SELECT COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES (PC-R-EV)

MONEYVAL(2018)1

# Montenegro

## 6th Compliance Report

3 July 2018

Montenegro is a member of MONEYVAL. This Report from Montenegro under step 2 of the Compliance Enhancing Procedures was adopted at MONEYVAL's 56th Plenary Meeting (Strasbourg, 3-7 July 2018). For further information, please refer to MONEYVAL website: http://www.coe.int/moneyval .

## LIST OF ACRONYMS

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| 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 |

# Table of Contents

**6th Compliance Report submitted by Montenegro**

*Note by the Secretariat*

## Introduction

1. Following adoption of its 4th round mutual evaluation report ("MER") at MONEYVAL's 47th Plenary in April 2015, Montenegro was placed under the enhanced follow-up procedure pursuant to Rule 13 of the revised Rules of Procedure, and Step 1 of the Compliance Enhancing Procedures ("CEPs") was applied. Since then, five compliance reports have been adopted.

2. The first compliance report was adopted at MONEYVAL's 50th plenary in April 2016. This included an analysis by the Secretariat of the measures taken by Montenegro to address the factors/deficiencies in relation to the core and key FATF Recommendations rated PC or NC in its 4th round MER. Montenegro was requested to provide a further compliance report to the 51st Plenary in September 2016 to demonstrate that timely action was being taken to address the remaining deficiencies in order to avoid the application of Step 2 of CEPs.

3. The second compliance report was adopted at MONEYVAL's 51st plenary in September 2016. This included an analysis by the Secretariat of progress since the adoption of the first compliance report. It was agreed that positive action was being taken to change legislation and implement procedures and, as a result, it was deemed premature to apply Step 2 of CEPs. Accordingly, the Plenary agreed that progress would be considered again in December 2016 at the 52nd Plenary, by which time it was 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 amendments[1] would have been provided.

4. 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 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, in part due to recent elections. However, it was important for the Plenary to take a consistent approach to the application of CEPs. In light of the foregoing, the Plenary decided to apply Step 2 of CEPs.

5. As a consequence of the application of Step 2 of CEPs, a high-level mission to Montenegro was arranged to meet relevant ministers and senior officials on 3-4 May 2017. The MONEYVAL delegation was composed of Mr Daniel Thelesklaf (Chair of MONEYVAL), Mr Jan Kleijssen (Director of Information Society and Action against Crime) and Mr Matthias Kloth (Executive Secretary to MONEYVAL). The delegation held meetings with the Minister of Foreign Affairs as

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

well as senior officials (General Directors) from the Ministry of Justice and the Ministry of Finance. The delegation also met with representatives from the Montenegrin Parliament.

6. Subsequently, the fourth compliance report was discussed and adopted at MONEYVAL's 53rd Plenary in June 2017. The Plenary heard an update 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, the Law on International Restrictive Measures, the Law on Misdemeanours and the new Law on the Prevention of Money Laundering and Terrorist Financing. Despite the fact that most of the legislation was yet to enter into force[2], the Plenary welcomed the commitment by the Montenegrin government to finalise the legislative process before the Parliament's summer recess. In light of these developments, no further additional steps under the CEPs were deemed necessary by the Plenary. However, Montenegro was urged to bring the various legislative instruments into force before the 54th Plenary in September 2017and invited to submit an updated compliance report. 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. It was also 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.

7. Montenegro submitted its sixth compliance report on 30 April 2018. It should be noted at the outset that since the previous report, Montenegro adopted amendments to the Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF) on 26 June 2018. The Law on International Restrictive Measures (LIRM) was approved by Government on 21 June 2018. On 25 June 2018, the MONEYVAL Secretariat received a letter from the Ministry of Foreign Affairs indicating that an urgent procedure had been requested for the adoption of the LIRM in Parliament and the expectation was that the law would be adopted before Parliament's summer recess. Jointly the two laws address the vast majority of the outstanding deficiencies identified by the Secretariat in the stock-taking exercise.

8. The purpose of this paper is to analyse the action that has been taken by the Montenegrin authorities to address the remaining deficiencies identified in the 4th round MER.

## Progress made by Montenegro since the adoption of the fifth compliance report

### 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.

9. As noted in the previous compliance report the new definition of property introduced in the Criminal Code (CC), Article 268 (7), addresses one of the main deficiencies identified in the 4th round MER and brings the definition of property broadly in line with the requirements under R.1.

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".

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

10. Given that the definition of property extends to property rights of any kind, the second deficiency identified under R.1 related to lack of reference to concealment or disguise of rights with respect to property has been addressed.

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.

11. This is addressed through the amendments of Art. 268(2) CC: '[The punishment under para. 1 above shall apply to the principal of the offence under para. 1 above who was the principal or the accomplice in the commission of the criminal offence by which the money or property referred to in para. 1 above was acquired or] who helped the principal to avoid his/her liability for the committed offence, or with the same aim undertake actions to conceal the origin of money or property referred to in para. 1.'

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

12. The recommended action has been addressed through amendments to Article 268 of the CC.

13. 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.

14. As mentioned in the previous compliance reports, the deficiency related to the mandatory confiscation of laundered money and property has been addressed through the introduction of a definition of property (see R.1).

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.

15. 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). Furthermore, the definition of 'material benefits acquired through criminal offence' in Article 142 (12) of the Criminal Code, which are subject to mandatory confiscation under Article 112, 113(1) CC, has been broadened to also include indirect benefit (Art. 8 of the Law amending CC of July 2017).

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.

16. Under the Law on Seizure and Confiscation (Articles 2(4) and 36), confiscation of the material benefit of equivalent value to material benefit of criminal activity can be obtained through a motion for confiscation rather than through a payment order on the perpetrator. The confiscation of property of corresponding value to instrumentalities is now possible through Article 2 (4) of the CC and Article 3(1) of the Law on Seizure and Confiscation.

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.

17. 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.

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

**Recommendation 5 (Customer Due Diligence)**

Deficiency 1: Not all activities and operations covered by the FATF's definition of financial institution would be subject to preventive measures under the LPMLTF if lawfully conducted in Montenegro / Recommended action: The scope of Article 4 of the LPMLTF should be extended to cover all activities or operations covered by the FATF's definition of financial institution.

19. The LPMLTF (Art. 5) contains a revised definition of financial institutions which covers all activities or operations included in the FATF's definition of a financial institution.

Deficiency 2: Reporting entities are not required to undertake full CDD measures when carrying out occasional transactions that are wire transfers / Recommended action: Reporting entities should be required to undertake full CDD measures when carrying out occasional transactions that are wire transfers (in addition to those set out in Article 12a of the LPMLTF).

20. The LPMLTF, Articles 9(1) para. 3 and 9a, addresses the deficiency related to undertaking full CDD when carrying out occasional transactions that are wire transfers.

Deficiency 3: 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 / Recommended actions: (1) Article 16 of the LPMLTF should include a clear requirement to verify that a legal representative of a customer who is a legal person is authorised to act on behalf of the customer. Whilst this may be the effect of the requirement in Article 15(1) to establish and verify the identity of a Montenegrin company, the same cannot be said for a foreign company; (2) Article 17(2) of the LPMLTF should clearly require a reporting entity to verify that an "authorized person" is authorised to act in the case of an occasional transaction with a legal person (as well as in the course of a continuing business relationship). Whilst this may be the effect of the requirement in Article 15(1) to establish and verify the identity of a Montenegrin company, the same cannot be said for a foreign company; (3) Article 15 of the LPMLTF should explicitly provide for the collection of information on directors (in addition to the executive director) and include provisions regulating the power to bind the legal person.

21. As mentioned in the previous analysis, the LPMLTF, Articles 8 (2), 16 and 17, addresses the deficiencies related to the requirements to verify that a legal representative of a customer who is legal entity is authorised to act on behalf of the customer and to the requirements to verify that an "authorised person" is authorised to act in the case of an occasional transaction (continuing business relationship) with a legal person.

22. The LPMLTF appears to include the requirement to collect information on all directors (Article 16).

Deficiency 4: For customers that are legal persons, reporting entities are not always required to verify the identity of persons purporting to act on behalf of such customers / Recommended action: Article 17(3) of the LPMLTF should establish a clear requirement to obtain data on, and verify the identity of, an "authorized person" of a customer that is a legal person when carrying out an occasional transaction under Article 9(1) item 2.

23. The LPMLTF, Articles 8(2) and 16, provides that reporting entities are obliged to identify and verify the identity of the "authorised person" of a customer (including legal persons). Therefore, the relevant recommendation has been addressed.

Deficiency 5: For customers that are limited partnerships, legal entities (but not persons) or legal arrangements, reporting entities are not required to verify that any person purporting to act is so authorised, to verify the legal status, to obtain information concerning legal form or to collect information on provisions regulating the power to bind.

24. As noted in the analysis of the previous follow up reports (MONEYVAL(2016)3_ANALYSIS, paragraph 80), the amended LPMLTF, Articles 8 (2) and 18 (1), addresses the deficiency related to requirement to verify the authority of the person purporting to act on behalf of a limited partnership or legal arrangement.

Recommended actions: In the case of a relationship or transaction in respect of a limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust), there should be (1) a requirement in the LPMLTF to verify the authority of the person purporting to act on its behalf. (2) a requirement in the LPMLTF to verify the legal status of the limited partnership or legal arrangement; (3) a requirement in the LPMLTF to collect information on the provisions regulating the power to bind the limited partnership or legal arrangement.

25. The LPMLTF addresses the deficiency related to verification of the legal status of the limited partnership or legal arrangement, taking into account the definition of business organisations under Article 2 and 3 of the Law on Business Organisations.

26. Article 16 (1) of the LMPLTF addresses the requirement to verify the identity of the representative and all directors of a domestic or foreign legal person or business organisation and to collect information on the provisions regulating the power to bind the legal person, foreign trust or other person i.e. entity equal to them referred to in Article 18 ( and reference to Article 79 (2)).

Deficiency 6: 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 part Recommended actions: (1) Article 20 of the LPMLTF should clearly require a reporting entity to understand the ownership structure of a business relationship or occasional transaction in respect of a legal entity that is not a legal person, limited partnership or legal arrangement and explain what information on beneficial ownership is to be collected; (2) Consequential changes should also be made to Article 19 of the LPMLTF, which defines who is to be understood to be the "beneficial owner"; (3) Article 10 of the LPMLTF should require a reporting entity to identify the beneficial owner of a legal entity that is not a legal person, limited partnership (which is not a legal person under the Law on Business Organizations) or legal arrangement (such as a trust), and take reasonable steps to obtain sufficient identification data to verify identity.

27. The LPMLTF provides that reporting entities shall identify the beneficial owner of customers and verify their identity including the measures necessary to determine ownership and control structure of the customer in cases defined by the Law. The definition of customer includes reference to legal persons, business organizations, foreign trusts and other persons or entities equal to it. Therefore, it seems to address the deficiency related to the lack of requirement to take reasonable measures to understand the ownership and control structure for limited partnerships or legal arrangements, as the new definition of customer is broad enough to cover these entities.

Deficiency 7: Simplified measures can be applied in cases where risks are not lower / Recommended action: Simplified identification measures applied under Article 29(1) of the LPMLTF should be limited to circumstances where a reporting entity has assessed that there are low risks, which may not be the case for all the customers types listed in that article; and

Deficiency 8: Simplified CDD measures may be applied to a customer notwithstanding that there may be specific higher risk / Recommended action: Concessions in Articles 13 and 29 of the LPMLTF should not be applied in scenarios where higher risks apply.

28. As noted in the previous analysis the deficiencies were addressed through amendments to the LPMLTF adopted in August 2014 (See MONEYVAL(2016)3_ANALYSIS, paragraph 82). Simplified measures are covered in Article 7a, Article 29, Article 37 and Article 38 of the new LPMLTF. Regarding the concessions (exemptions) of Article 13 stipulates that exemptions only applied to situations of lower M/FT risk has been established.

Deficiency 9: Where simplified measures can be applied, customers are not subject to the full range of CDD measures / Recommended action: The scope of CDD exemptions set out in Article 13 of the LPMLTF and scope of simplified identification measures under Article 29 of the LPMLTF should be reviewed and revised such that simplified measures are applied across the full range of CDD measures.

29. Under the LPMLTF customers are subject to CDD measures also in the cases when simplified measures are applied. (Article 38).

Deficiency10: 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 on which standards are to be considered / 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. Paragraph 29 of the previous law has been erased. A new paragraph 30 (2) has been included in the new LPMLTF which stipulates the APMLTF shall, based on the data from international organisations, publish on its site the list of countries that apply international standards in the area of AML/CFT. The list of countries where international standards are applied at the same or higher level than the EU will be published. However, the methodology does not appear to have been clarified and published. Therefore, the recommended action has only been partly addressed.

Deficiency 11: The application of simplified CDD measures is not limited to countries that are in compliance with and which have effectively implemented the FATF Recommendations / Recommended action: Concessions in Articles 13 and 29(1) item 3 of the LPMLTF should not be applied to any customer that is resident in a country that is not in compliance with and has not effectively implemented the FATF Recommendations.

31. The LMPLTF, Article 37 (4), provides that reporting entities may not apply simplified measures to a customer, business relationships and transactions from a country that does not apply or insufficiently applies international standards in the area of prevention of money laundering and terrorist financing, based on data of the relevant international organisations.

Deficiency 12: Where a reporting entity is unable to apply required CDD measures, it does not commit an offence where it subsequently establishes a relationship / Recommended action: It should be an offence under Article 12(2) of the LPMLTF to establish a relationship in a case where evidence of identity cannot be obtained (in the same way that an offence is committed where evidence of identity cannot be obtained for an occasional transaction).

32. The deficiency was addressed through amendments to the LPMLTF adopted in August 2014. See MONEYVAL(2016)3_ANALYSIS, paragraph 85. It is addressed in Article 10(4) and Article 99(1) item 10, (2) and (3) of the new LPMLTF.

Deficiency 13: 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 / Recommended actions: (1) Where a reporting entity has already established a business relationship but delayed verification of the identity of a beneficiary (under an insurance contract) under Article 11(3) of the LPMLTF, there should be a requirement to subsequently terminate that relationship when it is not possible to apply CDD measures; and (2) There should be a requirement to terminate an existing business relationship where a reporting entity has doubts about the veracity or adequacy of previously obtained customer identification information, or during the remediation of CDD for existing customers, or where the reporting entity is unable to apply CDD measures.

33. The deficiency was addressed through amendments to the LPMLTF adopted in August 2014. See MONEYVAL(2016)3_ANALYSIS, paragraph 86. It is addressed in Article 10(4) and Article 99(1) item 10, (2) and (3) of the new LPMLTF.

Recommended action: Article 31 of the LPMLTF should be amended slightly to clarify that the prohibition on the use of fictitious names applies to all reporting entities (and not just banks). In particular, the authorities may consider including the word "including" in the bracketed text.

34. Article 39 under the new LPMLTF clarifies that the prohibition on the use of fictious names applies to all reporting entities.

Recommended action: In the case of a business relationship that has been established making use of exemptions or simplified identification measures, reporting entities should be required to undertake full CDD measures where there are subsequently reasonable grounds for suspicion of money laundering or terrorist financing.

35. The recommended action on the requirement to undertake full CDD measures in the case of a business relationship that has been established (Article 9(1) item 5 of the new LPMLTF) by making use of exemptions or simplified identification measures where there are subsequently reasonable grounds for ML/TF suspicions is addressed (See MONEYVAL(2016)3_ANALYSIS, paragraph 94).

Recommended action: CDD measures required under Article 10, 14 and 15 of the LPMLTF should include a clear reference back to Article 5, which defines customer identification.

36. The deficiencies related to CDD measures under the LMPLTF have been addressed through amendments to the LPMLTF which has been noted in the analysis of previous compliance reports (See MONEYVAL(2016)3_ANALYSIS, paragraph 95).

Recommended action: Article 10 of the LPMLTF addresses the timing of requirements to verify the identity of the legal representative and "authorized person" of a customer that is a legal person (as it currently refers only to obtaining data).

37. The recommended action on the timing of requirements to verify the identity of the legal representative and "authorized person" of a customer that is a legal person is addressed in article 10(1) of the new LPMLTF.

Recommended action: An express provision should be added to Article 22 of the LPMLTF to scrutinise transactions to ensure that they are consistent with the customer's risk profile.

38. Article 27(2)(2) of the new LPMLTF will provide requirement to scrutinise transactions to ensure that they are consistent with the customer's risk profile.

Recommended action: Article 25(3) of the LPMLTF should require a reporting entity to perform enhanced CDD for higher rather than high risk categories of customer, business relationships or transactions.

39. The deficiency related to performing enhanced CDD for higher rather than high risk categories of customer, business relationships or transactions is addressed under Articles 7a(2) and 30(3) and (4) of the LPMLTF.

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.

40. The recommended action on the requirement to adopt risk management procedures concerning the conditions in which verification may be delayed in the circumstances where a reporting entity permitted to utilise a business relationship prior to verification seems to be only partially covered by the requirements of Article 7b (2) which introduce general risk models and management procedures when establishing and verifying the identity of the customer, monitoring of business relationships and the control of the transactions.

41. The vast majority of R.5 deficiencies have been rectified through the adoption of the new LPMLTF.

### Recommendation 13 (Suspicious Transaction Reporting) and SR IV (Suspicious Transaction Reporting elated 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

42. For the analysis on the definition of financial institutions please refer to analysis under R.5.

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.

43. Amendments incorporated in the new LPMLTF provide a definition of STR which extends to material gain obtained through a criminal act, therefore the deficiency under R.13 has been addressed.

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: TF reporting obligation does not cover funds related or linked to terrorist organisations and those who finance terrorism; and funds used by those who finance terrorism / Recommended action: Amend TF reporting obligation to refer to funds related or linked to terrorist organisations and those who finance terrorism; and funds used by those who finance terrorism as required by 13.2 and IV.1.

44. The new LPMLTF, Article 41(3), also addresses the deficiencies related to FT reporting obligation.

45. 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. / Deficiency 4: 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 licensed or registered or subject to effective monitoring systems.

Recommended action: The scope of Article 4 of the LPMLTF should be extended to cover all activities or operations covered by the FATF's definition of financial institution. / Recommended action: Legislation

should be amended or introduced to allow the competent supervisory authorities identified in Article 86 of the LPMLTF to exercise statutory functions where this is currently not possible (including those responsible for money or value transfer).

46. The definition of financial institutions under Article 5 of the LPMLTF covers all activities and operations described by the FATF definition.

Deficiency 2: 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 for which they have supervisory responsibility. / Deficiency 3: 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, or sit on its management board, this is not so for the SEC.

Recommended action: A clear legal basis should be introduced to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a senior management function (including sitting on the board) in an investment management company (or branch of an overseas company), pension fund management company (or branch of an overseas company), or stock-broker (or branch of an overseas company) / Recommended action: Registration of a financial institution covered by Article 4 items 14 and 15 of the LPMLTF is considered to have taken place through the submission of information on the compliance officer under Article 38 of the LPMLTF. While the evaluation team accepts this indirectly achieves the requirement under criterion 23.7, it is recommended that a direct requirement is included in the LPMLTF for the reporting entity to register with the APMLTF.

47. The recommended action on the supervision (licencing, registration, monitoring) of financial institutions has been largely addressed. For those legal entities licenced or approved by the Central Bank to execute transfers, it appears that supervision is carried out on the basis of the Law on payment services that came into force on 9 January 2015. However, it still appears that not all persons that are recognised in legislation as being able to provide a money or currency exchange service must be licensed or registered. Certainly, it is the case that money exchange business involving cash-to-cash operations, where the funds are not held on a payment account, are excluded from the scope of the Payments Law.

48. The amendments to the Law on Investment Funds which were adopted on 28 February 2018 (in force since 8 March 2018) provide that a qualifying holder in the management company may not be a person involved in the acts described in the law. However, the list of criminal acts described in the respective article is limited only to some criminal activities. This does not seem to cover the requirement of R.23. Moreover, there is no reference to associates of criminals, beneficial owners of the persons owing or controlling significant interest are also note covered. Article 92c of the same law provides that in deciding upon the request for obtaining the approval for acquisition, i.e. increase of a qualifying holding, the Capital Market Authority shall consider the eligibility and financial condition of the applicant on the basis of criteria which includes inter alia: business reputation, possibilities to, in connection with the acquisition of a qualifying holding in the management company, launder or intention to launder money or finance the terrorism or such acquisition may affect the increase in the risk of money laundering or terrorist financing.

49. A person may not be appointed as the Board of Directors member or the Executive Director of the investment fund management company if inter alia: a person was validly convicted to an unconditional prison sentence of more than six months; a person against whom a criminal proceeding is pending; a person against which liquidation or bankruptcy proceeding has been initiated or conducted;

50. The mentioned provisions are applicable with regard to investment fund management companies and pension fund management companies (Law on voluntary pension funds, Article 19a and 19d) or stock brokers (Law on Capital Market, Articles 210, 158-167 and 416).

51. The recommended actions aimed at preventing criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in an investment management company, pension fund management companies or stock brokers have been mostly addressed.

52. Progress has been made to rectify most of the deficiencies under R. 23. Minor deficiencies remain outstanding.

**Recommendation 26 (FIU)**

Deficiency 1: The APMLTF does not publicly release reports on trends and typologies / Recommended action: Consider conducting strategic analysis and publicly release reports on trends and typologies as required under c.26.8.

53. The APMLTF, under Article 56 of the new Law, is required to publish annual reports which also contain typologies, trends and statistical data. The APMLTF is in the process of establishing a procedure to conduct strategic analysis as part of a project under the Council of Europe's Horizontal Facility for the Western Balkans and Turkey.

54. Overall, it can be concluded that all the technical deficiencies have been addressed.

**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.

55. 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.

56. The LPMLTF, Articles 69 and 70, provides that APMLTF can exchange information only through foreign financial intelligence units and it is not clear if this will enable the FIU of Montenegro to exchange information for supervisory purposes.

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.

57. 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.

58. 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 authorized 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 authorized manner.

59. 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.

60. As noted in the previous analysis the recommended action on the legal bases for police to conduct investigation on behalf of foreign counterparts has been 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.

61. The amendments to the LPMLTF now provide that the APMLTF can provide information also on underlying predicate offences, however this is not extended to requesting information from foreign authorities.

62. Most of the deficiencies have been addressed. Some remain outstanding.

### Special Recommendation I (Implementation of UN instruments)

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

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

65. The main deficiencies have been addressed.

### 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.

66. As noted in the previous analysis the CC has been amended to criminalise all the offences listed in the treaties from the Annex to the FT Convention, and to include these offences as terrorist acts for the purposes of the CC. The amendments to the CC also address the deficiency related to the financing of the offences under the Annex Conventions, which were partially covered under terrorism offence and were subject to an additional purposive element.

Deficiency 2: The financing of the offences under the Annex Conventions, which are partially covered under Art. 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.

67. 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, paragraph 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.

68. 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 informed that the LPMLFT definition of the terrorist and terrorists organisation is the one to be used 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.

69. 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 ground 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. Authorities have advised that terrorist financing activity would always be in violation of the business policies thus they would see no problem in practical application of the law.

70. In the 4th round MER it was recommended that 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.

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

71. 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. The authorities have advised that this issue is a matter of misunderstanding – according to their reading of the law a co-principal is punishable as the principal in the alternative cases where he is 1) taking part in the commission of a FT offence and 2) not taking part in the offence, but, following a prior arrangement, contributes significantly to the commission of the offence.

72. Although minor gaps remain, it can be concluded that all the main deficiencies have been addressed.

### 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. / Recommended Action: Measures ensuring the automatic

freezing of funds as required under S/RES/1267 and 1373 or under procedures initiated by third countries should be put in place.

73. Under the LIRM, based on a reasonable proposal by another state or upon a proposal by the National Security Council, pursuant to the provisions regulating the basis of the intelligence and security sector of Montenegro, the Government defines the National List of designated persons subject to restrictive measures.

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.

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.

74. According to Art. 9 of the LIRM, the National List shall be compiled based on: information of the Ministry of Foreign Affairs about physical and legal persons who have been designated through European Union acts as terrorists, terrorist organizations, or funders of terrorism or terrorist organizations, as well as funders of terrorist acts; proposal by the National Security Agency of Montenegro, state administration authority responsible for police-related issues, administration authority responsible for prevention of money laundering and terrorist financing, and the state prosecutor's office; reasonable proposal by another state.

75. The proposal from the state authorities indicated above shall include data and facts (description of circumstances with all evidence and available documentation, as well as information on assets and/or property which may be subject to a restricted disposition or acquisition) that indicate to the existence of a reasonable doubt that: the physical person has committed or has attempted at committing a terrorist act or is participating in or enabling the committing of a terrorist act; the legal person, trade company, entrepreneur, group or association is in ownership, in possession or under control, directly or indirectly, of the persons concerned; physical or legal person, trade company, entrepreneur, group or association acts on the behalf of or at the instruction of the persons concerned. The proposal shall be submitted to the National Security Council, without delay.

76. The request from a foreign state referred above shall include information about the physical person or legal person that is being proposed for designation on the National List, description of circumstances with all evidence and available documentation that verifies the existence of a reasonable doubt and any connection to Montenegro, as well as information on assets and/or property which may be subject to a restricted disposition or acquisition. According to Article 11 of the same Law the Ministry of Foreign Affairs shall, without delay, submit to the National Security Council the request from another state for designation of a person on the National List.

77. The Government shall submit the National List defined by the Government, as well as any amendment or supplement to this act, to the state administration authority responsible for internal affairs, which shall adopt, without delay, a resolution for imposing the restrictive measures on every person designated on the National List individually.

78. The resolution referred above shall be submitted to the authorities and entities responsible for application of the restrictive measure, as well as to the designated person, without delay.

79. Authorities and entities responsible for application of the restrictive measure shall be obliged to act on the resolution, without delay.

80. As explained by the authorities where a foreign country requests a designation by Montenegro, this is made via diplomatic channels at the Ministry of Foreign Affairs. Requests should contain personal data, detailed explanation of reasons for designation and detailed explanation of connections with Montenegro, as well as other elements needed for listing. MFA

submits this request to the National Security Council for designation. Immediately after the update of the National List, the MFA informs the country of the implementation of restrictive measures.

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.;

81. 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, necessary for:

- basic living expenses,
- the costs of childbirth, death and other basic expenses of the designated person and members of his family,
- medicines and medical treatment of the person or a member of his family,
- payment of obligations to the state (taxes, duties, insurances, etc.),
- reporting of costs for regular maintenance of assets and/or other property the disposition and acquisition of which has been restricted with the application of the restrictive measure, and
- costs of legal assistance.

82. If the request is filed by a person from the United Nations List, the Ministry shall inform thereof the responsible committee of the United Nations, in compliance with the Guidelines.

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;

83. As regards provisions ensuring the protection of the rights of bona fide third parties, Article 17a of the LIRM 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.

Recommended Action: Introduce a specific and effective system for monitoring compliance with the new regime.

84. No mechanisms have yet been introduced to have a specific and effective system for monitoring compliance with the new regime under SR.III as it has been implemented very recently.

## Conclusion

85. Since the application of CEPs, Montenegro has made significant progress in addressing many of the identified deficiencies. This was already acknowledged by MONEYVAL at previous plenary meetings. Many of the remaining deficiencies in relation to R.5, R.13/SR.IV, R.23, 26, 40 and SR. I and II are addressed to a satisfactory level through the adoption of amendments of the LPMLFT and other measures.

86. However, while noting some progress in relation to SR III, the LIRM, which is intended to address the most serious deficiencies under SR III, had not yet been adopted by Parliament by the end of June 2018. This is 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 in September 2017 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 raises significant concern and the Plenary should urge Montenegro to proceed with the adoption of the new LIRM by 31 July 2018. Failing the adoption of the LIRM, it is proposed that the Plenary would place Montenegro under Step 3 of CEPs. This would involve the publication of a statement on 1 August 2018. A proposed statement is enclosed under Annex 1.

# Annex 1

## COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM

## MONEYVAL

### Public statement under Step 3 of MONEYVAL's Compliance Enhancing Procedures in respect of Montenegro

1 August 2018

The Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (MONEYVAL) has been concerned with the anti-money laundering and counter-terrorist financing (AML/CFT) regime of Montenegro since 2015[3].

Montenegro has taken many steps to address serious deficiencies identified in MONEYVAL's fourth round mutual evaluation report of 2015 in relation to preventive measures. However, Montenegro's *Law on International Restrictive Measures* (LIRM), aimed at dealing with targeted financial sanctions to freeze terrorist assets, has still not been adopted. MONEYVAL urges Montenegro to adopt the *Law on International Restrictive Measures* as expeditiously as possible.

MONEYVAL members should consider the risks emanating from the absence of an adequate regime for targeted financial sanctions in Montenegro.

[3] A graduated series of steps has been taken since 2015, culminating in a high-level mission in June 2017 under Step 2 of the Compliance Enhancing Procedures, to reinforce concerns by MONEYVAL about the non-compliance with its reference documents by Montenegro.