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(MONEYVAL)

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# Report on Fourth Assessment Visit – *Executive Summary*

## 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 |
| BNI     | Bearer negotiable instrument  |
| C       | Compliant   |
| CBM     | Central Bank of Montenegro  |
| CDD     | Customer Due Diligence  |
| CTR     | Cash transaction report   |
| DNFBP   | Designated Non-Financial Businesses and Professions                           |
| FATF    | Financial Action Task Force   |
| FIU     | Financial Intelligence Unit   |
| ISA     | Insurance Supervision Agency  |
| LC      | Largely compliant   |
| LPMLTF  | Law on the Prevention of Money Laundering and Terrorist Financing             |
| ML      | Money laundering  |
| MLA     | Mutual Legal Assistance   |
| MoU     | Memorandum of Understanding   |
| NC      | Non-compliant   |
| NGO     | Non-governmental organisation   |
| NPO     | Non-profit organisation   |
| PC      | Partially compliant   |
| PEP     | Politically Exposed Person  |
| SEC     | Security and Exchange Commission  |
| SR      | Special Recommendation  |
| STR     | Suspicious transaction report   |
| TF/FT   | Financing of terrorism  |
| UNSC    | United Nations Security Council   |
| UNSCR   | United Nations Security Council Resolution                                    |

## 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 4<sup>th</sup> 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 4<sup>th</sup> 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 3<sup>rd</sup> 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 where 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 issued 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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.

**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 3<sup>rd</sup> round evaluation report that were not considered during the 4<sup>th</sup> assessment visit. These ratings are set out in italics and shaded.*

| <b>Forty Recommendations</b>  | <b>Rating</b> | <b>Summary of factors underlying rating<sup>1</sup></b>  |
|---|---------------|--|
| <b>Legal systems</b>  |               |  |
| 1. Money laundering offence   | <b>PC</b>     | <ul style="list-style-type: none"> <li>• Not all types of property are covered by the ML offence;</li> <li>• The concealment or disguise of rights with respect to property is not covered.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Very low number of ML investigations, prosecutions and convictions;</li> <li>• Concerns over evidential thresholds to establish underlying predicate criminality;</li> <li>• Underutilisation of FIU generated reports for the prosecution of ML resulting in convictions;</li> <li>• Issues regarding timeliness of ML proceedings.</li> </ul> |
| 2. Money laundering offence<br>Mental element and corporate liability | <b>LC</b>     | <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The sanctions that have been actually applied by the Courts for ML are not dissuasive and effective;</li> <li>• No ML investigations, prosecutions or convictions for legal persons.</li> </ul>  |
| 3. Confiscation and provisional measures                              | <b>PC</b>     | <ul style="list-style-type: none"> <li>• The absence of a definition of property in the CC may restrict the widest use of the confiscation regime;</li> <li>• The confiscation of proceeds is not adequately covered;</li> <li>• 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;</li> </ul>  |

<sup>1</sup> These factors are only required to be set out when the rating is less than Compliant.

|   |           |  |
|---|-----------|--|
|   |           | <ul style="list-style-type: none"> <li>• No requirement to confiscate property that is derived indirectly from proceeds; including income or profits;</li> <li>• No power to prevent or void actions which may prejudice the authorities' ability to recover property subject to confiscation.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• No information was provided on confiscation measures for predicate offences;</li> <li>• No information was provided on provisional measures applied for predicate offences;</li> <li>• Very low number of provisional measures and confiscation orders for ML offences.</li> </ul>   |
| <b>Preventive measures</b>                          |           |  |
| 4. Secrecy laws consistent with the Recommendations | <b>LC</b> | <ul style="list-style-type: none"> <li>• 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;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Requirements of Data Protection Act might jeopardize information sharing as required under FATF recommendation.</li> </ul>  |
| 5. Customer due diligence                           | <b>PC</b> | <ul style="list-style-type: none"> <li>• 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;</li> <li>• Reporting entities are not required to undertake full CDD measures when carrying out occasional transactions that are wire transfers. (c.5.2)</li> <li>• 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)</li> <li>• 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)</li> <li>• 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</li> </ul> |

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|  |  | <p>concerning legal form, or to collect information on provisions regulating the power to bind. (c.5.4)</p> <ul style="list-style-type: none"> <li>• 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)</li> <li>• Simplified measures can be applied in cases where risks are not lower. (c.5.9)</li> <li>• Where simplified measures can be applied, customers are not subject to the full range of CDD measures. (c.5.9)</li> <li>• 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).</li> <li>• Simplified CDD measures may be applied to a customer notwithstanding that there may be specific higher risks. (5.11)</li> <li>• 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)</li> <li>• 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)</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• 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)</li> <li>• 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)</li> <li>• 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,</li> </ul> |
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|   |            | <p>the guidelines published by the SEC and ISA state that reporting entities <i>may</i> refuse to establish a business relationship which may give rise to ambiguity. (5.15)</p> <ul style="list-style-type: none"> <li>• 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)</li> <li>• 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)</li> </ul>   |
| 6. Politically exposed persons                    | <b>PC</b>  | <ul style="list-style-type: none"> <li>• Requirement to adopt appropriate risk management systems does not include determination of whether a potential customer or a beneficial owner represent a PEP;</li> <li>• No requirement to obtain senior management approval once a customer becomes a PEP to continue business relationship;</li> <li>• 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.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Excessive reliance on information submitted by the customer to determine whether the customer is a PEP;</li> <li>• Insufficient information obtained on the source of wealth and funds of PEPs;</li> <li>• Senior management approval not obtained when establishing business relationships or conducting transactions with PEPs;</li> <li>• Insurance companies interviewed showed limited understanding of PEP requirements.</li> </ul> |
| 7. <i>Correspondent banking</i>                   | <b>LC</b>  |  |
| 8. New technologies and non face-to-face business | <b>C</b>   |  |
| 9. <i>Third parties and introducers</i>           | <b>N/A</b> |  |



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| 10. Record keeping                     | <b>C</b>  |   |
| 11. Unusual transactions               | <b>PC</b> | <ul style="list-style-type: none"> <li>• Complex and unusual patterns of transactions are not covered;</li> <li>• No obligation for financial institutions to examine as far as possible the background and purpose of complex and unusual transactions;</li> <li>• Record-keeping obligations do not extend to findings on unusual transactions;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• FI's do not seem to differentiate obligations deriving from unusual transactions and suspicious transactions.</li> </ul>   |
| 12. DNFBPS – R.5, 6, 8-11 <sup>2</sup> | <b>NC</b> | <ul style="list-style-type: none"> <li>• The legal framework does not cover trust and company service providers;</li> <li>• Deficiencies outlined in R5 also apply to DNFBPs;</li> </ul> <p><b><i>Applying Recommendation 5</i></b></p> <ul style="list-style-type: none"> <li>• CDD requirements do not apply to online casinos;</li> <li>• CDD obligations for lawyers and notaries are limited in scope and do not cover the whole range of CDD obligations;</li> <li>• No obligation for DNFBPs to determine the beneficial owners of legal arrangements;</li> <li>• Weak implementation of CDD measures of the 2 000 Euro threshold by casinos;</li> <li>• 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;</li> <li>• Weak implementation of obligations related to beneficial ownership by DNFBP sector representatives;</li> <li>• The obligations on beneficial ownership applicable to lawyers and notaries do not include the requirement to satisfy themselves that they</li> </ul> |

<sup>2</sup> 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 3<sup>rd</sup> round report on Recommendation 9.

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|   |                  | <p>know who the beneficial owner is;</p> <p><b><i>Applying Recommendation 6</i></b></p> <ul style="list-style-type: none"> <li>• Lack of guidance on determining whether a customer is a PEP and undertaking the necessary additional measures;</li> <li>• Lawyers and notaries are not required to establish whether a customer is a PEP;</li> <li>• Weak implementation of CDD measures with respect to PEPs;</li> </ul> <p><b><i>Applying Recommendation 8</i></b></p> <ul style="list-style-type: none"> <li>• No guidance on the use of new technologies in DNFBP sector;</li> <li>• Limited scope of CDD obligations for casinos undertaking online activities undermine obligation of casinos to eliminate money laundering risks that arise from new technologies;</li> <li>• Lawyers and notaries are not required to pay special attention to risks associated with new technologies in their activities;</li> </ul> <p><b><i>Applying Recommendation 10</i></b></p> <ul style="list-style-type: none"> <li>• Record-keeping obligations do not apply to online activities of casinos;</li> <li>• Record-keeping obligations for lawyers and notaries do not include all the necessary information subject to record-keeping under Recommendation 10;</li> </ul> <p><b><i>Applying Recommendation 11</i></b></p> <ul style="list-style-type: none"> <li>• Obligation to analyse all unusual and complex transactions is not in line with FATF requirements;</li> <li>• Lawyers and notaries are not required to undertake obligations with respect to unusual transactions and to analyse all complex transactions or unusual patterns of transactions;</li> <li>• Lack of guidance on unusual transactions and obligations associated with such transactions;</li> <li>• Weak implementation of analyses of such transactions by DNFBP sector;</li> </ul> |
| <p>13. Suspicious transaction reporting</p> | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• 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;</li> </ul>   |

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|  |           | <ul style="list-style-type: none"> <li>• The reporting requirement only refers to “<i>transactions</i>” rather than funds;</li> <li>• The reporting requirement only refers to “<i>suspicion of money laundering or terrorist financing</i>” rather than “<i>suspicious of funds that are the proceeds of a criminal activity</i>”;</li> <li>• TF reporting obligation does not cover funds related or linked to <i>terrorist organisations</i> and <i>those who finance terrorism</i>; and funds used by <i>those who finance terrorism</i>;</li> </ul> <p><b><u>Effectiveness</u></b></p> <p>Several effectiveness issues due to</p> <ul style="list-style-type: none"> <li>• (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;</li> <li>• Attempted transactions are not reported in all circumstances, although technically covered.</li> </ul> |
| 14. <i>Protection and no tipping-off</i>           | <b>C</b>  |  |
| 15. <i>Internal controls, compliance and audit</i> | <b>LC</b> |  |
| 16. DNFbps – R.13-15 & 21 <sup>3</sup>             | <b>PC</b> | <p><b><i>Applying Recommendation 13</i></b></p> <ul style="list-style-type: none"> <li>• Regarding casinos and real estate agents the same deficiencies described in R.13 apply;</li> <li>• Reporting obligation for lawyers and notaries unduly restricted;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Inadequate understanding of the reporting requirement by the gambling sector;</li> <li>• Very low number of reporting raises concerns regarding effectiveness of the system, especially with regard to the high-risk real estate sector;</li> </ul> <p><b><i>Applying Recommendation 21</i></b></p> <ul style="list-style-type: none"> <li>• Poor implementation of compliance with requirements paying special attention to transactions with countries which do not or</li> </ul>  |

<sup>3</sup> 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 3<sup>rd</sup> round report on Recommendations 14 and 15.

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|                      |                  | <p>insufficiently apply FATF recommendations;</p> <ul style="list-style-type: none"> <li>• Poor guidance on effective measures for ensuring that DNFBP sector is aware about weaknesses in the AML/CFT systems of other countries.</li> </ul>   |
| <p>17. Sanctions</p> | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• Effective, proportionate and dissuasive sanctions are not available since: <ul style="list-style-type: none"> <li>○ 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;</li> <li>○ The maximum fine that may be applied directly by the APMLTF to a legal person, entrepreneur or individual is low;</li> <li>○ 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;</li> <li>○ The SEC may apply sanctions only where a reporting entity fails to remediate a misdemeanour. (17.1)</li> </ul> </li> <li>• 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)</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• 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)</li> <li>• 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)</li> <li>• 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)</li> <li>• Whereas the APMLTF has submitted in excess of 100 requests to initiate misdemeanour proceedings, just 18 have led to decisions to fine. (17.2)</li> </ul> |

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|   |           | <ul style="list-style-type: none"> <li>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)</li> </ul>  |
| 18. <i>Shell banks</i>                                    | <b>C</b>  |   |
| 19. <i>Other forms of reporting</i>                       | <b>C</b>  |   |
| 20. <i>Other DNFBPS and secure transaction techniques</i> | <b>LC</b> |   |
| 21. Special attention for higher risk countries           | <b>NC</b> | <ul style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>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.</li> </ul> |
| 22. <i>Foreign branches and subsidiaries</i>              | <b>C</b>  |   |
| 23. Regulation, supervision and monitoring                | <b>PC</b> | <ul style="list-style-type: none"> <li>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)</li> <li>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 or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in reporting entities</li> </ul>  |

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|   |                  | <p>for which they have supervisory responsibility. (23.3)</p> <ul style="list-style-type: none"> <li>• 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)</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The Central Bank does not supervise microcredit financial institutions directly for AML/CFT purposes. (23.1)</li> <li>• 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)</li> <li>• 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)</li> <li>• 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)</li> <li>• 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.</li> </ul> |
| <p>24. DNF BPS - Regulation, supervision and monitoring</p> | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• 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;</li> <li>• Casinos are not subject to effective, proportionate, and dissuasive sanctions for AML/CFT breaches;</li> <li>• There is no sanctioning regime for lawyers, notaries, auditors and accountants;</li> <li>• There are no supervisory powers specifically defined for lawyers, notaries, auditors and accountants to conduct AML/CFT supervision;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• No specific regulation setting out the areas to be inspected during on-site inspections of DNBFPs.</li> </ul>   |

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| 25. <i>Guidelines and Feedback</i>      | <b>LC</b> |  |
| <b>Institutional and other measures</b> |           |  |
| 26. The FIU                             | <b>PC</b> | <ul style="list-style-type: none"> <li>The APMETF does not publicly release reports on trends and typologies;</li> </ul> <p><b>Effectiveness</b></p> <ul style="list-style-type: none"> <li>Low number of requests for administrative, financial and law enforcement information undermines the analytical and dissemination process;</li> <li>The dissemination process does not ensure that effective action is taken by the most appropriate law enforcement authority in all cases;</li> <li>No review by the FIU to determine whether the analytical output is adequate.</li> </ul> |
| 27. Law enforcement authorities         | <b>PC</b> | <p><b>Effectiveness</b></p> <ul style="list-style-type: none"> <li>No effective law enforcement policy for the investigation of ML/FT offences;</li> <li>Very low number of ML/FT investigations;</li> <li>Limited understanding by law enforcement authorities of purpose of FIU disseminations.</li> </ul>   |
| 28. Powers of competent authorities     | <b>C</b>  |  |
| 29. Supervisors                         | <b>LC</b> | <ul style="list-style-type: none"> <li>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)</li> <li>The SEC does not have clear authority to conduct examinations of stockbrokers for AML/CFT purposes. (29.2)</li> </ul>   |
| 30. Resources, integrity and training   | <b>PC</b> | <p><i>APMLTF</i></p> <ul style="list-style-type: none"> <li>Inadequate allocation of staff at the in relation to tasks and activities performed (analytics department in relation to other departments);</li> <li>Insufficient IT and human resources have a negative impact on the analysis of STRs, CTRs and other financial information;</li> </ul> <p><i>Police</i></p> <ul style="list-style-type: none"> <li>Number of staff in Criminal Police Department is</li> </ul>   |



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|                                  |                  | <p>insufficient;</p> <ul style="list-style-type: none"> <li>• Training of police officers in Criminal Police Department is inadequate;</li> </ul> <p><i>Customs</i></p> <ul style="list-style-type: none"> <li>• Lack of adequate training of Customs Officers;</li> <li>• Number of staff is too low in order to fully support all obligations under SR. IX;</li> </ul> <p><i>Policy Makers</i></p> <ul style="list-style-type: none"> <li>• Adequacy of resources and training level of Members of National Commission and intra-institutional working group could not be assessed;</li> </ul> <p><i>Supervisors</i></p> <ul style="list-style-type: none"> <li>• The APMLTF is responsible for overseeing a significant number of reporting entities and has only five staff available to do so;</li> <li>• Within the CBM criminal record checks are not routinely performed at the time of employment of staff;</li> <li>• Details of training provided suggest that AML/CFT training is not offered widely within the competent supervisory bodies;</li> <li>• 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;</li> <li>• High turnover of staff in APMLTF has an adverse impact on effectiveness.</li> </ul> |
| <p>31. National co-operation</p> | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• Lack of inter-institutional body in relation to operational cooperation and coordination before the end of 2013;</li> <li>• Cooperation between APMLTF, Prosecutors (High State Prosecutor &amp; Supreme Prosecutor's Office) and Police needs enhancement;</li> </ul> <p><b><u>Effectiveness:</u></b></p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Effectiveness of national cooperation on an operational level could not be assessed.</li> </ul>  |

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| 32. Statistics <sup>4</sup>                       | PC  | <ul style="list-style-type: none"> <li>• No review mechanism of the AML/CFT system on a regular basis;</li> <li>• Unclear whether statistics on confiscation and provisional measures for ML and predicate offences;</li> <li>• Incomplete statistics on the dissemination process maintained by the FIU;</li> <li>• No MLA statistics for the years 2009-2012 were provided;</li> <li>• Incomplete statistics on numbers of supervisory examinations have been presented by the authorities.</li> </ul>  |
| 33. Legal persons – beneficial owners             | PC  | <ul style="list-style-type: none"> <li>• Banks are not required to establish who the beneficial owner of a limited partnership is. (33.1)</li> <li>• 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)</li> <li>• 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)</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• 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 Depository Agency or Central Business Registry on legal ownership of companies; and Internet checks.</li> </ul> |
| 34. <i>Legal arrangements – beneficial owners</i> | N/A |   |
| <b>International Co-operation</b>                 |     |   |
| 35. Conventions                                   | LC  | <ul style="list-style-type: none"> <li>• Minor deficiencies remain in the implementation of several provisions of the Vienna and Palermo Conventions.</li> <li>• The TF Convention has been ratified, but deficiencies remain in the implementation of</li> </ul>   |

<sup>4</sup> 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 3<sup>rd</sup> round report on Recommendations 20, 38 and 39.

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|   |           | certain provisions of the Convention.  |
| 36. Mutual legal assistance (MLA)           | <b>LC</b> | <ul style="list-style-type: none"> <li>• MLA is restricted only to "<i>property obtained by criminal activity</i>";</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The data provided were not sufficient to show the effectiveness of the system.</li> </ul>   |
| 37. <i>Dual criminality</i>                 | <b>LC</b> |  |
| 38. <i>MLA on confiscation and freezing</i> | <b>LC</b> |  |
| 39. <i>Extradition</i>                      | <b>LC</b> |  |
| 40. Other forms of co-operation             | <b>PC</b> | <ul style="list-style-type: none"> <li>• Clear and effective gateways are not in place to facilitate and allow for exchanges of information directly between counterparts: <ul style="list-style-type: none"> <li>○ The Central Bank is empowered to exchange information outside Montenegro only with "foreign institutions responsible for bank supervision". (40.2)</li> <li>○ The Agency for Telecommunication and Postal Services cannot cooperate or exchange information with foreign counterparts on AML/CFT issues. (40.2)</li> <li>○ The APMLTF may not exchange information for supervisory purposes, except where there are reasonable grounds for suspecting money laundering or terrorist financing. (40.2)</li> </ul> </li> <li>• The SEC cannot share information spontaneously under the Securities Law or the Law on Voluntary Pension Funds. (40.3)</li> <li>• The SEC does not have a general power to conduct an examination under the Securities Law on behalf of a foreign authority. (40.5)</li> <li>• 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)</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• With the exception of the APMLTF, assistance is not requested from, or by, competent supervisory authorities.</li> </ul> |

| Nine Special Recommendations                  |    |   |
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| SR.I Implement UN instruments                 | PC | <ul style="list-style-type: none"> <li>• Deficiencies remain in the implementation of certain provisions of the TF Convention;</li> <li>• There are no laws and procedures for the application of S/RES/1267(1999) and S/RES/1373(2001);</li> </ul>   |
| SR.II Criminalise terrorist financing         | PC | <ul style="list-style-type: none"> <li>• The FT offence is limited in scope, as it does not cover all the acts listed in the Annex Conventions;</li> <li>• The financing of the offences under the Annex Conventions, which are partially covered under Art. 447 (Terrorism), are subject to an additional purposive element;</li> <li>• The scope of the definition of “individual terrorist” and “terrorist organisation” is not in line with the FATF Standards;</li> <li>• 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.</li> </ul>   |
| SR.III Freeze and confiscate terrorist assets | NC | <ul style="list-style-type: none"> <li>• 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;</li> <li>• No mechanism is in place to draw up a domestic list of terrorists;</li> <li>• No procedures are established to examine and give effect to actions initiated under freezing mechanisms of other jurisdictions;</li> <li>• 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);</li> <li>• No provisions ensuring the protection of the rights of bona fide third parties;</li> <li>• The guidance provided to financial institutions does not appropriately reflect the requirements of the UNSCRs.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Inadequate understanding of the purpose and the requirements of the UNSCRs by reporting entities.</li> </ul> |

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| SR.IV Suspicious transaction reporting       | PC | <ul style="list-style-type: none"> <li>• 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</li> <li>• Deficiencies in SR. II apply (in relation to predicate offences)</li> <li>• The reporting requirement only refers to “transactions” rather than funds;</li> <li>• TF reporting obligation does not cover funds related or linked to <i>terrorist organisations</i> and <i>those who finance terrorism</i>; and funds used by <i>those who finance terrorism</i>;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Heavy reliance on indicators and non-existence of TF indicators adds to non-reporting on TF;</li> <li>• Attempted transactions would not be reported in all circumstances, although technically covered.</li> </ul>   |
| SR.V International co-operation <sup>5</sup> | PC | <ul style="list-style-type: none"> <li>• MLA is restricted only to "<i>property obtained by criminal activity</i>"</li> <li>• Clear and effective gateways are not in place to facilitate and allow for exchanges of information directly between counterparts: <ul style="list-style-type: none"> <li>○ The Central Bank is empowered to exchange information outside Montenegro only with “foreign institutions responsible for bank supervision”. (40.2)</li> <li>○ The Agency for Telecommunication and Postal Services cannot cooperate or exchange information with foreign counterparts on AML/CFT issues. (40.2)</li> <li>○ The APMLTF may not exchange information for supervisory purposes, except where there are reasonable grounds for suspecting money laundering or terrorist financing. (40.2)</li> </ul> </li> <li>• The SEC cannot share information spontaneously under the Securities Law or the Law on Voluntary Pension Funds. (40.3)</li> <li>• The SEC does not have a general power to conduct an examination under the Securities Law on behalf of a foreign authority. (40.5)</li> </ul> |

<sup>5</sup> 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 3<sup>rd</sup> round report on Recommendations 37, 38 and 39.

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|  |    | <ul style="list-style-type: none"> <li>• 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)</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• With the exception of the APMLTF, assistance is not requested from, or by, competent supervisory authorities.</li> </ul>   |
| SR.VI AML requirements for money/value transfer services | NC | <ul style="list-style-type: none"> <li>• There is no supervisory system established to oversee some forms of MVT operations;</li> <li>• No requirements with respect to fitness and propriety requirements for managers and owners of MVT service operators;</li> <li>• 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;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The Payment System Law adopted in 2014 will become effective in January 2015, therefore its effectiveness could not be assessed.</li> </ul>   |
| SR.VII Wire transfer rules                               | PC | <ul style="list-style-type: none"> <li>• Record-keeping requirements in Articles 21 and 70 do not extend to wire transfers regulated by Article 12a of the LPMLTF. (VII.1)</li> <li>• There is no overriding requirement to verify an originator's identity using documentation that is reliable and independent. (VII.1)</li> <li>• Legislation is not in place to permit supervision of all organizations able to perform payment transactions. (VII.6)</li> <li>• 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)</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> |
| SR.VIII Non-profit organisations                         | PC | <ul style="list-style-type: none"> <li>• No mechanism is in place for conducting comprehensive assessments and periodic reassessments of the NPO sector;</li> </ul>  |

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|  |                  | <ul style="list-style-type: none"> <li>• 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;</li> <li>• There is no supervision in place to sanction violations of the provisions of the Law on NGOs;</li> <li>• 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.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> |
| <p>SR.IX Cross Border declaration and disclosure</p> | <p><b>PC</b></p> | <ul style="list-style-type: none"> <li>• No power to obtain further information from the bearer in case of false declarations/failure to declare;</li> <li>• No power to stop or restrain currency or bearer negotiable instruments;</li> <li>• Sanctions are neither proportionate nor dissuasive;</li> <li>• Deficiencies from R.3 and SR. III apply;</li> <li>• Inadequate and insufficient level of training provided to Customs Authority;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• The limited information available (notifications by Customs to APMLTF) does not enable an adequate assessment of effectiveness;</li> <li>• Sanctions imposed appear to be low;</li> <li>• Lack of understanding of ML/TF risks associated with cross-border transportation of cash.</li> </ul>   |