations and Comments	The legal basis for applying simplified identification measures to a customer that is a post office or organiser of a lottery or special games of chance should be reviewed.

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive *(see Annex)*	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	A PEP is defined under Article 27 of the LPMLTF as a natural person who is acting, or has been acting in the preceding year, within a distinguished public position in Montenegro, in another country or on an international level. In line with Article 2(4) of the Commission Directive, Article 27 of the LPMLTF covers a natural person acting or who has been acting in the **last year** in a distinguished public position. In respect of transactions or business relationships with PEPs, Article 27 of the LPMLTF provides for a reporting entity to obtain data on funds and asset sources from personal or other documents submitted by a customer, and, if the prescribed data cannot be obtained from the submitted documents, data shall be obtained directly from a customer's written statement. In contrast, Article 13(4) of the Directive requires "adequate measures" to be taken. The requirement to obtain the source of wealth is unclear. Additionally, rather than senior management approval, Montenegrin legislation requires the written consent of the person in charge before establishing a business relationship with a PEP.
Conclusion	The definition of a PEP in Montenegro is wider than that found in the Directive as it applies to both domestic and foreign PEPs irrespective of their residence. It also applies to person holding a prominent public function at an international level. There is no requirement to obtain senior

	management approval and source of wealth.
Recommendations and Comments	Montenegrin legislation should require reporting entities to apply adequate measures to establish the source of wealth of the customer and beneficial owner and to obtain senior management approval before establishing a business relationship with a PEP.

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 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 your country apply Art. 13(3) of the Directive?
Description and Analysis	Article 26 of the LPMLTF applies only when establishing a correspondent relationship with a bank or similar credit institution that has a registered office outside the EU or outside "the states from the list".
Conclusion	Article 13(3) of the Directive is applied. In addition, Article 26 of the LPMLTF does not require EDD to be applied to Third Countries that are "from the list".
Recommendations and Comments	Provisions that exclude banks or similar credit institutions that have a registered office in "states from the list" should be removed.

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may 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 Art. 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. How are these issues covered in your legislation?
Description and Analysis	Article 28a of the LPMLTF states that banks and other financial institutions (micro-credit financial institutions, credit unions, and parties pursuing credit-guarantee operations licenced or authorised by the Central Bank) shall take measures and actions to eliminate money laundering risks that may arise from new developing technologies that might allow anonymity.

	In order to take such measures it follows that it must be necessary to pay special attention to such risks[70].
Conclusion	Unlike under the Directive, reporting entities are not required to consider anonymity more generally.
Recommendations and Comments	Consideration should be given to following the broader approach to anonymity that is adopted in Article 13(6) of the Directive. Article 28a of the LPMLTF should be amended to refer to new and developing technologies (rather than new developing). The scope of Article 28a of the LPMLTF should be extended to include all institutions and persons covered by the Directive.

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	In the period covered by this report, the authorities state that 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.
Conclusion	Recommendation 9 has not been considered by assessors and so it is not possible to conclude on this area.
Recommendations and Comments	None.

11.	**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.

[70] It is understood that this matter is explicitly addressed in a revision to the Rulebook on developing risk analysis guidelines.

FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to 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 (2004 AML/CFT Methodology 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 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	CDD and reporting obligations apply to the professional activities of audit companies, independent auditors, and legal or natural persons providing accounting and tax advice services.
Conclusion	Obligations appear to extend to all activities of accountants.
Recommendations and Comments	Guidance should be published to confirm that CDD and reporting obligations extend to all professional activities of audit companies, independent auditors, and legal or natural persons providing accounting and tax advice services.

12.	**High Value Dealers**
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 EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	Article 4 of the LPMLTF includes persons trading in works of art, precious metals and precious stones, precious metal and stone products, and "other goods" when payment is made in cash in the amount of

	€15,000 euro or more, in one or more interconnected transactions.
Conclusion	A broader approach is followed in Montenegro.
Recommendations and Comments	None.

13.	**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 EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	Article 9 of the LPMLTF states that, when making a transaction of at least €2,000, an organiser or special games of chance must verify the identity of a customer and obtain the data from Article 71(6). Article 9 also provides that a business relationship will be established when a client registers to participate in games of chance on the Internet or through other telecommunications means.
Conclusion	Directive provisions appear to be applied.
Recommendations and Comments	None.

14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which 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	Article 33(2) of the LPMLTF states that a reporting entity shall provide data from Article 71 to the competent administration body without delay when there are reasonable grounds for suspicion of money laundering or terrorist financing. The competent administration body is the APMLTF. Article 43 of the LPMLTF includes similar obligations for lawyers and notaries executing real estate transactions for and on behalf of a customer.
Conclusion	Reporting to self-regulatory bodies is not a permitted in Montenegro. All reports must be made to the APMLTF.
Recommendations and Comments	None.

15.	**Reporting obligations**
Arts. 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 (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a 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? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	Pursuant to Article 33 of the LMPLTF, reporting entities are required to submit a report to the FIU without delay when there are reasonable grounds for suspicion of ML/FT related to a 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. Where a transaction is considered to represent ML/FT and when it is impossible to suspend such transaction, or when there is a possibility that the efforts of monitoring a client engaged into activities suspected to be related to ML/FT could be frustrated, reporting entities shall notify the FIU immediately after the execution of the transaction.
Conclusion	Although reporting entities are required to report a suspicious transaction before it is executed, they are not prohibited from carrying out the transaction. It appears that the requirement to inform the FIU of the deadline within which the transaction is to be executed is intended to have this effect. Reporting is triggered by reasonable grounds to suspect ML/FT related to a transaction or customer.

Recommendations and Comments	Article 33 should explicitly require reporting entities to refrain from carrying out a suspicious transaction.

16.	**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 reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	If the APMLTF evaluates, on the basis of data, information and documentation obtained in accordance with the LPMLTF, that, in relation to a certain transaction or certain person, there are reasonable grounds for suspicion of money laundering or terrorist financing, it is required to inform the police of prosecutor under Article 55 of the LPMLTF. In fulfilment of this obligation, the APMLTF shall not provide data on the reporting entity or employee making the report unless: there are reasonable grounds for suspecting that the reporting entity or employee has committed a money laundering or terrorist financing offence; or this data is necessary for establishing facts in criminal proceedings and is required, in written form, by the Court.
Conclusion	Article 27 of the Directive is implemented.
Recommendations and Comments	None.

17.	**Tipping off (2)**
Art. 28 of the Directive	The 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 the 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 what circumstances are the tipping off obligations applied? Are there exceptions?

Description and Analysis	Article 80(1) of the LPMLTF states that a reporting entity may not reveal the following to a customer or third person: • That prescribed data, information or documentation on a customer or transaction has been forwarded to the competent administration body. • That the competent administration body has temporarily suspended a transaction or has given instructions to the reporting entity. • That the competent administration body has demanded regular supervision of the customer's financial business. • That an investigation of the customer or third party has been or may be initiated. Article 80(3) of the LPMLTF states that information on facts from Article 80(1), reports on suspicious transactions as well as other data, information or documentation collected by the competent administration body shall be designated an appropriate degree of confidentiality and must not be made available to third parties (though it is not clear in this content whether third party also includes the customer). Article 80(5) of the LPMLTF allows the competent administration body to lift confidentiality (also having the effect of permitting disclosure to a third party). Article 80(6) of the LPMLTF states that the prohibition on revealing information under Article 80(1) shall not apply: • When establishing facts in criminal proceeds and when required to do so by a competent court. • When demanded by a supervisory body listed in Article 86 of the LPMLTF in line with statutory duties under that law. The authorities have not provided details of an express provision prohibiting disclosure of the fact that a STR has been made, though this is likely to be the effect of Article 80(3) which states that suspicious transactions will be designated an appropriate degree of confidentiality. Also, it is not clear from Article 80(3) of the LPMLTF that the provision for confidentiality relates to a STR that is being reported or provided (distinct from one that has been reported or provided). The authorities have explained that Article 80(3) permits a reporting entity to routinely disclose information provided to the APMLTF, fact that a STR has been made, and other data, information and documentation collected by the APMLTF to a competent supervisory authority.
Conclusion	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The LPMLTF lays down instances where the prohibition is lifted.
Recommendations and Comments	Consideration should be given to including an express provision prohibiting disclosure of the fact that a STR is being reported or provided to the APMLTF (distinct from the data, information, or documentation

	contained in, or provided with, such a report). Competent supervisory authority access to confidential information under Article 80 should be clarified.

18.	**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 where applicable 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 Art. 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 35(1) of the LPMLTF states that a reporting entity shall establish and apply appropriate rules regarding the procedures with a client, reporting, keeping of data, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing. Article 35(2) of the LPMLTF states that banks, credit and other financial institutions defined in the LPMLTF shall order, conduct and supervise the application of the rules from Article 35(1) in branches and majority-owned subsidiaries in other countries. In order to "order, conduct and supervise" application of the rules, it follows that they must first be communicated to branches and majority-owned subsidiaries. However, the term "financial institution" is not defined in the LPMLTF and so it is not possible to confirm that the requirement in Article 35 of the LPMLTF is applied to all of the credit and financial institutions subject to the Directive.
Conclusion	Article 35 of the LPMLTF sets an obligation that is based on Article 34(2) of the Directive.
Recommendations and Comments	The terms "financial institution" should be clarified.

19.	**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 should 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, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	Article 34(2) of the LPMLTF states 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 the LPMLTF, a reporting entity shall immediately inform the competent administration body of that and undertake measures for removing money laundering or terrorist financing risk.
Conclusion	The effect of Article 34(2) of the LPMLTF is different to Article 31(3) of the Directive and FATF Recommendations 22 and 21 which address cases where the legislation of a country does not **permit** the application of equivalent AML/CFT measures. The effect of this is to require a reporting entity to inform and take measures in a case where another country **permits** the application of measures that are equivalent to the LPMLTF but does not **prescribe** those measures in its own legislation. This goes beyond what is required by the Directive.
Recommendations and Comments	Article 34(2) of the LPMLTF should be expressed as applying to cases where a country does not **permit** the application of equivalent AML/CFT measures.

	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the 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 Directive implemented in your jurisdiction?
Description and Analysis	Article 89(3) of the LPMLTF states that if, during an inspection, the supervisory authorities listed in Article 86 assess that, in relation to any transaction or person, there is suspicion of money laundering or terrorist financing, or establish facts that can be related to money laundering or terrorist financing, they shall immediately and without delay inform the APMLTF.
Conclusion	Article 89(3) of the LPMLTF does not mirror Article 25(1) of the Directive. The Directive applies also to facts disclosed **in any way** (not only during an inspection) that could be related to money laundering or

	terrorist financing.
Recommendations and Comments	Consideration should be given to extending the reporting obligation in Article 89(3) of the LPMLTF to facts established in **any way** that could be related to money laundering or terrorist financing.

20.	**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 a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Notwithstanding requirements placed on reporting entities to apply CDD measures and keep records, the authorities have not provided details of any requirements placed on reporting entities to have **systems** in place that enable them to respond fully and promptly to enquires from the APMLTF 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.
Conclusion	Reporting entities are not required to have such systems in place.
Recommendations and Comments	Consideration should be given to requiring reporting entities to have such systems in place.

21.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?

Description and Analysis	Article 4(2) of the LPMLTF includes professionals and categories of undertakings other than those referred to in Article 2(1) of the Directive. The authorities have explained that these additional professionals and undertakings have been added on the basis of "experience and analysis of new methods of executing transactions and establishing business relationships". It is not clear whether this involves a risk assessment. Article 4(3) of the LPMLTF provides that a Regulation can define reporting entities additional to those listed in Article 4(2) that shall be subject to measures for preventing and detecting money laundering and terrorist financing where there is a more significant risk.
Conclusion	AML/CFT obligations have been extended to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes.
Recommendations and Comments	None.

22.	**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, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	Article 29 of the LPMLTF provides for simplified identification measures to be applied to: • An "appropriate institution" (a financial institution that exists in the EU but not also in Montenegro) that has a registered office in the EU or in a state applying international AML/CFT standards that are at the same level as EU standards or higher. • An organisation whose securities are traded on an organised market or stock exchange in a Member State of the EU or other states where the international standards are at the same level as EU standards or higher. Article 29(2) requires the APMLTF to publish on its website a list of countries that apply international standards that are at the same level as the EU standards or higher. A list of countries that apply equivalent AML/CFT standards was last updated on 9 April 2012 and covers EU Member States and FATF members.

Conclusion	The LPMLTF provides for simplified measures to be applied to customers that: are financial institutions incorporated in equivalent third countries; or have securities traded on an equivalent third country market.
Recommendations and Comments	Guidance should be published on the basis for assessing the equivalence of legislation in place in third countries. A list of countries that apply equivalent securities standards should be published in line with Article 29(2) of the LPMLTF.

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2

Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliaments;

(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(d) members of courts of auditors or of the boards of central banks;

(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;

(f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:

(a) the spouse;

(b) any partner considered by national law as equivalent to the spouse;

(c) the children and their spouses or partners;

(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:

(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;

(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

VI. LIST OF ANNEXES

See MONEYVAL(2015)12_ANN