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THE FINANCING OF TERRORISM
(MONEYVAL)

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4th ROUND MUTUAL EVALUATION OF MONTENEGRO

REVISED EXIT FOLLOW-UP REPORT SUBMITTED TO
MONEYVAL

**WRITTEN ANALYSIS ON PROGRESS IN RESPECT OF THE CORE AND
KEY RECOMMENDATIONS**

May 2020



Montenegro is a member of MONEYVAL. This report was adopted by the 1st Intersessional Consultation of MONEYVAL (23 April - 6 May 2020) using the “silent procedure”. For further information on the examination and adoption of this report, please refer to the 1st Intersessional Consultation Decisions Report at <https://rm.coe.int/moneyval-2020-4-1st-intersessional-consultation-decisions/16809e6482>

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LIST OF ACRONYMS USED

AML/CFT	Anti-money laundering and combating financing of terrorism
APMLFT	Administration for the Prevention of Money Laundering and Terrorist Financing
BOs	Beneficial Owners
CC	Criminal Code
CDD	Customer Due Diligence
CEPs	Compliance Enhancing Procedures
CMB	Central Bank of Montenegro
CFT	Combating the financing of terrorism
DNFBP	Designated Non-Financial Businesses and Professions
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GPO	General Prosecutor's Office
ISA	Insurance Supervision Agency
LEA	Law Enforcement Agency
LIRM	Law on International Restrictive Measures
LPMLFT	Law on the Prevention of Money Laundering and Terrorist Financing
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual legal assistance
MFA	Ministry of Foreign Affairs
MVTS	Money Value Transfer Service Providers
SAR	Suspicious Activity Report
SR	Special recommendation
STR	Suspicious transaction report
UN	United Nations
UNSCR	United Nations Security Council resolution

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Mutual evaluation of Montenegro: Revised Second Follow-up Report

Application to be removed from the regular follow-up process

Note by the Secretariat

Introduction

1. The purpose of this paper is to introduce Montenegro's second revised follow-up report concerning the progress that it has made to remedy the deficiencies identified in the fourth round mutual evaluation report (MER) on selected FATF Recommendations.
2. Montenegro considers that it has made sufficient progress to be considered for removal from the regular follow-up process and has applied to be removed from the process.

Background information

3. The on-site visit to Montenegro took place from 3 to 8 March 2014. MONEYVAL adopted the fourth round MER of Montenegro at its 47th plenary meeting (14 - 17 April 2015). As a result of the fourth round evaluation process, Montenegro was rated partially compliant (PC) on 24 Recommendations¹ and non-compliant (NC) on 4 recommendations, including on several core² and key³ recommendations, as indicated in the table below:

Core Recommendations rated PC (no Core Recommendations were rated NC)
Recommendation 1 (Money laundering offence)
Special Recommendation II (Criminalisation of terrorist financing)
Recommendation 5 (Customer due diligence)
Recommendation 13 (Suspicious transaction reporting)
Special Recommendation IV (Suspicious transaction reporting related to terrorism)
Key Recommendations rated PC (only one Key Recommendation (SR.III) was rated NC)
Recommendation 3 (Confiscation and provisional measures)
Recommendation 23 (Regulation, supervision and monitoring)
Recommendation 26 (Financial Intelligence Unit)
Recommendation 40 (Other forms of co-operation)
Special Recommendation I (Implementation of United Nations instruments)
Special Recommendation III (Freeze and confiscate terrorist assets)
Special Recommendation V (International co-operation)
13 other Recommendations rated PC (three other Recommendations were rated NC)
Recommendation 6 (Politically exposed persons)
Recommendation 11 (Unusual transactions)
Recommendation 12 (DNFBPs – R.5, 6, 8-11)
Recommendation 16 (DNFBPs – R.13-15 and 21)
Recommendation 17 (Sanctions)
Recommendation 21 (Special attention to higher risk countries)

1 It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.

2 The core Recommendations, as defined in the FATF procedures, are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

3 The key Recommendations, as defined in the FATF procedures, are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III and SR.V.

Recommendation 24 (Regulation, supervision and monitoring)
Recommendation 27 (Law enforcement authorities)
Recommendation 30 (Resources, integrity and training)
Recommendation 31 (National co-operation)
Recommendation 32 (Statistics)
Recommendation 33 (Legal persons)
Special Recommendation VI (AML requirements for money/value transfer services)
Special Recommendation VII (Wire transfer rules)
Special Recommendation VIII (Non-profit organisations)
Special Recommendation IX (Cross-border declaration & disclosure)

4. Upon the adoption of the report, MONEYVAL concluded that overall there had been a lack of progress since the third round. Montenegro was placed under the enhanced follow-up procedure pursuant to Rule 13 of the revised Rules of Procedure, and Step 1 of the Compliance Enhancing Procedures (“CEPs”) was applied. Since then, seven compliance reports have been adopted.⁴ The issues of particular concern under the CEPs process, as set out in the letter of the Chairman addressed to the Secretary General of the Council of Europe, included 5 out of the 6 core FATF Recommendations (R.1, SR.II, R.5, R.13 and SR.IV).
5. The first compliance report was adopted at MONEYVAL’s 50th plenary in April 2016. This included an analysis by the Secretariat of the measures taken by Montenegro to address the factors/deficiencies in relation to the core and key FATF Recommendations rated PC or NC in its 4th round MER. Montenegro was requested to provide a further compliance report to the 51st Plenary in September 2016.
6. The second compliance report adopted at MONEYVAL’s 51st plenary included an analysis by the Secretariat of the progress made since the adoption of the first compliance report. It was agreed that positive action was being taken to change legal acts and implement procedures therefore, it was deemed premature to apply Step 2 of CEPs. Accordingly, the Plenary agreed that progress would be considered again at the 52nd Plenary, by which time it was expected that: (a) the requirements of R.6 (which replaces SR.III) would have been implemented (or would be very close to implementation); and (b) the political commitment and revised timetable requested for other necessary legislative amendments⁵ would have been provided.
7. At MONEYVAL’s 52nd Plenary in December 2016 the third compliance report was adopted. MONEYVAL welcomed the adoption by the Government of Montenegro of an Action Plan on the Implementation of UNSCR 1373 (2001) since the second compliance report had been considered in September 2016. This Action Plan also dealt with the application in Montenegro of UNSCR 1267 (1999). However, it was noted that the majority of implementation deadlines set in the Action Plan (some of which related to legislative amendments) were for the third quarter of 2017 which meant that there would be a further delay in the rectification of severe deficiencies related to Special Recommendation III. The Plenary also noted that the political commitment and revised timetable requested for other legislative amendments needed to address deficiencies highlighted in

4 Step (ii) of the procedures in force at the time envisaged that “the Chairman of MONEYVAL would send a letter, with copy to the Head of Delegation concerned, to the Secretary General of the Council of Europe, drawing his/her attention to non-compliance by a MONEYVAL participating State with the reference documents”.

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

Montenegro's 4th Round MER (in respect of core and key Recommendations 1, 3, 5, 13, 23, 26 and 40 and Special Recommendations I, II, IV and V) had not been provided. This raised significant concern. The Chair observed that deadlines set in April and September 2016 had not been met by the authorities and the Plenary decided to apply Step 2 of CEPs.

8. As a consequence of the application of Step 2 of CEPs, a high-level mission to Montenegro was arranged to meet relevant ministers and senior officials on 3-4 May 2017. The MONEYVAL delegation was composed of Mr Daniel Thelesklaf (Chair of MONEYVAL), Mr Jan Kleijssen (Director of Information Society and Action against Crime) and Mr Matthias Kloth (Executive Secretary to MONEYVAL). The delegation held meetings with the Minister of Foreign Affairs as well as senior officials (General Directors) from the Ministry of Justice and the Ministry of Finance. The delegation also met with representatives from the Montenegrin Parliament.
9. Subsequently, the fourth compliance report was discussed and adopted at MONEYVAL's 53rd Plenary in June 2017. The Plenary heard an update on the measures taken by Montenegro since the third compliance report and the high-level mission. The Plenary noted the substantial progress made through legislative developments, particularly in relation to the Criminal Code (CC), the Law on International Restrictive Measures (LIRM), the Law on Misdemeanours and the new Law on the Prevention of Money Laundering and Terrorist Financing (LPMLFT). Despite the fact that most of the legislation was yet to enter into force⁶, the Plenary welcomed the commitment by the Montenegrin government to finalise the legislative process before the Parliament's summer recess. In light of these developments, no further additional steps under the CEPs were deemed necessary by the Plenary. However, Montenegro was urged to bring the various legislative instruments into force before the 54th Plenary and invited to submit an updated compliance report.
10. The 54th Plenary concluded that the high-level mission conducted on 3-4 May 2017 (Step 2 of the CEPs) had had a positive effect and triggered an accelerated legislative action. However, since some significant deficiencies (both technical and effectiveness-related) were outstanding, the Plenary requested Montenegro to report back to the Plenary on the remaining deficiencies ahead of the 56th Plenary. It was therefore decided to maintain Montenegro under Step 2 of the CEPs and agreed that the Secretariat would take stock of the remaining deficiencies immediately after the Plenary meeting and submit a memorandum containing these deficiencies to Montenegro. It was decided that should Montenegro fail to meaningfully address the remaining deficiencies by the 56th Plenary, the Plenary would consider applying Step 3 of the CEPs.
11. The sixth compliance report was discussed at MONEYVAL's 56th Plenary in July 2018. It was noted that Montenegro adopted amendments to the LPMLTF on 26 June 2018, which addressed the vast majority of the outstanding deficiencies identified by the Secretariat in the stock-taking exercise. While noting some progress in relation to SR. III, the LIRM, which was intended to address the most serious deficiencies under SR III, had not yet been adopted by Parliament by the end of June 2018, despite the political commitment made during the high-level mission in June 2017, indicating that the law would be adopted before the 54th MONEYVAL Plenary and the call upon Montenegro by MONEYVAL at the 55th Plenary to address the most significant deficiencies by the 56th Plenary meeting at the very latest. This raised significant concern and the Plenary urged Montenegro to

⁶ At the time of the fourth compliance report, the amendments to the Criminal Code, the Law on International Restrictive Measures and the Law on Misdemeanours had been adopted by the Government but had not yet been adopted by Parliament. The Law on the Prevention of Money Laundering and Terrorist Financing had still been in draft form.

- proceed with the adoption of the new LIRM by 31 July 2018 at the latest before Parliament's summer recess. Failing the adoption of the LIRM, it was proposed that the Plenary would place Montenegro under Step 3 of CEPs, which would involve the publication of a statement on 1 August 2018.
12. Following the 56th Plenary meeting, the Montenegrin authorities informed the MONEYVAL Secretariat that the Parliament of Montenegro adopted the LIRM on 27 July 2018. As a result, it was decided to maintain Montenegro under Step 2 of the CEPs. The decision was communicated by the MONEYVAL Secretariat to all delegations on 31 July 2018.
 13. The seventh compliance report was discussed at MONEYVAL's 57th Plenary in December 2018. It was noted that upon the coming into force of the LIRM, Montenegro broadly addressed the deficiencies under SR.III, being the last remaining serious deficiencies examined under the CEPs. In light of this development, the Plenary decided to remove Montenegro from the CEPs and place the country in regular follow-up. The Plenary invited Montenegro to report back at the 58th Plenary (15-19 July 2019) and urged the country to exit the process at that occasion.
 14. Montenegro submitted its first regular follow-up report at the 58th Plenary meeting in July 2019. The Secretariat concluded that it could not assess at that stage whether Montenegro fulfilled the criteria for removal from the 4th round follow-up process (as set out in Rule 13, paragraph 4 of the 4th Round rules of procedure), given that the country's AML/CFT system was undergoing changes which should be awaited before taking a decision. Therefore, the Plenary invited Montenegro to report back on the ongoing legislative developments at the 59th Plenary (3-6 December 2019).
 15. Montenegro submitted its second follow-up report on 27 September 2019 and requested removal from the regular follow-up process. In accordance with paragraph 4 of Rule 13 of the Fourth Round Rules of Procedure, in order to be removed from the regular follow-up process, Montenegro should have an effective AML/CFT system in force, under which the State or territory has implemented the core and key recommendations at a level of or at a level essentially equivalent to compliant or largely compliant. The Plenary may retain some limited flexibility with regard to key recommendations if substantial progress has also been made on the overall set of recommendations that have been rated PC.
 16. The 59th MONEYVAL Plenary decided that it could not yet form a view on the situation in Montenegro. Given that the adoption of amendments to the AML/CFT Law were imminent, it exceptionally decided to give Montenegro additional time to report on the adoption of the AML/CFT Law and the new FIU's application for admission to the Egmont Group. Therefore, it invited Montenegro to send an update on the matter to the MONEYVAL Secretariat by 15 February 2020. Provided that the Secretariat would conclude in light of new information that Recommendation 26 is maintained at a level equivalent to "largely compliant", an updated Secretariat analysis would be circulated within MONEYVAL's "silent procedure" (Rule 6, paragraph 6 of MONEYVAL's 5th round Rules of Procedure, to be applied *mutatis mutandis* to the current 4th round follow-up report) to propose the removal of Montenegro from the 4th round regular follow-up process.
 17. The present analysis has been drafted by the Secretariat to assess the progress made for all key and core recommendations with outstanding deficiencies or new legal framework (Recommendation 1, 3, 5, 13, 23, 26, 40 and SR. I, II, III, IV, V). The Secretariat has in this context also analysed whether the amendments to the LPMLTF altered any of the progress hitherto achieved by Montenegro to Recommendations which were positively assessed in the previous analyses.

18. On a general note concerning all applications for removal from regular follow-up: the procedure is a paper desk-based review, and thus by nature less detailed and thorough than a MER. Effectiveness aspects can be taken into account only through consideration of data and information provided by the authorities. It is also important to note that the conclusions in this analysis do not prejudice the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in all cases, as comprehensive as it would have been during a mutual evaluation.

Overview of Montenegro's Progress since September 2019

Legislative developments

19. The most significant legal measures implemented by Montenegro since September 2019 include:
- The amended LPMLFT was adopted by the Montenegrin Parliament in 17 December 2019. The amendments to the Law refer the competencies, powers, affairs and organisation of the FIU, including the Protection of data and information kept by it.
 - The Montenegrin FIU applied for Egmont Membership in December 2019. This application process is currently under step 4 (Preparation for the final Onsite Visit) and it is supported by the FIU Albania and the FIU Azerbaijan.

Main conclusions and recommendations to the Plenary on progress made since the 4th round MER

Recommendation 1 (Money Laundering Offence)

Deficiency 1: *Not all types of property are covered by the ML offence / Recommended action: A definition of property applicable to the ML offence should be introduced in the CC.*

20. This deficiency has been rectified (Criminal Code (CC), Article 268 (7)). See [MONEYVAL\(2017\)16 ANALYSIS](#) par.8-10.

Deficiency 2: *The concealment or disguise of rights with respect to property is not covered / Recommended action: The acts of concealment and misrepresentation within the ML offence should be extended to the "rights with respect to property".*

21. This deficiency has been rectified (Criminal Code (CC), Article 268 (7)). See [MONEYVAL\(2017\)16 ANALYSIS](#) par.8-10.

Recommended action: "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.

22. This is addressed through the amendments of Art. 268(2) CC. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.11.

Recommended action: The definitions of money laundering in the different pieces of legislation should be aligned.

23. This is addressed through the amendments of Art. 268(2) CC. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.12.

24. Overall the ML offence is in line with the FATF requirements. Therefore, it can be concluded that all the technical deficiencies have been addressed.

Recommendation 3 (Confiscation and provisional measures)

Deficiency 1: *The absence of a definition of property in the CC may restrict the widest use of the confiscation regime.*

25. This deficiency has been rectified (Criminal Code (CC), Article 268). See [MONEYVAL\(2017\)16 ANALYSIS](#) par.9.

Deficiency 2: *The confiscation of proceeds is not adequately covered. Deficiency 3:* *No requirement to confiscate property that is derived indirectly from the proceeds, including income or profits / Recommended action:* *The authorities should amend the law to include the ability of confiscation of proceeds of crime obtained indirectly.*

26. The deficiencies related to confiscation of proceeds of crime obtained indirectly have been addressed through the adoption of the Law on Seizure and Confiscation in September 2015 (Articles 2 and 3). See [MONEYVAL\(2018\)1 ANALYSIS](#) par.15.

Deficiency 4: *No requirement to confiscate property of corresponding value to laundered property and instrumentalities, and requirement to confiscate property of corresponding value to proceeds is inadequate / Recommended action:* *The authorities should also introduce the following measures: (1) Confiscation of property of corresponding value to proceeds based on a confiscation order (rather than an order of payment on the perpetrator); and (2) Confiscation of property of corresponding value to laundered property and instrumentalities.*

27. The deficiency has been addressed by the Law on Seizure and Confiscation (Articles 2(4) and 36). See [MONEYVAL\(2018\)1 ANALYSIS](#) par.16.

Deficiency 5: *No power to prevent or void actions which may prejudice the authorities' ability to recover property subject to confiscation / Recommended action:* *The authorities should also introduce the following measures: power to prevent or void actions, whether contractual or otherwise, where the persons involved know 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.*

28. The Law on Seizure and Confiscation, Article 19, seems to provide powers to prevent or void actions which may prejudice the authorities' ability to recover property subject to confiscation.

29. Overall, the deficiencies identified under R.3 have been mostly addressed.

Recommendation 5 (Customer Due Diligence)

Recommended action: *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); and (3) Article 29 of the LPMLTF*

30. The recommended action has been addressed (LPMLTF Art.30(2)). See [MONEYVAL\(2018\)1 ANALYSIS](#) par.30.

Recommended action: *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.

31. The recommended action seems to be only partially covered by the requirements of Article 7b (2). See [MONEYVAL\(2018\)1 ANALYSIS](#) par.40.
32. Taking into account that all deficiencies and recommended actions under R.5 have been broadly rectified through the adoption of the new LPMLTF (see [MONEYVAL\(2018\)1 ANALYSIS](#) par.19-41), R.5 has been brought to a level equal to largely compliant (LC).

Recommendation 13 (Suspicious Transaction Reporting) and SR IV (Suspicious Transaction Reporting related to Terrorism)

Deficiency 1: *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.*

33. This deficiency has been rectified (LPMLTF Art.5). See [MONEYVAL\(2018\)1 ANALYSIS](#) par.19.

Deficiency 2: *The reporting requirement only refers to “transactions” rather than funds / Recommended action: Amend Article 33 LPMLTF to refer to “funds” rather than transactions.*

34. This deficiency has been rectified (LPMLTF Art.5(12)). See [MONEYVAL\(2018\)1 ANALYSIS](#) par.43.

Deficiency 3: *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” / Recommended action: Amend current Article 33 LPMLTF to refer to “criminal activity” rather than only to “suspicions for money laundering or terrorist financing” [R.13 only.]*

Deficiency 4: *FT 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 / Recommended action: Amend FT 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.*

35. The deficiencies have been rectified (LPMLTF, Article 41(3)). See [MONEYVAL\(2018\)1 ANALYSIS](#) par.44.
36. The deficiencies identified under R.13 have been addressed.

Recommendation 23 (Regulation and Supervision of Financial Institutions)

Deficiency (1): *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)*

Deficiency (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)*

37. Montenegro has rectified these deficiencies (LPMLTF Art.5). [MONEYVAL\(2018\)1 ANALYSIS](#) par.46.

Deficiency (2): *The SEC, under the Securities Law and the Law on Voluntary Pension Funds, and the APLMTF, 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)*

Deficiency (8): *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*

38. These deficiencies are mostly rectified. Nevertheless, the amendments to the Law on Investment Funds are limited to some criminal activities. Moreover, there is no reference to associates of criminals. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.47-51.

Deficiency (4): *The Central Bank does not supervise microcredit financial institutions directly for AML/CFT purposes; (23.1)*

Deficiency (6): *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)*

39. The Montenegrin authorities have provided statistics on the inspections by the Central Bank and the Agency for Telecommunication and Postal Services.

40. With respect to microcredit financial institutions, the Central Bank carried out 3 on-site prudential inspections in 2015, 1 in 2016 and 1 in 2017. All inspections included AML/CFT issues. No inspections were conducted in 2018 and 2019.

41. As for the postal operators the Agency for Telecommunication and Postal Services carried out in 16 specific AML/CFT inspections in 2015, 10 in 2016, 10 in 2017 – 10 and 32 in 2018.

42. The Secretariat is therefore satisfied that both the Central Bank and the Agency for Telecommunications and Postal Services have started conducted on-site inspections, although, given that this is a desk-based review, the quality of these inspections cannot be assessed.

Deficiency 5: *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)*

43. This deficiency is rectified. The statistics provided (pages 458-478 of the Annex to this report) clearly show that the ISA carried out the AML/CFT on-site inspections.

Deficiency (7): *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 focused on AML/CFT matters; (23.1)*

44. Statistics on AML/CFT infringements show that the situation has not changed. Most of the sanctions were imposed on DNFBPs. Nevertheless, this is a desk-based review and the Secretariat is not in a position to assess the quality of AML/CFT inspections.

45. Progress has been made to rectify most of the deficiencies under R. 23. Minor deficiencies remain. R.23 has been brought to a level equivalent to LC. Montenegro is urged to address the outstanding deficiencies outlined in R.23 before the 5th round mutual evaluation.

Recommendation 26 (FIU)

46. In the 2015 MER, R.26 had originally been rated PC. In the meantime, in light of progress achieved by Montenegro since then, the Secretariat concluded that a sufficient number of deficiencies had been addressed to bring this recommendation to a level of LC.
47. In its 1st regular follow-up report, Montenegro noted that the APMLTF had ceased to exist, with its authority and powers being transferred to the Montenegro Police Administration (Decree on Organisation and Work of Public Administration, 31 December 2018) while awaiting new legislation to define the new organisational structure within this administration.
48. In light of the above changes, the APMLTF management was released from its duties on 17 February 2019. Nonetheless, the authorities noted that former APMLTF officers had continued to carry out their duties within the Police Administration without any interruption.
49. In addition, by letter of 13 May 2019, the Chair of the Egmont Group of Financial Intelligence Units informed the MONEYVAL Secretariat that, in light of these developments and the fact that Egmont Group membership is linked to a particular unit (and may not automatically move to another body in case of changes to the FIU system in a given jurisdiction), Montenegro was no longer a member of the Egmont Group.
50. On 17 December 2019, the Montenegrin Parliament adopted the amended LPMLTF (the Law), which defines the competencies, powers, affairs and organisation of the FIU, including the protection of data and information kept by it.
51. In detail, according to the Law (Art.55(2)), the new FIU is independent in exercising its powers when performing activities stipulated in the Law and independent in decision-making related to: (i) the reception, gathering, keeping, analysing and delivering of data, notifications, information and documentation; and (ii) sharing of strategic and operational analysis of suspicious transactions to the competent authorities and foreign FIUs (C.26.1).
52. The Law (Art.41(9)) stipulates that the manner of, and conditions for, providing REs with guidance regarding the manner of reporting, including the specification of reporting forms (Art.58(5)) and the procedures that should be followed when reporting, shall be defined by the Ministry (C.26.2).
53. With regard to the requirements set under C.26.3, the Law (Art.60(4)) stipulates that State authorities and public power-holders shall provide the requested data, information and documentation to the FIU without delay, and not later than eight days after the day of receiving the request, or enable, without compensation, direct electronic access to the requested data and information. In addition, the FIU has direct access to the electronic database of beneficial ownership of legal persons (Art.21.a.2(2)). Also, the FIU has electronic access to Customs authority data on cross-border transportation of cash, cheques, bearer securities and precious metals and precious stones with a value or amount of EUR 10,000 or more, that were not declared. Access must be immediate or not later than within 3 days from the day of transportation.
54. The Law (Art.35(3), Art.58 and Art.60(1)) stipulates that the FIU can obtain additional information from REs and state authorities or public powers-holders in order to properly undertake its functions, including the analysis of STRs (C.26.4).

55. As regards the dissemination of information, Art.66 of the Law empowers the FIU to disseminate in written form, on the basis of data, information and documentation to domestic authorities for investigation or action when there are grounds to suspect ML/FT (C.26.5).
56. In addition, the Law (Art.55 and Art.55.a, b and c) provides for the operational independence and autonomy of the new FIU. In detail, according to Art.55(1) the FIU is operationally independent in performing its affairs. Regarding the Budget of the FIU, funds are allocated to it by the budget of the administrative authority competent for police affairs. These funds are independently disposed of by the head of the FIU, in accordance with instructions given by the director of the administrative authority competent for police affairs, and the law regulating planning and execution of the budget and fiscal responsibility (Art.55.c).
57. The head of the FIU is appointed by the government, following public competition, on the proposal of the director of the administrative authority competent for police affairs. The candidate should meet the same requirements as for deputy director of the administrative authority competent for police affairs, in accordance with the law regulating its internal affairs. Before appointment, the Parliament of Montenegro must first provide an opinion on the candidate upon the proposal of the competent board (Art.55.a).
58. According to Art.55.b of the Law, the head of the FIU participates in the selection procedure of FIU employees, which is conducted in accordance with the regulations on civil servants and state employees. A candidate can be appointed as FIU employee upon proposal of the head of the FIU and decision issued by director of the administrative authority competent for police affairs. FIU employees can only be reassigned to other working positions or tasked to perform other duties in the administrative authority competent for police affairs, with the authorisation of the head of the FIU (C.26.6).
59. Regarding the protection of information kept by the FIU, Art.93.a of the Law stipulates that the FIU shall, in the aim of protection of data and information kept in accordance with the Law, provide technical conditions for the protection of those data and information. Also, access to such data and information is solely provided to FIU employees (C.26.7).
60. Furthermore, the Law (Art.56(7)) stipulates that, at least once a year, the FIU should publish a report that includes statistical data, trends and typologies in ML/FT, and especially data related to the number of STRs sent to the FIU (C.26.8).
61. Currently, the FIU of Montenegro has applied for membership of the Egmont Group. The application is currently under step 4 and it is sponsored by the FIUs of Albania and Azerbaijan (C.26.9).
62. With regard to the Egmont Group standards on exchange of information among FIUs, Art.70 of the LPMLTF provides the conditions under which the FIU of Montenegro responds to foreign FIU requests, including an exhaustive list of the grounds for refusal. In addition, the Montenegrin authorities have advised that the new FIU continues to employ the principles of the Egmont Group in its work (C.26.10).
63. Taking into account the recent legislative developments and the initiatives taken by the FIU to comply with the requirements of R.26, it can be concluded from this desk-based review that the level of compliance with R.26 remains LC. However, in light of the jurisdiction's forthcoming 5th round mutual evaluation, Montenegro is urged to successfully conclude its application for membership of

the Egmont Group and make all necessary changes to its legal framework in order to comply with the requirements of the 2012 FATF standards, particularly R.29.

Recommendation 40 (Other Forms of Cooperation) and SR.V (International Cooperation)

Deficiency 1: *Clear and effective gateways are not in place to facilitate and allow for exchange of information directly between counterparts [Central Bank, Agency for Electronic Communications and Postal Activities and APMLTF]*

Recommended actions: *The authorities should ensure that: (1) 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; (2) The Agency for Telecommunication and Postal Services can cooperate and exchange information with foreign counterparts on AML/CFT issues; and (3) 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.*

64. According to the Law on Financial Leasing, Factoring, Purchase of Claims, Micro-Crediting and Credit-Guarantee Operations, the Central Bank of Montenegro may conclude agreements with competent foreign authorities to provide information and to establish other forms of cooperation. As for the Agency for Telecommunication and Postal Services, the latter can cooperate with foreign regulatory authorities, but not MVTs supervisors. They consider that the exchange of information in the area of ML and FT can only be conveyed by the APMLTF.
65. With regard to the 3rd Recommended Action, it currently has no relevance since it was issued at a time where the APMLTF was the supervisory authority for financial leasing companies, REAs and DMPS. However, according to Art.94 of the amended LPMLTF the new FIU is not listed as a supervisory authority nor has such a capacity in practice.

Deficiency 2: *The Securities and Exchange Commission (“SEC”) cannot share information spontaneously under the Securities Law or the Law on Voluntary Pension Funds / Recommended action: The authorities should ensure that the SEC can share information spontaneously under Article 18a of the Securities Law.*

Deficiency 3: *The SEC does not have a general power to conduct an examination under the Securities Law on behalf of a foreign authority / Recommended action: The authorities should ensure that the SEC has a general power to conduct an examination under the Securities Law on behalf of a foreign authority.*

66. The amended provisions of the Law on Capital Market, Articles 44 and 45, contain provisions on the sharing of information spontaneously when there is a memorandum of understanding with third countries and the ESMA.
67. At the request of the competent regulatory authority of a Member State in relation to direct control, the Capital Market Authority, within its powers, shall: exercise the direct control; enable the regulatory authority which submitted the request to participate in or exercise direct control independently; or enable auditors and experts authorised by the regulatory authority of the Member State to exercise direct control. However, this provision relates only to EU Member State countries and not to third countries. Therefore, the recommended action has been addressed only partly.

Deficiency 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.*

68. This deficiency has been rectified. Controls and safeguards are in place across all competent supervisory authorities (Articles 8, 9 and 84 of the Central Bank).

Recommended action: *The Police should introduce a clear legal basis for conducting investigations on behalf of foreign counterparts.*

69. This recommended action is addressed (See [MONEYVAL\(2016\)3 ANALYSIS](#), paragraph 73).

Recommended action: *The APMLTF should consider amending Article 60 LPMLTF in a way that allows the APMLTF to exchange information on both: (i) data, information and documentation relating to money laundering; and (ii) data, information and documentation related to underlying predicate offences.*

70. This recommended action had been implemented. The amendments to the LPMLTF now provide that the FIU (Art.64(6)) can provide information also on the underlying predicate offences.

71. Overall, most of the deficiencies have been addressed, bringing the level of compliance with R.40 to LC. Montenegro is urged to address the outstanding deficiencies outlined in R.40 before the 5th round mutual evaluation.

Special Recommendation I (Implementation of UN instruments)

Deficiency 1: *Deficiencies remain in the implementation of certain provisions of the FT Convention;*

72. All main deficiencies related to SR.II have been addressed (see the analysis below).

Deficiency 2: *There are no laws and procedures for the application of S/RES/1267(1999) and S/RES/1373(2001).*

73. Some deficiencies related to SR.III remain (see the analysis of SR.III below).

74. Overall, Montenegro has made significant progress by addressing most of the deficiencies identified in the MER, which has brought the level of compliance with SR.I to a LC. However, Montenegro is urged to address the outstanding deficiencies outlined in the analysis of SR.II and SR.II before the 5th round mutual evaluation.

Special Recommendation II (Criminalisation of Terrorist Financing)

Deficiency 1: *The FT offence is limited in scope, as it does not cover all the acts listed in the Annex Conventions / Recommended action: 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.*

75. This deficiency has been addressed by the amended CC (Art.268 and 449). See [MONEYVAL\(2017\)16 ANALYSIS](#) par.9-10.

Deficiency 2: *The financing of the offences under the Annex Conventions, which are partially covered under Article 447 (terrorism), are subject to an additional purposive element / Recommended action: 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.*

76. This deficiency has been addressed through the amendments to Article 449 of the CC which entered into force in July 2017. See [MONEYVAL\(2017\)16 ANALYSIS](#), par.10.

Deficiency 3: *The scope of the definition of “individual terrorist” and “terrorist organization” is not in line with the FATF standards / Recommended action: 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.*

77. Although, the new text of Article 449 of the CC still refers to organisations, their members, or individuals, it now includes the contribution to such offences with the knowledge of the intention of the group to commit a terrorist act. The authorities have advised that the LPMLFT definition of the terrorist and terrorists organisation is referred to in the criminal procedure. However, since there has not been any case law so far, the authorities were unable to provide any practical examples of this procedure.

Deficiency 4: *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 / Recommended action: 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.*

78. With the amendments to the Law on Criminal Liability of Legal Entities (adopted in June 2016), cases are now included when the legal entity does not commit the FT offence with the intention to gain any benefit for legal entity. However, the grounds in the law that, in the absence of intention for gains for the legal entity, legal liability is evoked when the offence is committed in violation of the ‘business policy or concrete directives adopted by the entity,’ appears rather unusual and potentially restrictive. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.69-70.

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

79. This recommended action has not been implemented but its validity remains disputed by authorities. The relevant Article 23(2) of the CC has remained unchanged since the 4th round MER. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.71-72.

80. Although minor gaps remain, it can be concluded that all the main deficiencies have been addressed. On this basis Montenegro is rated LC with SR.II. Montenegro is urged to address the outstanding deficiencies outlined in SR.II before the 5th round mutual evaluation.

Special Recommendation III (Freezing of Terrorist Assets)

Deficiency 1: *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;*

81. This deficiency has been rectified. To address the shortcomings identified in the 4th round MER concerning the application of targeted financial sanctions, the authorities have previously reported that the “Law on International Restrictive Measures” (“Law on IRM”) came into force in 2015. See [MONEYVAL\(2017\)53 ANALYSIS](#) par.10.

Deficiency 2: *No mechanism is in place to draw up a domestic list of terrorists / Recommended Action: A mechanism should be established to draw up domestic lists.*

82. The law on international restrictive measures (LIRM) rectifies the deficiency and addresses the relevant recommended action. According to Art. 9 of the Law, the National List shall be compiled based on information of the Ministry of Foreign Affairs (MFA), the National Security Agency of Montenegro, state administration authority responsible for police-related issues, the administration authority responsible for prevention of ML/FT, the state prosecutor's office, and reasonable proposals by another state. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.74-75.

Deficiency 3: *No procedures are established to examine and give effect to actions initiated under freezing mechanisms of other jurisdictions / Recommended Action: Procedures should be put in place for the examination and giving effect to freezing mechanisms of other jurisdictions.*

83. The LIRM rectifies the deficiency and addresses the relevant recommended action. In particular, the National List is compiled among others based on reasonable proposals submitted to the MFA by other states via diplomatic channels (Art.9 of the LIRM). Procedures to examine and give effect to such requests are in place. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.76-80.

Deficiency 4: *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) / Recommended Action: 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.;*

84. The deficiency remains outstanding. There are no publicly-known procedures for de-listing and unfreezing of funds. However, the LIRM now provides that during the application of restrictive measures, the designated person shall have the right to file a request for approval of the use of a portion of the assets and/or other property. See [MONEYVAL\(2018\)1 ANALYSIS](#) par.81-82.

Deficiency 5: *No provisions ensuring the protection of the rights of bona fide third parties; Recommended Action: Ensure that the rights of bona fide third parties are protected within the new regime;*

85. The LIRM rectifies the deficiency and addresses the relevant recommended action. In particular, Art.17a provides for assets and/or other property the disposition of which has been restricted in compliance with this law may become subject to an enforcement of a court decision the purpose of which is the protection of conscientious third parties.

Deficiency 6: *The guidance provided to financial institutions does not appropriately reflect the requirements of the UNSCRs. Recommended Action: 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.*

86. This deficiency has been partly rectified. In particular, the CBM established Guidelines on the implementation of international restrictive measures by banks and financial institutions (FIs), including supervision of the implementation of these measures (30 November 2017). The Guidelines

are available at the CBM's website. However, the Guidelines do not reflect the provisions of the amended LIRM (July 2018). As regards the corresponding recommended action, it is related to effectiveness aspects which are difficult to assess in the present desk-based review.

Overall, the Secretariat considers that all deficiencies but two have been broadly addressed. The outstanding deficiencies relate to the requirement for publicly known procedures for de-listing and unfreezing of funds and targeted financial sanctions related guidance to FIs. On this basis Montenegro is rated LC with SR.III. Montenegro is urged to address the outstanding deficiencies outlined in SR.III before the 5th round mutual evaluation.

Conclusion

87. Since the adoption of the fourth round MER in April 2015, Montenegro has made significant progress in addressing many of the identified deficiencies under R.1, 3, 5, 13/SR.IV, 23, 40/SR.V, SR.I, SR.II and SR.III, which has brought the level of compliance with these recommendations to “largely compliant”. This has already been acknowledged by the Committee at previous plenary meetings.
88. With the adoption of the Law and the application of the FIU of Montenegro for Egmont Group membership, the level of compliance with R.26 remains equivalent to LC, based on a desk-based review. In light of the jurisdiction's 5th forthcoming round mutual evaluation, Montenegro is urged to successfully conclude its application for membership of the Egmont Group and take all necessary steps to bring its legal framework in line with the requirements of the 2012 FATF standards, particularly R.29.
89. The Secretariat proposes that the MONEYVAL Plenary invite the authorities to pay closer attention to the outstanding minor gaps identified under key and core Recommendations. Furthermore, in view of the country's forthcoming fifth round mutual evaluation, the authorities should be encouraged to continue their endeavours to enhance preventive measures to combat ML/FT, and intensify their planned actions in terms of guidance, training and supervision. This will put Montenegro in a stronger position to demonstrate effectiveness in the implementation of the new Law.
90. Overall, it is the view of the MONEYVAL Secretariat that Montenegro has taken sufficient steps to remedy deficiencies under core and key Recommendations rated PC. Consequently, the Secretariat considers that Montenegro fulfils the conditions under Rule 13, paragraph 4 for removal from the follow-up process.

The MONEYVAL Secretariat

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