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Anti-money laundering and counter-terrorist financing measures

Montenegro

Fifth Round Mutual Evaluation Report

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The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

The fifth round mutual evaluation report on Montenegro was adopted by the MONEYVAL Committee at its 66th Plenary Session

(Strasbourg, 11 – 15 December 2023).

Contents

EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place in Montenegro as at the date of the onsite visit (6-17 March 2023). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Montenegro's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

a) The competent authorities demonstrated a reasonable understanding on how ML occurs in Montenegro. The understanding of the Montenegrin authorities goes beyond the analysis and findings of the NRAs. The risk understanding of some important ML threats and vulnerabilities needs to be enhanced. The AML/CFT strategic action plans address the identified ML/TF risks to a large extent, however a number of actions are still pending. Most of the key authorities could articulate a clear view on TF threats and vulnerabilities and demonstrated a good level of cooperation. Domestic coordination and cooperation has been demonstrated amongst the competent authorities.

b) LEAs have access to a wide range of financial intelligence and other relevant information, and actively communicate and coordinate with each other and the FIU during investigations. The FIU accesses a broad range of information which is routinely used for operational and tactical analysis but to a lesser extent for strategic analysis. Financial intelligence is mainly used to develop evidence on and trace proceeds of crime but is not sufficiently used to identify and investigate ML. Reporting is low across all sectors particularly within high-risk DNFBPs. STRs are however fairly useful and constitute the main trigger for FIU disseminations. Lack of feedback from LEAs to the FIU hinders a coordinated response by the authorities to the main ML/TF risks.

c) The number of ML investigations and prosecutions is relatively low compared to the volume of convictions for high-risk predicates. The prosecutors often prefer pursuing the confiscation of proceeds of crime rather than investigating and prosecuting associated ML. Money laundering investigations are to a limited extent consistent with the risk profile of Montenegro. The number of ML convictions is also low. The type of ML prosecutions and convictions is consistent with the country risks only to a limited extent, with third-party ML, stand-alone ML and ML from foreign predicates being insufficiently pursued. Criminal sanctions for ML are not applied in an effective, proportionate, and dissuasive manner.

d) The competent authorities of Montenegro have made it a policy objective to deprive criminals of their profits. Financial investigations for tracing and confiscating proceeds of criminal activity are used, however not consistently and systematically. Montenegro has to some extent confiscated proceeds generated from several serious crimes, such as organised crime, drug trafficking and corruption. However, the overall value of confiscated assets derived from the commission of high-risk predicate offences (including drug trafficking perpetrated by Montenegrin OCGs and high-level corruption) is still low. More efforts are necessary to trace, seize and confiscate foreign proceeds and proceeds moved abroad. The controls on cross-border cash movements have yielded some results however more efforts are needed. Confiscation of falsely/not declared cross-border movements of cash is not available as a sanction in Montenegro. Direct access to information on cross-border cash movements by the FIU recently

started being used for tactical analysis to detect ML/TF suspicions and is yielding positive results.

e) The authorities demonstrated a good understanding of TF risks going beyond the conclusions of the NRA. The understanding of the TF risk exposure of certain sectors such as banks, MVTSs, and the NPO sector is limited. Montenegrin authorities adopt an intelligence-based approach to detect terrorism and TF suspicions, which ensures a sufficient and effective level of detection and immediate coordinated response. The NSA and SPU are following financial transactions, cross-border movements of cash, but actions are not undertaken to trace other assets that can be used for TF purposes (e.g. VAs). There have been no convictions, nor prosecutions for TF, which is in line with the country's risk profile to a certain extent.

f) Montenegro's legal framework enables the automatic implementation of TF/PF-related TFS under the relevant UNSCRs. Major technical deficiencies (i.e. the narrow scope of the freezing obligation and the high evidentiary threshold for designations under the 1373 mechanism) impact the effectiveness of the system. The risk of abuse of NPOs for TF purposes is not sufficiently understood and addressed, no risk-based measures to NPOs have been introduced and there is no oversight of the sector. Larger FIs demonstrated a generally good awareness of the TF/PF-related TFS obligations, however, concerns remain in relation to other sectors. Relevant coordination and cooperation mechanisms are not yet in place for TFS, nor processes to freeze and unfreeze assets and provide access to the frozen funds.

g) The most material sector by far in Montenegro is the banking sector which demonstrated a good understanding of ML risks and good level of implementation of AML/CFT obligations. The understanding of ML risks was adequate across most other non-bank FIs, with the effectiveness of mitigating measures being adequate and the strongest in important FIs such as MVTSs. The understanding of TF risks is limited across sectors. Certain deficiencies with the identification of BOs persisted across all sectors. Accountants and auditors (which play a central role in the provision of company services) showed a good level of understanding of ML risks and implementation of preventive measures particularly regarding legal persons. Other DNFBPs did not demonstrate an adequate understanding of risk and implementation of preventive measures.

h) There is a solid licensing regime for banks, a good understanding of ML risks, but a limited understanding of TF risks. The CBM has established an adequate risk assessment framework and risk-based supervision for several years, which requires further development. Major enhancements, particularly regarding the imposition of pecuniary fines via the misdemeanour procedure, are necessary to make the enforcement regime effective and dissuasive in driving compliance. There are no entry requirements for VASPs, real estate agents, accountancy, or legal firms, CSPs, and DPMSs, and the AT has identified major issues with the authorisation regime for providers of games of chance. The effectiveness of supervision and enforcement on the remaining important and moderately important sectors varied extensively from no AML/CFT supervisory framework for VASPs, and no or very limited supervisory actions in relation to lawyers, notaries and CSPs, to sufficient measures in the case of MFIs, MVTSs and the Investment Sector.

i) An adequate level of understanding of the ML risks posed by legal persons was demonstrated by LEAs, FIU and the CBM, but was limited for other authorities. Multiple

analyses on ML threats associated with legal entities were carried out. The analysis of vulnerabilities linked to misuse of powers of attorney, shell companies and multi-tiered structures, exposure to misuse for corruption and OCGs, and the adequacy of the control framework have not been properly assessed. TF threats and vulnerabilities were not assessed, and a limited understanding was also demonstrated in this regard. The country has put in place several measures aimed at preventing the misuse of legal persons including the requirements of registration and holding a bank account. There are concerns surrounding the availability of accurate, adequate, and up-to-date basic and BO information.

j) Montenegro provides a wide range of legal assistance in an efficient manner using bilateral and multilateral agreements and international networks. The authorities seek MLA when investigating cases with cross border elements, however, MLAs sought are on the decline and not fully aligned with the risk profile of the country. Police and the FIU actively request and provide other forms of international cooperation with foreign partners, in an appropriate and prompt manner. The FIU however is not as proactive when it comes to the spontaneous sharing of intelligence with its counterparts. The CBM reaches out to international counterparts throughout licensing processes and participates in supervisory colleges, while other supervisors are less proactive. The main financial supervisors have also demonstrated capacity to assist their foreign counterparts although such occasions were limited.

Risks and General Situation

2. Montenegro is located in the Balkan region and is bordered by the Adriatic Sea to the south-west, Croatia to the west, Bosnia and Herzegovina to the north-west, Serbia to the north-east, Kosovo* to the east and Albania to the south-east. Montenegro, although not a EU member State, uses the EURO as the *defacto* domestic official currency since 2002. The banking sector is the most significant across the financial industry, holding 93% of the total assets in the financial system in 2021.

3. The geographical location of Montenegro impacts the risks related to the smuggling of drugs, migrants, tobacco, and arms as well as human trafficking. Transnational OCGs are exploiting the system to undertake these crimes and are also pursuing loan sharking activities (usury). Montenegro is internationally recognised as forming part of the "Balkan route" for the transiting of drugs across Europe. The authorities consider the following as main ML threats: (i) high level - "drug trafficking at international level", "loan sharking" and "evasion of taxes and contributions", (ii) medium level - "corruption", "serious murders related to organized crime" and "drug trafficking at national level" and (iii) low level - "property crimes".

4. ML threats were analysed in the NRA to different extents, with some lacking in depth such as: (i) use of cash and informal economy, (ii) abuse of legal persons, (iii) high-level corruption and (iv) Citizenship by Investment Scheme. Sectorial vulnerabilities within sectors other than the banking and insurance sector have not been extensively analysed.

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

Overall Level of Compliance and Effectiveness

5. Montenegro has taken several measures to enhance its legal and regulatory framework since the last evaluation, most notable being the adoption of a new AML/CFT law in July 2021, significant enhancements to the FIU capabilities and the implementation of an adequate risk-based supervisory framework for banks and some other FIs by the CBM. The country conducted two NRAs in 2015 and 2020 and a number of other specific risk assessments, with further actions being needed to enhance the understanding of some important threats and vulnerabilities.

6. Montenegro has an effective AML/CFT system particularly when it comes to the understanding of ML/TF risks and international cooperation. On other aspects more efforts are needed to reach a substantial level of compliance and most notably with regards to the investigation, prosecution and conviction of ML in line with the risk profile of Montenegro, the effective implementation of TF related TFS obligations and the application and oversight of risk-based mitigating measures for the NPO sector.

7. In terms of technical compliance, various actions have been taken to enhance the legal framework, nonetheless a number of major deficiencies remain with respect to: (i) targeted TF/PF financial sanctions (R.6/7); (ii) regulation and supervision of FIs and DNFBPs (R.10, R.13, R.16-R.19, R.22, R.23, R.26 and R. 28); (iii) measures applied to VAs and VASPs (R.15); (iv) transparency of legal persons (R.24); (v) cash couriers (R.32); (vi) statistics (R.33); and (vii) sanctions for failing to comply with AML/CFT requirements (R.35).

Assessment of risk, coordination, and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

8. Montenegro's competent authorities demonstrated a good understanding of the main ML risks in Montenegro, being broader and more structured than the NRA conclusions. ML threats were analysed to different extents, with some lacking in depth including those related to the: (i) use of cash and informal economy, (ii) abuse of legal persons, (iii) high-level corruption and (iv) Citizenship by Investment Scheme. Sectorial vulnerabilities within sectors other than the banking and insurance sector have not been extensively analysed. Most of the key CFT authorities could articulate a clear view on TF threats and vulnerabilities, including potential TF related typologies that might occur in Montenegro, and this despite the limited TF analysis in the NRA.

9. AML/CFT actions are envisaged under numerous strategic documents, without appropriate consolidation and prioritisation to ensure effective implementation. A number of actions are still pending notwithstanding their importance, which questions the country's commitment to address them. The exemptions and simplified CDD measures set in the LPMLTF are neither supported nor consistent with the results of the NRAs. Domestic cooperation amongst the competent authorities has been demonstrated to a certain extent.

Financial intelligence, ML investigations, prosecutions, and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

Use of Financial Intelligence

10. The competent authorities access a wide variety of sources of financial intelligence and other relevant information when conducting criminal and financial investigations. Financial intelligence is mainly used to develop evidence and trace proceeds of predicate offences, but is not sufficiently used to identify and investigate ML. The FIU regularly disseminates information to the LEAs and other competent authorities (which is largely aligned with the country's risks) however, its use in ML investigations is limited. This results from the over focus on evidencing the underlying predicate crime when investigating and prosecuting ML and the general lack of prioritisation of the ML offence by LEAs. A positive practice of forming investigative teams with

the involvement of the FIU to investigate ML has recently been established, however there is still insufficient feedback provided by the LEAs to the FIU. The level of reporting is low across all sectors, and in particular high-risk sectors such as lawyers, notaries, providers of company services and casinos. STRs constitute the main trigger of FIU disseminations and are fairly usable in this respect.

Investigation and prosecution of ML

11. The prosecutorial and police authorities of Montenegro have sufficient powers to identify and investigate ML. This however took place in a limited number of cases, mostly in respect to ML related to domestic predicate offences. This is caused by (i) the absence of a clear policy, criteria and an appropriate coordination mechanism applicable to different branches of prosecution and police to identify an investigate ML; (ii) the limited scope of financial investigations which are concentrated on establishing assets subject to confiscation and do not aim at the identification and investigation of ML; (iii) insufficient consideration of high-risk predicates to pursue ML; and (iv) the limited use of incoming international cooperation to detect cases. There is a preference to pursue the confiscation of crime proceeds rather than investigating and prosecuting associated ML.

12. In the absence of judicial practice and guidance, the prosecutors and judges have an uneven understanding of what constitutes proceeds of criminal activity for stand-alone ML cases. This leads to setting a high evidentiary standard for proving ML. The ML investigations and prosecutions are consistent with the risk profile of the country to a limited extent. Prosecutions have been declining over recent years while convictions are few and not aligned to risk. The prosecution and conviction of third-party ML, stand-alone ML, ML from foreign predicates, and ML perpetrated through legal persons is not sufficiently pursued. Criminal sanctions for ML are not applied in an effective, proportionate, and dissuasive manner, and court delays are hampering the effectiveness of the judicial system to combat ML.

Confiscation

13. The competent authorities of Montenegro have powers to trace, seize and confiscate criminal proceeds, instrumentalities and property of equivalent value, which are pursued as policy objectives. Financial investigations are being conducted to some extent and led to confiscation of considerable amount of proceeds. The AT notes however that such investigations were not being applied in a sufficiently consistent and effective manner, due to: (i) lack of awareness and expertise of prosecutors and police (other than the SPO and SPU), (ii) insufficient implementation of the existent policy for financial investigations resulting also from ineffective monitoring thereof; and (iii) and the shortages of human resources at the SPO and the SPU.

14. Montenegro has confiscated proceeds of domestic predicate offences to some extent. Foreign proceeds of crime and proceeds held by third-parties have been confiscated to a limited extent, while property of equivalent value and proceeds moved to other countries have not been confiscated. The extent to which instrumentalities are confiscated is unknown although authorities provided some limited information to evidence their ability to do so. Proceeds generated from a number of serious crimes, such as organised crime, drug trafficking and corruption have been confiscated to some extent. The overall value of confiscated assets derived from the commission of high-risk predicate offences (including drug trafficking involving major OCGs and high-level corruption) is still inconsistent with the risk-profile of the country.

15. The authorities demonstrated some experience in managing seized and confiscated assets. Undue delays in criminal proceedings are putting extra pressure on the management of seized assets.

16. The controls on cross-border cash movements have yielded some results. Nonetheless, considering the country's risks associated with cash usage and cross-border crimes, more efforts are needed. Montenegro does not allow for the permanent confiscation of falsely/not declared cross-border movements of currency and bearer negotiable instruments, and misdemeanour sanctions imposed are not considered dissuasive, effective and neither proportionate. The FIU has recently started making effective use of information on cross-border cash movements for tactical analysis purpose to detect and pursue analysis into ML/TF suspicions.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

17. Montenegro's legal framework to counter TF is broadly in line with the international standards. Most of the key CTF authorities demonstrated a generally good understanding of TF-related risks, going beyond the conclusions of the NRA. There is however scope to enhance the understanding of TF vulnerabilities within important sectors such as banks, MVTSs and NPOs, and TF risks linked to cross-border cash movements and use of VAs. During the period under review, there have been no TF investigations or prosecutions which given the gaps in risk understanding is in line with the country's risk profile only to some extent.

18. The authorities apply an intelligence-based approach to detect terrorism and TF which proves effective. The NSA and SPU are following financial transactions, cross-border movement of cash, but actions are not undertaken to trace other assets that can be used for TF purposes. The AT noted that the high evidentiary threshold applied to initiate TF investigations, the SPU's inability to launch fully-fledged financial investigations upon the receipt of intelligence without the SPO's approval, coupled with the need for more expertise in TF related financial investigations (especially into new methods of terrorism financing) and limited human resources (and ability to retain and recruit staff), limits the country's capability to investigate and prosecute TF.

19. Coordination and cooperation between key authorities is good at an operational level to respond to specific cases, but less effective when it comes to synchronising high-level operational goals to combat TF.

20. Montenegro's legal framework enables the implementation without delay of TF-related and PF-related TFS under the relevant UNSCRs. Technical gaps in relation to the scope of the asset freezing obligation (see R.6 / R.7) impact the implementation of TFS obligations. No TF-related or PF-related asset freezing measures were taken during the referenced period, and Montenegro has not proposed any UNSCR 1267 designations on its own initiative, nor has received or made a formal request for designation pursuant to UNSCR 1373.

21. The implementation of TFS obligations varies amongst sectors. Larger FIs demonstrated a good level of understanding of their TFS obligations. The same cannot be confirmed for other smaller FIs and DNFBPs. DNFBPs are not explicitly required to freeze funds/assets associated with designated persons and demonstrated a low level of awareness in relation to client checks against UN TFS lists, freezing or reporting obligations. The FIU's tool directly linked to the UN Consolidated list and private sector's (larger FIs) reliance on various TFS screening databases, largely mitigate the shortcomings related to the communication of UNSCR designations. The CBM has been actively monitoring the implementation of TFS obligations, while the CBM and CMA have been issuing guidance and conducting outreach in respect to TFS obligations. The quality of monitoring performed by the CBM needs improvement. Other sectors (FIs outside CBM's supervision and DNFBPs) are not being monitored for compliance with TFS requirements.

22. Montenegro is exposed to TF risks emanating from NPOs activities and has taken first steps to understand TF risks associated with NPO sector. Whilst the authorities were able to articulate some NPO-related vulnerabilities, the other key elements, such as the identification of the subset of organizations falling within the FATF definition of NPO, and of the features and types

of NPOs which are likely to be at a risk of TF abuse, are yet to be identified following the conclusion of the on-going NPO risk assessment.

23. There is no operational PF-related TFS cooperation and coordination mechanism at the country level.

Preventive measures (Chapter 5; IO.4; R.9–23)

24. Banks have a good understanding of ML risks and effective risk assessment procedures. Among most other FIs, the understanding of general ML risks is adequate, however the understanding of business or sectoral specific risks is at times lacking. Organisers of games of chance's and real estate agents' understanding of ML risks to which they are exposed is negligible. Understanding of TF risk is generally lower across all sectors. Banks and other FIs have a solid understanding of their AML/CFT obligations, however (to the exception of accountants, auditors and other sporadic cases) this awareness is not replicated in the DNFBP sector. Banks and MVTSs generally have effective risk mitigating systems and controls. Investment sector firms' risk mitigating measures, including onboarding and transaction monitoring processes are less developed. Risk mitigating measures put in place by DNFBPs are generally (to the exclusion of accountants and auditors) insufficient to mitigate the specific risks to which they are exposed.

25. The quality of CDD measures applied by Banks and MVTSs is good, sufficient in the case of other non-bank FIs and accountants/auditors, and inadequate in the case of other DNFBPs. A limited number of banks (including the most material bank) verify the BOs of domestic legal entities through multiple sources other than the CRBE. Most other FIs and DNFBPs (excluding some accountants and lawyers met on-site) rely exclusively on the CRBE. The majority of REs interpret the concept of beneficial ownership as exclusively limited to the ownership of shares and voting rights. Some banks and FIs (other than MVTSs, insurance and financial leasing companies) rely exclusively on PEP declarations to identify PEPs. Amongst the FIs, MFIs and insurance companies did not demonstrate an adequate understanding and application of PEP-related EDD obligations. Within the DNFBP sector the awareness and application of PEP EDD measures is limited and applied only by accountants and some notaries. Most DNFBPs do not undertake appropriate actions to identify PEPs. Some FIs (other than banks, MVTSs and insurance companies) and DNFBPs (other than accountants, auditors and firms) demonstrated a lack of awareness of EDD obligations in respect of clients from high-risk jurisdictions.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

26. The CBM and CMA have a solid licensing process for banks, other FIs and investment services entities, which would benefit from more systematic cooperation with local and foreign authorities. The overreliance on supplied information and documentation, and lack of cooperation with local and foreign authorities in the case of ISA and accreditation of professionals, hampers all other licensing and authorisation processes. There are no entry requirements and on-going checks in respect to VASPs sector, real estate agents, CSPs, DPMSs and accountancy or legal firms, while it is doubtful whether the Administration for Games of Chance is able to impede criminals from owning casinos.

27. The CBM and ISA have the most developed understanding of ML risks. The CMA and MoI demonstrated an adequate understanding of generic ML risks. The remaining supervisors showed limited understanding. The understanding of TF risks among all supervisors requires further development. The CBM, and since recently (end 2022) the CMA and the Authority for Inspection Affairs (Games of Chance), have AML/CFT risk frameworks in place. Other supervisors either rely on very generic available information to understand specific sectorial/entity risks or possess no risk information. Risk-based supervision for banks has been applied by the CBM since 2021, and for MFIs since 2022. The ISA and the MoI showed ability to vary the intensity of

examinations according to risk (although not having a developed risk-based supervisory framework). Supervision of other FIs and DNFBPs is not risk based. There is no or very limited supervision of high-risk sectors such as lawyers, notaries and CSPs. The CBM conducts good quality examinations, while in the case of other supervisors this needs improvement.

28. The CBM uses remedial measures in a systemic and consistent manner and is positively impacting AML/CFT compliance. Pecuniary fines have been mainly imposed by the CBM, the MoI, and to a more limited extent the Administration for Inspection Affairs. These are however not effective and dissuasive, while the process for their imposition is hampered by excessively bureaucratic procedures and stringent prescriptive periods. The other financial supervisors mainly rely on written warnings and remedial actions, while the CMA has also withdrawn authorisations on the back of AML/CFT concerns. Other DNFBP supervisory authorities are not taking any supervisory or enforcement measures to drive compliance including in sectors such as gaming, lawyers and notaries which are exposed to high ML/TF risks. There is limited data or information available to monitor the impact of supervisory efforts.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

29. Information on the creation and types of legal persons and arrangements is publicly accessible. Most competent authorities have an adequate understanding of the ML risks posed by legal persons and have assessed elements of the respective ML threats, through multiple exercises. These risk assessments could benefit from further comprehensiveness in relation to vulnerabilities and risk-control measures. The Montenegrin authorities have put in place an array of mitigating measures to prevent legal persons from being misused, which vary in their level of effectivity. The registers and the registration mechanisms in place, apart from the one administered by the Central Clearing Depository, have a number of shortcomings which impede the effectiveness of the system in place, and the availability of adequate, accurate and up-to date basic and beneficial ownership information. Particularly, overreliance on self–declarations, limited verification, lack of ongoing monitoring of changes and absence of sanctions for failures.

30. Despite the BO register being largely unpopulated, the authorities demonstrated ability to obtain BO information from: (i) the REs and (ii) legal persons themselves, which are bound to hold accurate and updated BO information. Some concerns were noted on the accuracy of BO data maintained by REs (other than some banks including the major one) and accountants. There are overall concerns on the availability of adequate, accurate and current basic and BO information on foreign legal arrangements operating in Montenegro.

31. Montenegrin authorities were unable to demonstrate that effective, proportionate and dissuasive sanctions have been applied against persons not complying with the requirements related to basic and beneficial ownership information.

International cooperation (Chapter 8; IO.2; R.36–40)

32. Montenegro has a sound legal framework which combines an extensive network of multilateral and bilateral treaties, and mutual regional arrangements. The MoJ is the central authority for the receipt and transmission of MLA and extradition requests. The authorities have provided statistics and examples which demonstrate their ability to effectively execute MLA and extradition requests in a constructive and timely manner. Nevertheless, the handling of requests would benefit from more granular and formalised prioritisation mechanisms and effective case management tools, considering the limitations in human resources required to tend to multiple tasks including international cooperation.

33. Montenegro seeks information through international judicial cooperation to a generally satisfactory level in respect of cross-border cases of organised crime and drug trafficking,

however such cooperation is lacking in respect of corruption, tax evasion and ML reflecting the lower investigation and prosecution of these crimes domestically. A decline in outgoing requests is also noted. The competent authorities appear to actively use other forms of international cooperation for domestic ML/TF analysis and investigation purposes and effectively and promptly assist foreign counterparts. The FIU is well integrated in the international community and is considered a reliable partner, as manifested by the feedback given by the global community. However, the FIU is less proactive in sharing relevant intelligence on a spontaneous basis. The CBM reaches out to international counterparts throughout licensing processes and participates in supervisory colleges, while other supervisors are less proactive. The main financial supervisors have also demonstrated capacity to assist their foreign counterparts although such occasions were limited.

34. The authorities are effective in exchanging basic and BO information, however the deficiencies identified under IO.5 have a bearing on this capacity.

Priority Actions

National AML/CFT policies and risk understanding.

a) Montenegro should improve the national understanding of risk by:

- Analysing in further detail the ML risks associated with use of cash and the informal economy, high-level corruption, and the misuse of legal persons;
- Analysing more comprehensively the TF risks and in particular the TF risk exposure of banks, MVTSs and NPOs and the potential misuse of cross-border cash movements and new technologies such as VAs and emerging risks; and
- Assessing sectorial vulnerabilities of lawyers, notaries, organisers of games of chance, providers of company services, investment firms, real estate agents and VAs/VASPs; and

b) Montenegro should consolidate and prioritise the national AML/CFT actions set out under the various action plans and take swift action to complete the pending actions.

Tackling ML and Confiscation

c) Montenegrin LEAs and the SPO should (i) enhance the use of financial intelligence and FIU disseminations, and (ii) develop guidelines for identifying and investigating ML applicable to all prosecutors and police officers, which promotes and ensures better use of predicate crime investigations, financial investigations, and incoming international cooperation to detect and investigate ML associated with the high-risk proceeds generating crimes.

d) The authorities should take action to enhance the volume and quality of STRs by: (i) providing adequate feedback to REs on the outcomes and the quality of STRs; (ii) providing targeted guidance and training to REs (focusing on the more material ones) on reporting of STRs; (iii) addressing obstacles to STR reporting noticed in some banks, lawyers and notaries; and (iv) ensuring the practical access and use by all REs to the new electronic system for filing STRs prioritizing the more material ones.

e) Montenegro should define a clear policy for prioritising the identification, investigation and prosecution of ML associated with the high-risk proceeds generating crimes and different types of ML in line with its risk profile.

f) Montenegro should monitor and ensure the effective implementation of the policy on confiscation of criminal proceeds, instrumentalities, and property of equivalent value.

g) The cross-border cash movement controls should be strengthened by: (i) introducing more detailed criteria for the RCA and Border Police to detect cross-border movements of currency and BNIs suspected to relate to ML/TF, and cases of false or non-declarations, (ii) making effective use of data on declarations through strategic types of analysis to detect ML/TF trends and typologies, (iii) conducting respective trainings and (iv) enhancing the sanctioning regime including by enabling the confiscation of falsely/not declared cash or BNIs.

TF, TFS and NPOs

Montenegro should:

h) Continue to enhance the human and material resources of the SPU and SPO, and necessary expertise to effectively investigate and prosecute TF. In particular this should also be accompanied by (i) more operational independence for the SPU to initiate TF financial investigations, and (ii) provision of training to develop their TF financial analytical capacities and abilities.

i) Develop procedures and guidelines for intelligence and investigatory authorities to detect and investigate TF, including clear guidance on the circumstances and sources of information to trigger TF investigations, and a re-assessment of the appropriate evidentiary threshold to initiate TF investigations.

j) Address the technical deficiencies identified under R.6 and R.7 with respect to the new TFS implementation mechanism, notably by extending the obligation to freeze to all natural and legal persons.

k) Ensure that PF-TFS is embedded in cross-government PF coordination and cooperation, policies and exchanges. Additional steps should also be taken in order to enhance the TF and PF related TFS awareness amongst competent authorities and the private sector.

Supervision and preventive measures

l) Montenegro should introduce market entry requirements for CSPs, DPMSs, legal and accountancy firms, real estate agents and VASPs, and enhance the authorisation regime for operators of games of chance by scrutinising BOs of operators systematically and continuously, and applying effective source of fund controls.

m) DNFPB supervisors should improve the understanding of sectorial and entity specific ML/TF risks, devise risk-based supervisory models, and carry out risk-based inspections.

n) Supervisory authorities should improve the awareness of ML/TF risks among and across FIs and DNFBPs (other than banks and MVTSs) focusing on those DNFBPs exposed to higher ML/TF risks (i.e. notaries, company formation agents and casinos). Steps should also be taken to improve the understanding of TF risks across the banking and MVTS sectors.

o) Supervisory authorities should take further action (through sectoral guidance and supervisory actions) to improve the application of AML/CFT obligations, particularly (i) the monitoring of customer activity and scrutiny of transactions, and (iii) the application of EDD on PEPs and high-risk countries. Specific focus should be made on banks (for the scrutiny of transactions), MFIs and high-risk DNFBPs (other than large accountancy firms).

Transparency of legal persons

p) Montenegro should implement systemic mechanisms to:

- verify all relevant information provided at the stage of registration of a legal person, in particular the verification of identity of all company founders and BOs;
- prevent legal persons from being owned or controlled by criminals or their associates;

- ensure, on an ongoing basis, the adequacy, accuracy of, and timely detection and verification of changes to, basic and BO information;
- apply effective, proportionate and dissuasive sanctions for failure to retain and provide adequate, accurate and timely basic and BO information, and
- compile and maintain statistics on application of sanctions.

International cooperation

q) The various authorities should retain comprehensive statistics and data on all forms of international cooperation, to better manage and continue improving the effectiveness of international cooperation.

r) The MoJ, Courts and the prosecutors should put in place more granular and formalised prioritization mechanisms and increase the capacity of the LURIS and PRIS systems to serve as effective case management tools, especially in respect of passive judicial cooperation in criminal matters.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings[1]

IO.1 – Risk, policy and coordination	IO.2 – International cooperation	IO.3 – Supervision	IO.4 – Preventive measures	IO.5 – Legal persons and arrangements	IO.6 – Financial intelligence
Substantial	Substantial	Moderate	Moderate	Moderate	Moderate
IO.7 – ML investigation & prosecution	**IO.8 – Confiscation**	**IO.9 – TF investigation & prosecution**	**IO.10 – TF preventive measures & financial sanctions**	**IO.11 – PF financial sanctions**	
Moderate	Moderate	Moderate	Moderate	Moderate	

Technical Compliance Ratings[2]

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
LC	LC	LC	LC	LC	PC
R.7- targeted financial sanctions - proliferation	**R.8 -non-profit organisations**	**R.9 – financial institution secrecy laws**	**R.10 – Customer due diligence**	**R.11 – Record keeping**	**R.12 – Politically exposed persons**
PC	NC	LC	PC	LC	LC
R.13 – Correspondent banking	**R.14 – Money or value transfer services**	**R.15 – New technologies**	**R.16 – Wire transfers**	**R.17 – Reliance on third parties**	**R.18 – Internal controls and foreign branches and subsidiaries**
PC	LC	PC	PC	PC	PC
R.19 – Higher-risk countries	**R.20 – Reporting of suspicious transactions**	**R.21 – Tipping-off and confidentiality**	**R.22 - DNFBPs: Customer due diligence**	**R.23 – DNFBPs: Other measures**	**R.24 – Transparency & BO of legal persons**
PC	LC	LC	PC	PC	PC
R.25 - Transparency & BO of legal arrangements	**R.26 – Regulation and supervision of financial institutions**	**R.27 – Powers of supervision**	**R.28 – Regulation and supervision of DNFBPs**	**R.29 – Financial intelligence units**	**R.30 – Responsibilities of law enforcement and investigative authorities**
PC	PC	LC	PC	C	C
R.31 – Powers of law enforcement and investigative authorities	**R.32 – Cash couriers**	**R.33 - Statistics**	**R.34 – Guidance and feedback**	**R.35 - Sanctions**	**R.36 – International instruments**
LC	PC	PC	LC	PC	LC
R.37 – Mutual legal assistance	**R.38 – Mutual legal assistance: freezing and confiscation**	**R.39 – Extradition**	**R.40 – Other forms of international cooperation**		
LC	LC	LC	LC		

[1] Effectiveness ratings can be either a High - HE, Substantial - SE, Moderate - ME, or Low - LE, level of effectiveness.
[2] Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – noncompliant.

MUTUAL EVALUATION REPORT

Preface

1. This report outlines the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. It was based on information provided by the Montenegrin authorities and obtained by the AT during its on-site visit to the country from 6 to 17 March 2023.

3. The evaluation was carried out by an assessment team consisting of:

Assessors:

- Mr Nikoloz CHINKORASHVILI, Deputy Head of the International Relations and Legal Department, General Prosecutor's Office, Georgia (legal evaluator)
- Ms Jillian FLEMING, Head of AML Legal, Policy, Risk and Financial Sanctions, Central Bank of Ireland (financial evaluator)
- Ms Ani GOYUNYAN, Head of the Compliance Service, Central Bank of Armenia (law enforcement evaluator)
- Mr Edin JAHIC, Head of the Department for fighting Organized Crime and Corruption, Ministry of Security, Bosnia and Herzegovina (law enforcement evaluator)
- Mr Ladislav MAJERNIK, Prosecutor, Head of Section on International Public Law and European Matters, General Prosecutor's Office, Slovakia (legal evaluator)
- Mr Nicola MUCCIOLI, FIU Director, San Marino (legal evaluator)

Moneyval Secretariat:

- Mr Alexander MANGION - Administrator
- Ms Lorena UNGUREANU - Project Officer
- Ms Ani MELKONYAN (*until 5 July 2023) – Administrator

4. The report was reviewed by Mr Lajos KORONA (Hungary), Ms Amalia HANDJIMICHAEL (Cyprus) and the FATF Secretariat.

5. Montenegro previously underwent a MONEYVAL mutual evaluation in 2015 which was conducted according to the 2004 Methodology. The 2015 evaluation report is available at Montenegro - Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (coe.int).

6. That Mutual Evaluation concluded that Montenegro was compliant with three Recommendations, largely compliant with five, partially compliant with 24, and non-compliant with four. 13 Recommendations were not re-assessed having been N/A, LC or C under the Third Round of Evaluation. Montenegro was rated compliant or largely compliant with 4 of the 16 Core and Key Recommendations.

7. Montenegro exited the enhanced follow-up procedure in 2020, taking into consideration that the exit follow-up report concluded that sufficient steps had been taken to remedy deficiencies under core and key recommendations rated NC or PC. Consequently, the country was removed from the follow-up process.

1. ML/TF RISKS AND CONTEXT

1. Montenegro is a country located in the Balkan region and its territory covers the area of 13,812 km^2. It is bordered by the Adriatic Sea to the south-west, Croatia to the west, Bosnia and Herzegovina to the north-west, Serbia to the north-east, Kosovo* to the east and Albania to the south-east. Montenegro although not a EU member State uses the EURO as the *defacto* domestic official currency since 2002. There were approximately 619,000 citizens living in Montenegro in 2021[3]. There are 24 self-governing municipalities which play an important role in the political system in Montenegro.

2. Montenegro was proclaimed as an independent and sovereign state in 2006 by the Parliament of the Republic of Montenegro. The Head of State and of Government is the President; the Government is chosen by the majority members of the Parliament of Montenegro, and consists of the Prime Minister, one or more Deputy Prime Ministers, and Ministers. Montenegro is a member of the Council of Europe since 2007, and of the United Nations and the OSCE since 2006. Montenegro officially applied to join the European Union in December 2008, with membership negotiations having started in June 2012.

1.1. ML/TF Risks and Scoping of Higher Risk Issues

1.1.1. Overview of ML/TF Risks

ML risks

3. The authorities identified that the ML risks in Montenegro are mostly linked to international drug trafficking, evasion of taxes and contributions, and loan sharking. The convictions achieved by Montenegro during the assessment period and analysis of open-source data indicates that organised crime, corruption, human trafficking[4] and smuggling of migrants[5], smuggling of tobacco, and arms trafficking[6] are also significant ML risks.

4. With regards to organised crime, there are 10 high-risk organised criminal groups identified[7] which are transnational and devoted to drug trafficking[8], human[9] and arms[10] trafficking, migrant smuggling[11], and tobacco smuggling[12]. The OCGs are exploiting the real estate market, hospitality and service industries, and the games of chance sector by infiltrating into ownership structures[13], and using virtual assets and the darknet[14]. On an individual basis, the OCG members are also pursuing loan sharking activities, which were identified by the NRA as a high

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
[3]https://www.monstat.org/eng/page.php?id=1302&pageid=48
[4]https://www.state.gov/reports/2022-trafficking-in-persons-report/montenegro/
[5] GRETA – Third Round Evaluation Report of Montenegro – 2021.
[6] MEQ, "1.2 Number of convictions for predicate offences"
[7] SOCCTA 2021, pages 10 - 16
[8] NRA 2020, page 24.
[9]https://frontex.europa.eu/we-know/migratory-routes/western-balkan-route/
[10] NRA 2020, page 25.
[11]GRETA – Third Round Evaluation Report of Montenegro – 2021.
[12] EC Montenegro 2022 Report, page 52.
[13]NRA 2020, EC Montenegro 2022 Report, page 47.
[14]NRA 2020, page 25

level of ML threat[15]. The NRA 2020 states that the largest part of prosecutions for predicate offences and ML involved natural persons who were members of OCGs[16]. The European Commission raised some concerns with respect to the handling of organised crime cases by the courts, related to the sentencing policy in organised and serious crime cases[17].

5. Drug trafficking represents a significant threat, as Montenegro forms part of the "Balkan route", which remains one of the key trafficking routes for opiates from Afghanistan destined to Western and Central Europe. Also, it is important to note that Montenegro borders Albania, which is the main producer of marijuana according to the findings of the Police Administration, and that a large amount of narcotic drugs comes from that country[18]. Montenegrin drug trafficking groups are also considered to be major players in the procurement and transportation of large quantities of cocaine destined for European markets, having direct connections with criminal groups in South America[19]. While there is local drug trafficking and consumption, most of the narcotic seizures (80%) occur at the Montenegrin borders[20]. The NRA assesses drug trafficking at the international level as a high risk for ML, whereas drug trafficking at the national level is assessed as medium[21].

6. The concerns posed by corruption are twofold: (i) it is a contextual factor affecting the effective functioning of the structural elements of the AML/CFT regime; and (ii) it is an important general ML threat to the country. Transparency International ranked Montenegro 65/180 with a score of 45/100 in the 2022 Corruption Perceptions Index[22]. The reasoning for the low score surrounds the lack of improvements in institutional and legal frameworks against corruption, the practice of withholding information from the public and concerns with judicial independence[23]. GRECO highlights that despite several reforms to fight corruption in Montenegro, it remains a serious problem in the public, private as well as business sectors[24]. The NRA acknowledges that corruption is part of local OCGs' strategy to perpetrate their criminal operations or to gather information, targeting public bodies (security services, the prosecution and the judiciary, and other local and state authorities who are responsible for inspection controls), as well as the private sector (bank employees, lawyers, bailiffs, and business entities)[25].

7. The NRA 2020 identified domestic tax evasion among the high threats, involving the establishment and use of fictitious companies and fictious transactions carried out through companies. Likewise, OCGs are exploiting companies to conceal their illicit gains[26]. In Montenegro, according to the authorities, company services are provided by accountants and to a lesser extent by lawyers. The notaries are also involved in company formation through certification of incorporation documents. There are also other person/entities performing company formation and administration services which are however not regulated. The NRA

[15] NRA 2020, page 28
[16] NRA 2020, page 57.
[17] EC Montenegro 2022 Report https://ec.europa.eu/commission/presscorner/detail/en/country_22_6103
[18] NRA 2020, page 29
[19] NRA 2020, page 25
[20] NRA 2020, page 24
[21] NRA 2020, pages 8 and 10
[22] https://www.transparency.org/en/cpi/2022
[23] Transparency International, CPI 2022
[24] GRECO – 5th Evaluation Round Report 2022 – p.6
[25] NRA 2020, pages 21 and 31
[26] NRA 2020, pages25, 48

highlights a lack of understanding of AML/CFT obligations, and limited reporting, potentially undermining the quality of the performed controls[27] in these sectors.

8. The banking and real estate sectors (construction and sales), the organisers of games of chance, in particular casinos (predominantly characterised by cash transactions, as well as increasing number of e-casinos), lawyers, providers of services for establishing legal entities and business or fiduciary services[28] are considered to be the most vulnerable. The real estate sector (transactions, investment, sale and brokerage) is considered to be a significant sector in terms of ML risk. This is mostly due to the size of the sector and a large number of STRs received that involve immovable property deals. Typologies indicate that investment into real estate is the most frequent method for ML in Montenegro. The use of cash and channelling of funds through legal entities to purchase real estate is a common phenomenon[29]. Certain findings also indicate that OCG members also already possess certain amounts of cryptocurrencies, which is also used to purchase real estate and undermine the traceability of the assets, although to a much lesser extent compared to the use of cash[30]. In addition, there are also concerns related to the incomplete land register that potentially affects financial investigations and asset confiscations[31]. In Montenegro, this issue is particularly important as the economy relies on FDI to a large extent and a significant portion of those investments are in the purchase of real estate through transactions from countries such as the Russian Federation and Türkiye[32].

9. Between 2019 and December 2022, the Government adopted a Citizenship by Investment Scheme, as part of its ongoing efforts to attract foreign direct investment and increase economic activity in the country. According to Government data, 815 foreign citizens, mostly from Russia and China, obtained Montenegrin passports by purchasing real estate or by donating money to underdeveloped areas.

TF Risks

10. The geopolitical situation in Montenegro is of particular relevance when considering the risks of terrorism and terrorism financing that the country faces. Montenegro is facing a long-term increasing trend of propaganda activities of radical religious preachers, groups and individuals from the region associated with Salafi and Wahhabis movements. The radicalisation of members of the Roma population was also identified as a threat. Several so-called "parajamats" of these groups within which religious indoctrination is carried out have been identified. There are, however, no indications that these structures provide facilities for the recruitment and training for the planning and execution of terrorist activity[33].

11. The TF risk in Montenegro has been assessed as low in the 2020 NRA. The potential TF threats in Montenegro are associated with: (i) ideologically and religiously motivated terrorism and emerging trends propagating radicalism of all forms[34]; (ii) participation of some Montenegrin

[27] NRA 2020, page 265
[28] NRA 2020, page 241
[29] NRA 2020, pages 21 and 52
[30] 2021 VA/VASP Risk Assessment, pages 25-26
[31] EC Montenegro 2022 Report, page 47.
https://ec.europa.eu/commission/presscorner/detail/en/country_22_6103
[32] SOCTA 2021, page 72
[33] 2021 SOCTA, p. 77.
[34] NRA 2020, p,275; Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24; SOCTA 2021, p.77

citizens in armed conflicts abroad, including in Syria, and their return to the country[35]; (iii) terrorist infiltration linked to a massive influx of migrants and refugees[36]; (iv) use of modern technological achievements and social networks to propagate ideas and raise funds, including through the use of virtual assets[37].

12. The TF risk exposure of the banking sector and MVTSs has not been assessed. While the considerable volume of TF STRs submitted by MVTSs may suggest a potential misuse of the sector for TF purposes, the FIU indicated that these suspicions were not confirmed. There has been no proper TF risk assessment in relation to the NPO sector, which may be at risk of being misused to raise funds, in particular by radical movements and which is also not effectively monitored[38]. There is also scope to enhance the understanding of TF risks linked to cross-border cash movements and use of VAs.

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues

Country's Risk Assessment

13. To date, two national risk assessments for ML and TF have been conducted, with the latter being more extensive. Montenegro published its first NRA in 2015, followed by a second one in 2020. Both assessments were carried out by an inter-institutional team - consisted of eight working groups, including representatives from 25 institutions - using the World Bank methodology and on a wide range of sources of information. One of these eight working groups dealt exclusively with the assessment of TF risks. The NRA findings were discussed with some representatives of the private sector prior to adoption.

14. The 2020 NRA assesses the country's ML threats based mainly on investigatory and FIU intelligence. The ML vulnerabilities are also assessed including through consideration of general and sectorial vulnerabilities.

15. In relation to the threats emanating from OCG, Montenegro (over and above the NRAs) conducted two separate Serious and Organized Crime risk assessments (SOCTA) in 2017 and, more extensively the 2021. The SOCTAs provide for a more in-depth analysis on the risks associated with OCGs activities, their structures, modus operandi, and typologies they use to launder the proceeds of crime. The 2021 SOCTA acknowledges: (i) that OCGs main activity is related to smuggling of narcotics, primarily cocaine, at the international level, (ii) misusing legal entities for laundering proceeds through investments in construction business, real estate acquisition or ownership of organisations of games of chance, both in Montenegro and abroad.

16. In addition, in 2021 a separate analysis was conducted by the CBM and the FIU in respect of VAs/VASPs, using an own methodology. It concluded on a high level of ML risk exposure in relation to VAs and VASPs. This risk assessment examined the exposure of the banking and investment sectors to VAs and other related issues. It emerged that VASPs and VAs are not regulated in Montenegro, however, there were indications of VASPs and VA activity occurring.

17. The Montenegrin authorities have assessed elements of ML/TF risks associated with legal persons through: (i) the 2020 NRA, (ii) the 2021 Serious and Organised Crime Threat Assessment

[35] NRA 2020, p.275, 277; Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24; SOCTA 2021, p.77
[36] Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24
[37] NRA 2020, p.293
[38] NRA 2020

(SOCTA) and (iii) a separate specific risk assessment conducted in 2019. Nevertheless, there is no comprehensive and detailed assessment with regards to ML/TF risks and vulnerabilities of legal entities, and the adequacy of the control framework.

Scoping of Higher Risk Issues

18. The AT identified the following areas which required an increased focus through analysis of information provided by the Montenegrin authorities (including the NRA) and by consulting various open sources:

19. ***Corruption:*** And the extent to which corruption hampers the ability of the competent authorities and the REs to carry out their AML/CFT roles effectively. The AT considered: (i) whether the risks associated with corruption as a domestic and international source of proceeds of crime and the link with the OCGs has been properly assessed; (ii) whether preventive and mitigating measures are adequate and effective; and (iii) whether the LEAs have adequate capacities to detect and prioritise ML cases related to corruption.

20. ***Organised crime:*** The AT analysed the extent to which: (i) ML and TF risks related to OCGs are properly understood; (ii) the supervisory entities implement the fit and proper measures when licensing REs; and (iii) whether preventive measures are implemented appropriately to detect illicit funds linked to OCGs.

21. ***Drug Trafficking:*** The AT assessed the authorities' understanding of ML risks emanating from drug trafficking, the adequacy of controls and measures to mitigate drug-related ML, and the effectiveness of the preventive measures put in place by REs.

22. ***Banks:*** focus was given to the level of ML/TF risk understanding by the banking sector, and the adequacy of implementation of preventive measures, particularly on the adequacy of: CDD measures in respect of legal entities (including beneficial ownership identification measures) and the adequacy of implementation of CDD measures to prevent the misuse of the sector from the high-level ML crimes impacting the country; EDD measures in respect of PEPs, family members and associates; on-going monitoring of transactions; and the effectiveness of risk-based supervisory and enforcement efforts in respect of the sector.

23. ***Real estate sector:*** The AT assessed the effectiveness of the market entry requirements for real estate agents; measures to identify non-registered entities; capacities and the knowledge of supervisory authorities; effectiveness of measures taken to improve the capacities and knowledge of the real estate agents, notaries and lawyers involved in this sector; understanding of ML risks by the sectors and their knowledge of the AML/CFT obligations; implementation of preventive measures; and the LEAs' and judiciary response in terms of investigations, prosecutions, convictions and confiscation of assets.

24. ***Games of chance:*** focus was placed on assessing the implementation of the fit and proper measures at the licensing stage and especially in relation to the ownership structures; measures to identify non-registered entities; capacities and the knowledge of supervisory authorities to perform their functions; effectiveness of measures taken to improve the capacities and knowledge of the games of change sector; understanding of ML risks by the sector and knowledge of their AML/CFT obligations; implementation of preventive measures; and the LEAs', prosecutors' and judiciary response.

25. ***Transparency of legal persons:*** the AT analysed the effectiveness of mechanisms in place to ensure the transparency of legal persons and availability of adequate, accurate and current basic and BO information; the effectiveness of the Business and BO Registers (CRBE and CRBO); the regulation of the sector and the effectiveness of implementation of preventive measures by REs that assist in setting up and provide company services (including banks, accountants, lawyers); the ability of the LEAs to detect the abuse of legal persons and investigate, prosecute and convict the legal persons and natural persons behind such structures as well as the subsequent seizure, confiscation and management of the proceeds of crime held by legal persons.

26. ***Shadow economy and use of cash:*** the AT analysed the understanding of ML/TF risks posed by the significant use of cash in Montenegro, the extent to which this increases the threats and vulnerabilities; measures taken to regulate and reduce the use of cash; effective implementation of preventive measures; control of cross-border cash movements and the measures taken by the LEAs, prosecutors and the judiciary to effectively detect, trace, seize and confiscate the illicit proceeds in cash.

27. ***Citizenship by Investment Scheme:*** the AT assessed the understanding of ML and TF risk associated with the program by the authorities; the robustness of the ML control framework of the program; measures taken to conduct appropriate background checks on the applicants, potential risks originating from the provenance of invested funds and the end use of the funds; the implementation of preventive measures by the private sector in these instances; the cases detected by the LEAs relating to ML/TF or predicate offences conducted by such persons and the authorities' response.

28. ***MLA and international cooperation:*** in light of the international element of high-level ML threat crimes in Montenegro and the risk of Montenegro being misused to launder proceeds of foreign crimes, the AT analysed the manner and effectiveness of the MLA process and other forms of international cooperation by the LEAs, FIU and supervisors to support the needs of foreign counterparts and pursue proceedings into cross-border ML domestically; and the exchange of information with foreign counterparts on basic and BO information on legal persons.

29. ***TF risk and understanding:*** focus was given to the level of TF risk understanding demonstrated by the authorities and REs; the implementation of respective strategies; the capability and measures taken by the authorities to gather and analyse intelligence through international cooperation, to conduct parallel financial investigations, and to detect cases and initiate investigations, prosecutions and achieve convictions for TF. Of particular interest were banks, MVTS and NPOs and their effective application of measures (such as the monitoring of transactions) to detect and deter the use of wire transfers and cash as well as the abuse of NPOs for TF purposes.

1.2. Materiality

30. The economy of Montenegro is mostly service-based, tourism being the biggest contributor. Revenues from tourism amounted to 757.8 million EUR in 2021. The GDP of Montenegro in 2020 was 4,186 million EUR and in 2021 it increased to 4,955 million EUR. In 2021, the largest share in the structure of the GDP is held by the trade, transportation and accommodation and food services sectors (together 24.2%), as well as sectors of state administration, defence, education and health (15.62%), followed by industrial production sector (9.910.4%), agriculture (6.7%), real estate business (5.7%) and construction (5.1%).

31. Foreign direct investments (FDI) are an important source of revenue for the Montenegrin economy. Gross investments accounted for 26.7% of the total value of the domestic economy in 2021, while net foreign direct investments accounted for circa 12.0% of GDP[39]. The traditional sectors most exposed to FDIs are manufacturing (via intracompany loans), banking and the real estate sector. Most of the FDI originates from the Russian Federation, Italy, Switzerland, Serbia and Malta[40].

32. Montenegro is not a financial centre. Banks account for the main share in the market (93% of the total assets in the financial system in 2021) and most of the financial intermediation takes place through them. Amongst the 11 banks in total, the largest share is attributed to four banks, of which one possesses assets of around 26% of the market, the other three hold between 12% and 14% and the rest hold below 10%.

33. Materiality of all other financial institutions together equates to a total of 2.6% of GDP only, this includes investment firms, life insurance companies, MFIs and MVTSs.

34. The DNFBP sector is comprised of service providers in the real estate sector (engaged in investment and construction of real estate; purchase and sale; intermediation and management of property on behalf third parties) contributing to around 13% of GDP, and organisers of games of chance which based on rough estimates are considered to contribute around 19% of GDP. Also represented is the DPMS sector, CSP and fiduciary service providers, accountants, lawyers, and notaries sectors (see section 1.4.3 for more detailed information). There is no legislative and institutional framework to regulate CSPs (which are not accountants or lawyers), DPMSs, accountancy and legal firms. Moreover, only providers of company formation and fiduciary services are subject to AML/CFT obligations. Provision of trustee services is also not subject to AML/CFT obligations and supervision.

35. VASPs are not subject to market entry requirements in Montenegro and some VASPs are designated as REs. There were indications of VASPs and VA activity occurring (see section 1.4.3).

1.3. Structural elements

36. In Montenegro, the presence of the key structural elements required for an effective AML/CFT system may potentially be undermined in view of issues with political and institutional stability, governmental accountability, rule of law, and a professional and independent legal profession and judiciary. The European Commission concluded that, with regard to the Montenegrin judicial system, "effective independence, integrity, accountability and professionalism need to be further strengthened"[41].

37. Since 2020, political instability has had a direct impact on the functioning of the anti-corruption system. According to the analysis conducted in the Fifth Round Evaluation Report on Montenegro by GRECO[42] in 2022, there are considerable recommendations to be fulfilled by the country regarding the central Government (top executive functions) and the police to strengthen their prevention efforts in line with GRECO standards. As per the report, there is a need for a

[39] MEQ
[40] Central Bank of Montenegro Annual report 2021, Table 5, pages 138-139.
[41] Page 5 of the Montenegro 2022 Report by European Commission https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf.
[42] GRECO 5th Round Evaluation Report (2022) - https://www.coe.int/en/web/greco/-/montenegro-publication-of-5th-round-evaluation-report

strong political will to adopt a more proactive approach from all governmental institutions. Long-pending high level judicial and other Governmental appointments are not in place which is impacting the overall AML/CFT regime, and the introduction of policies and reforms to strengthen the framework.

1.4. Background and Other Contextual Factors

38. In recent years, Montenegro has experienced large inflows of migrants and refugees travelling to the European Union characterised by a continuous increase in the number of migrants transiting starting in 2017.

39. The geographical location on the "Balkan route" exposes Montenegro to cross-border risks in relation to "drug trafficking", "human trafficking", "smuggling in migrants" and "smuggling in goods", with a relevant involvement of domestic and foreign OCGs laundering proceeds of crimes in Montenegro and abroad.

40. Montenegro is indicated by the domestic authorities as a "cash-based economy". A recent study on the extent of the informal economy in Montenegro[43], estimates this to be around 24.5% of total economic activity. Moreover, the physical transportation of cash across the border increased during the recent years: through the use of large denominations and payments of persons for money transfer.

1.4.1. AML/CFT strategy

41. Since 2015, Montenegro has produced a number of policy documents dealing with ML/TF issues, which were adopted by the Government, including: (i) two Strategies "for the prevention and suppression of terrorism, money laundering and the financing of terrorism" (2015-2018 and 2022-2025) and their respective biennial Action Plans and (ii) the Action Plans attached to both NRAs.

42. Following the 2015 NRA, the competent authorities adopted the 2015 Action Plan for AML/CFT which contained actions across a broad spectrum. This document remains nonetheless broad and contains only general indications on the actions to be undertaken without mentioning priorities, deadlines and allocation of resources.

43. Subsequent to the 2020 NRA, Montenegro adopted the second Action Plan to address the findings at both national and sectorial levels. Priorities within this Action Plan include measures relating to the FIU, promoting parallel financial investigations, ML/TF training across the competent authorities, improvements in AML/CFT supervision and enforcement, and amendments to legislation.

1.4.2. Legal & institutional framework

44. Since the adoption of the 4th Round MER (2015), the AML/CFT legal framework in Montenegro over the assessment period has been governed by the Law on the Prevention of Money Laundering and Financing of Terrorism which has undergone multiple amendments, most recently in 2021. The LPMLTF requires the application of preventive measures, including STR

[43] Global Initiative Against Transnational Organized Crime – Illegal financial flows in Bosnia and Herzegovina, Montenegro and Serbia, January 2022.

and CTR reporting by REs, AML/CFT supervision by relevant authorities and establishes the sanctioning framework. The LPMLTF also provides for the establishment and functioning of the FIU.

45. Other relevant legislation includes the Criminal Code, the Criminal Procedure Code, the Law on International Restrictive measures, as well as sectorial laws (regulating the financial and designated non-financial businesses and professions).

46. The AML/CFT institutional framework in Montenegro involves the following authorities:

Courts

47. **Higher Courts –** There are two High Courts, in Bijelo Polje and Podgorica, covering a number of municipalities each. The High Courts have jurisdiction to: (i) hear and determine at first instances criminal proceedings punishable by law by imprisonment in excess of 10 years as principal punishment, and a number of other crimes including organised crime, high-level corruption, money laundering, terrorism and war crimes; (ii) decide at second instance on appeals against decisions rendered by the basic courts; (iii) determine the circumstances regarding the request for extradition of accused and convicted persons and the procedure of recognition and enforcement of foreign judgements in criminal matters; and (iv) perform duties of international criminal legal assistance in criminal matters for hearing a person, conducting special evidentiary actions, as well as other forms of international criminal legal assistance. Since 2015 the Higher Court in Podgorica established a special department for trials in criminal proceedings for organized crime, high-level corruption, ML, terrorism and war crimes.

48. **Basic Courts –** There are 15 Basic Courts in different municipalities of Montenegro. These courts have the jurisdiction to hear and determine at first instance predicate offences punishable by law by a fine or imprisonment of up to 10 years.

49. **Misdemeanour and High Misdemeanour Courts** – There are three misdemeanour courts in Podgorica, Budva and Bijelo Polje. Misdemeanour courts have jurisdiction to hear and determine misdemeanour proceedings including for infringement of AML/CFT obligations and violations of cross-border cash movement declarations amongst others. There is one High Misdemeanour Court in Podgorica which hears and decides on appeals lodged against decisions of misdemeanour courts, and on conflicts of jurisdiction between misdemeanour courts.

Ministries

50. **The Ministry of Foreign Affairs (MFA)** has competence over the control and coordination on the execution of the foreign policy and international activities of Montenegro. The MFA is also competent for drafting the LIRM. Its powers in relation to the implementation of international restrictive measures are defined in the LIRM.

51. **Ministry of Justice** - The main competencies are legislative functions and drafting laws and secondary legislative acts. The Ministry of Justice is also responsible for handling mutual legal assistance, both regarding the relevant legislative framework, as well as the coordination of the requests between foreign authorities and domestic courts.

52. **Ministry for Finance** – Among other functions the ministry is tasked with the accreditation of accountants, auditors and accountancy/audit firms as well as tax advisors. The Ministry of Finance has delegated responsibility for the professional accreditation of accountants to the Institute of Certified Accountants of Montenegro.

53. **Ministry of Public Administration** – is in charge of the public administration affairs related to NGOs.

Criminal justice and operational agencies:

54. **The Financial Intelligence Unit (FIU)** is the central institution in the AML/CFT framework in Montenegro. In 2019, the FIU transitioned from an administrative to a law enforcement type (becoming an independent unit within the Police Directorate) and relinquished its AML/CFT supervisory responsibilities. The FIU is the central authority for the receipt and analysis of STRs and other intelligence. The FIU also holds a leading role in the development of AML/CFT policy in Montenegro, through the coordination of the NRA process.

55. **State Prosecution Office** - an independent state authority that performs the affairs of investigation and prosecution of the perpetrators of criminal offences and other punishable acts that are prosecuted ex officio. The State Prosecution Office is composed as follows: Supreme State Prosecution Office, Special State Prosecution Office, High State Prosecution Offices and Basic State Prosecution Offices. The Special State Prosecution Office has jurisdiction for the investigation and prosecution of offences relating to organised crime, high-level corruption, ML, Terrorism, TF, and war crimes.

56. **Police Administration** – The Police Administration is composed of a number of directorates (sectors). These mainly include the (i) General Police Sector, (ii) Crime Combatting Sector, (iii) Border Police Sector, (iv) Special Police Forces Sector, and (v) the Financial Intelligence Sector (i.e. the FIU). The Special Police Unit - SPU (within the Special Police Forces Sector) is specifically tasked with investigating crimes falling under the competence of the SPO, which include ML/TF, and associated predicate offences. Other relevant divisions / units within these sectors include the: (i) division for suppression of general crime; (ii) the division for suppression of serious crime and (iii) the division for combating corruption, economic crime and financial investigations, which are responsible for assisting the prosecutor's office in the investigation of various crimes according to their competencies. The latter division is responsible to assist in the conduct of financial investigations and asset tracing. The Division for International Police Operational Cooperation Interpol-Europol-Sirene covers the international relations of the Montenegrin Police. The Police Administration has also four regional centres, and 17 Security Police Departments and Police Stations within the different municipalities.

57. **Revenue and Customs Administration** – controls the movements of money, bearer securities, precious metals and precious stones, in the value or amount of EUR 10,000 or more across the state border.

58. **The National Security Agency (NSA)** is a special body of the State entrusted to collect intelligence on threats and risks in order to safeguards the national security, independence, as guaranteed by the Montenegrin Constitution.

59. **Central Registry of Business Entities** - as part of the Revenue Administration, is responsible for the registration of business entities and other forms of legal entities.

Financial and non-financial supervisors

60. **Central Bank of Montenegro** - is the authority responsible for the licensing and supervision (including for AML/CFT purposes) of banks and other financial institutions namely payment and electronic money institutions, financial leasing and factoring companies, entities

providing purchase of receivables and micro-lending services, credit-Guarantee Funds and bureau de change dealers which operate exclusively on behalf of banks.

61. **Capital Market Authority** – is tasked with the licensing and supervision, including AML/CFT supervision of investment firms, investment funds managers and voluntary pension fund managers.

62. **Ministry of Interior (Directorate for Supervision)** – The Ministry of the Interior is responsible for the AML/CFT supervision of accountants, real estate agents, CSPs, DPMSs, and other entities including construction companies and car dealers.

63. **The Administration for Games of Chance (Casinos)** – Oversees the process of grants of concession for the provision of games of chance, including online-service providers.

64. **Administration for Inspection Affairs (Casinos)** – Is tasked with the supervision including for AML/CFT purposes of providers of games of chance.

65. Other supervisors include the Insurance Supervision Agency which licenses and supervises insurance entities and the Agency for Electronic Communications and Postal Services covering the AML/CFT supervision of the Post of Montenegro which is the only postal service entity providing financial postal services. The Notary Chamber and the Bar Association are responsible for monitoring AML/CFT compliance by notaries and lawyers respectively.

1.4.3. Financial sector, DNFBPs and VASPs

66. The type of reporting entities operating in Montenegro are to a large extent traditional businesses which do not tend to provide complex or sophisticated products and services, and where the use of new technologies to provide such services is limited.

67. Table 1.1. shows the number and materiality of market participants from 2018 to 2022.

Table 1.1: Size and number of REs in Montenegro (2018-2022)

	Entity	2018	2019	2020	2021	2022	Materiality (End 2022)
FIs	**Banks**	15	13	12	11	11	€6,404,260,000 – 110.48% of GDP (Asset Size)
	Microcredit Financial institutions	7	8	8	8	8	€74,764,000 – 1.29% of GDP (Asset Size)
	Payment Service Providers	4	4	5	3	3	€135,631,469 (Total Remittances)
	Financial Postal Services	1	1	1	1	1	
	Financial Leasing Companies	2	2	2	1	1	€32,238,000 (Total Value of Leases)
	Companies for purchase of receivables	0	1	1	3	3	€19,459,886 (Total Value of Receivables purchased)
	Factoring companies	1	1	2	2	2	€22,308,818 (Credits Acquired)
	Investment Firms	8	10	11	11	11	€ 6,445,666[44] (generated revenue in 2021)
	Fund Management Companies	8	6	6	6	6	€30,900,000 (held in investment funds)

[44] Includes also revenue generated by banks from the provision of investment services.

	Insurance companies	4	4	4	4	4	€21,374,009 - gross written premium (0.37% of GDP)
	Insurance intermediaries	16	17	19	19	19	-
DNFBPs	**Organisers of Games of Chance**	35	40	38	36	35	19.5% of GDP (based on cumulative volume of deposits and winnings)
	Real estate agents	1423	1423	1589	1694	1785	€16,932,542 (0.29% of GDP) - turnover
	Notaries	56-59					€9,504,426 (0,16% of GDP) - turnover
	Accountants/Auditors	525	525	618	692	714	€33,688,147 (0.58% of GDP) - turnover
	Lawyers	902	924	942	965	987	
	Consultancy and Management of Businesses (Also providing CSP services)	1937	1937	n/a	n/a	n/a	
	Dealers in precious metals and stones	122 - 210					€46,146,385 (0.8% of GDP) - turnover
	VASPs	N/A	N/A	N/A	N/A	N/A	€5,053,280 VA related transactions through banks between (2018-2021)

Financial Sector

68. The financial sector in Montenegro is Bank centric, with an asset value to GDP ratio of 110.48% exceeding by far the ratio to GDP non-bank financial institutions. The number of banks in Montenegro went down from 15 to the 11 over the review period. This was a result of bankruptcy proceedings initiated against two banks, and several mergers. The capital of the banks largely comes from foreign sources. Foreign capital participation in banks is 84% (8 out of the 11 banks are foreign owned), domestic capital refers to 14%, while the share of state capital is 2%. Of the total number of banks operating in Montenegro, four have parent banks in EU countries. Banks play a very significant role in financial intermediation in Montenegro. Specifically, all Montenegrin legal persons are required to open bank accounts to be able to trade; all MFIs grant loans and accept re-payments via Montenegrin bank accounts; Bureau de change dealers may only operate on behalf of banks and fall under the responsibility of banks for the conduct of operations; the bulk of money remittances are processed by banks (€7.6BN outward transactions processed by banks as opposed to €22M by other MVTSs in 2022); and the authorities indicate that the majority of real estate transactions occur via bank loans / bank payments.

69. The Banking Sector is dominated by three main banks which account for 68% of the total number of clients, 82% of all client deposits in the banking sector, and processed half of all outward transactions. The largest bank out of these three handles 29% of all clients, 40% of client deposits and processes 27% of all outward. Banks service both individuals and business in Montenegro and provide an array of services, including deposits, current accounts, loans, electronic banking and transfers, trade finance, asset management and currency exchange. 86%

of customer relationships are with Montenegrin residents, while the majority of customers are natural persons (92%) and 7.9% legal persons. Less than 10 foreign legal arrangements/ trusts have opened bank accounts with Montenegrin banks with insignificant amount of assets held. Business relationships with Montenegrin banks may not be opened on a remote basis with identification and verification of identity taking place in the physical presence of the customer or a representative.

70. The NRA acknowledges that this sector is exposed to significant risks of abuse for ML purposes, owed to the continuing expansion of the sector, the increased number of products (in particular e-products and services), and the fact that according to LEA data the largest volume of proceeds of crime are introduced via the banking system.

71. The most prominent non-banking financial sectors are the MFIs accounting to a ratio of loans to GDP of 1.29%, and payment services providers which remitted a total of €135,631,469 in 2022. Target groups of MFIs are natural persons who generate (or plan to do so) revenues from independent activity, entrepreneurs, micro and small enterprises (MSE), employees and retired persons. MFIs approve loans mainly to natural persons and in small amounts with minimum level of security. At the end of 2022 there were 8 MFIs operating in Montenegro. There are three payment service providers, one of which dominates the market with 82% of customers. All payment services providers act as agents for international payment institutions. The Post of Montenegro also provides money remittance services both as an agent of an international payment institution and also through a regional financial postal network.

72. The investment sector in Montenegro is also relatively small however appears to be expanding. The value of net assets of closed-end investment at the end of 2022 amounted to over €22 million, (an increase of 20% over the previous year), while those of open funds amounted to €8.9 million (and increase of 23% over the previous year). Investment firms of which there are 11, together with banks, which also provide investment services, in 2021 registered a total revenue of €6,445,666, which is 49% higher than the amount for the previous year.

73. There is limited market penetration of life insurance products in Montenegro. The sector is composed of four insurance companies and 19 insurance intermediaries which operate exclusively for and are closely tied to these insurance companies. The gross value of life insurance premia in 2022 amounted to €21,374,009 (i.e. 19.7% of total gross written premium) and showed no notable increases from the previous year. Bureau de change dealers may only operate on behalf of banks and fall under the responsibility of the Bank for the conduct of operations.

Non-Financial Sector

74. The main non-financial sectors in Montenegro are the gaming and real estate sector. Considering the turnover made by accountants and auditors (which are the main providers of company formation and administration services), the number of consultancy and management of businesses providers (approximately 1937) and the number of legal persons set up in Montenegro (i.e. 66,260 of which 54,666 being LLCs), the company formation and administration sector also appears to be significant.

75. At the end of 2022 there were 35 organisers of games of chance. Two companies operate three casinos in Montenegro, while another 33 operators provide gaming services in betting shops (20 operators with 126 facilities) and online-gaming (13 operators). The total volume of gambling transactions in 2022 amounted to €1.1 billion (19.5% of GDP). Although this figure is

calculated by taking into account both gaming deposits and winning withdrawals and hence includes an element of double counting, it is clearly indicative of a significant volume of funds flowing through the gaming sector. The highest volume of gaming activity occurs through slot machines (€570 million), following by online-gaming (€368 million), land-based casinos (€208 million and betting shops (€194 million).

76. Notaries, lawyers, and real estate agents are involved in real estate business in different ways. The most prominent role is undertaken by notaries since all property deals need to be executed through a notarial deed. Lawyers are involved to a lesser extent in the formulation and vetting of property contracts which is however not a mandatory requirement for the acquisition of property. The authorities indicated that the role of real estate agents in Montenegro is to broker property sales/leases and is not common for them to be involved in the handling or transfer of funds for property acquisitions. Real estate agents' turnover in 2022 amounted to almost €17M (0.29% of GDP), which is relatively low compared to the turnover made by construction companies (i.e. €720M – 12.4% of GDP) which are also subject to AML/CFT obligations.

77. Company services such as company formation are, provided by accountants and to a lesser extent lawyers. There are other legal entities other than accountants and lawyers that provide company services. Accountants, lawyers and other persons/entities provide company services, such as company formation, directorship, registered offices services, as well as advisory and accounting services. There is no requirement for entities/persons to register or be authorised to provide company services. As a result, the MoI does not have any visibility on the number of entities that are not accountants/lawyers providing company services, as well as those accountants and lawyers that are providing such services. The notaries are also involved in the company formation through certification of incorporation documents.

VASPs

78. VASPs are not subject to any market entry requirements in Montenegro and some VASPs are designated as AML/CFT REs. There were indications of VASPs[45] and VA activity occurring. Over a five-year period (2018-2021) the estimated volume of crypto trading transactions processed by Montenegrin Banks amounted to €5M carried out through 6,251 transactions[46], while one investment company carried out four investment transactions totalling €529.58 originating from VAs. There are also indications of OCGs making use of VAs.

Weighting

79. The materiality of each sector is ranked from most important to less important as follows:

80. The **most important sector** by far in terms of materiality and risk is the banking sector owed to the high ML risk exposure of the sector, and the fact that the total volume of assets held within the sector at the end of 2022 amounted to EUR 6.4 billion (110.5% of GDP), surpassing by far the contribution to GDP of other sectors – see para 68-70 and Table 1.1.

81. Casinos, Company Service Providers, Lawyers, and Notaries are **important sectors** in the context of ML/TF risks. Except for notaries, all these professions and businesses pose a high to medium/high ML/TF risk according to the 2020 NRA. This due to their involvement and provision of risky services (i.e namely the incorporation and operation of companies and real

45 While not an extensive indication of VASP operations, one Bitcoin ATM was located in Montenegro, which the authorities indicated that they shut down.

46 ML/TF Risk Analysis of VA/VASPs 2021 – Pgs 24 & 26

estate transactions). The NRA recognizes various ML typologies associated with the use of companies and acquisition of real estate identified from LEA data. At the end of 2022 the volume of gambling transactions amounted to EUR 1.1 billion (19.5% of GDP)[47].

82. The level of AML/CFT controls and supervision applied in these important sectors is generally poor (exception in the case of accountants). Lawyers, accountants, and other persons/entities provide company services, such as company formation, directorship, registered offices services, as well as advisory and accounting services. The provision of company services other than company formation and fiduciary services (undefined and unclear what it covers), are not subject to AML/CFT obligations and supervision (see. R.22). The authorities indicated that company services are mostly provided by accountants and lawyers, however they are unable to identify the population of lawyers, accountants and other non-professionals providing company services. It is hence unclear to what extent non-professionals are providing company services. Nonetheless REs met on-site indicated that non-professionals were indeed providing such services, while the NRA 2020 also indicates (based on FIU data) that a number of foreign owned companies were providing consultancy and advisory services to companies and businesses[48]. This lack of regulation and uncertainty about the population of CSPs undermines the supervision of this important sector and implementation of AML/CFT obligations.

83. Of **moderate importance** are (i) Investment Firms (ii) MFIs, (iii) MVTSs (including payment institutions licensed by the CBM, and the Post of Montenegro), (v) Real Estate Agents and (iv) VASPs. MVTSs, MFIs and the Investment Sector are categorized to pose a medium/medium low level of risk according to the 2020 NRA. The materiality of all other FIs (other than banks) is significantly lower when compared to banks (i.e. asset value equivalent to 2.6% of GDP[49]), out of which MFIs account for 1.6%.

84. There are no licensing or registration requirements for VASPs and VAs, while some VASPs are not subject to AML/CFT obligations in Montenegro (see R.15). While there were indications of VASPs and VA activity occurring in Montenegro, this appears to be modest compared to the activity occurring within more important sectors. While not an extensive indication of VASP operations, one Bitcoin ATM was located in Montenegro, which the authorities indicated that they shut down. Over a four-year period, the roughly estimated volume of crypto trading transactions processed by Montenegrin Banks amounted to €5M and carried out through 6,251 transactions. One investment firm allowed clients to deposit VAs, convert them to FIAT (through a foreign crypto exchange) and invest the equivalent in FIAT, with very minimal activity occurring (four investment transactions totalling €529.58 originating from VAs)[50]. The authorities, however, acknowledge that this data is not entirely reliable, and believe that there exists a higher risk of use of bank payment systems for VA/VASP trade. There were also few cases where use of VAs was detected in connection with criminal investigations (i.e. two investigations and one FIU analysis over four years), while the NSA's intelligence suggests that some OCGs are making use of VAs to launder proceeds of crime[51]. The VA/VASP risk 2021 analysis concludes that ML risk for VAs/VASPs is considered to be "high". The study indicates that ML vulnerabilities (e.g. weakness

[47] This figure is calculated by taking into account both gaming deposits and winning withdrawals and hence includes an element of double counting.
[48] NRA 2020 – Pgs 256-257
[49] NRA 2020 – Pg 13
[50] ML/TF Risk Analysis of VA/VASPs 2021 – Pgs 24,26 & 27
[51] ML/TF Risk Analysis of VA/VASPs 2021 – Pages 25 & 26

in the licensing/registration, supervision and in the application of AML/CFT requirements) acerbates the risk that VAs and VASPs might be misused by OCGs.

85. Regarding the real estate sector, the NRA categorises all persons that invest, trade or mediate in real estate as posing a medium/high risk for ML/TF purposes, but does not analyse the specific risk exposure of real estate mediators (i.e. agents) by taking in consideration the extent of their involvement in property transactions, their role in property transfers and risks associated with type of clients they service. The authorities indicated that the role of real estate agents in Montenegro is to broker property sales/leases and is not common for them to be involved in the handling or transfer of funds for property acquisitions. Real estate agents' turnover in 2022 amounted to almost €17M (0.29% of GDP), which is relatively low compared to the turnover made by construction companies (i.e. €720M – 12.4% of GDP).

86. **Less important** sectors are: (i) DPMSs, (ii) the insurance sector (composed of four insurance companies and 19 insurance intermediaries) with life insurance premia in 2021 amounting to EUR 21M pointing to a relatively reduced market penetration of life insurance products; and (ii) other FIs (namely one leasing company, two factoring companies, and three companies for purchase of receivables).

1.4.4. Preventive measures

87. AML/CFT measures in Montenegro are set out under the LPMLTF, with the latest version dating to June 2021. It is accompanied by rulebooks and guidance on a number of topics which are explained under R. 34.

88. The LPMLTF covers the preventive measures envisaged under FATF Recommendations 9 to 23, including the carrying out of ML/TF risk assessments, formulation of internal controls and procedures, application of SDD, CDD and EDD obligations, the submission of STRs, record-keeping obligations and confidentiality and prevention of tipping-off provisions. The LPMLTF also requires the reporting of cash transactions equivalent to or exceeding €15,000 by all REs, and also imposes an obligation on notaries to provide to the FIU copies of all property sale contracts (exceeding €15,000 in value) on a weekly basis.

89. All FIs identified under the FATF Recommendations are designated as reporting entities under the LPMLTF, subject to the following exclusions. Investment Funds and Voluntary Pension Funds are not designated as REs and hence not subject to AML/CFT obligations. No voluntary pension funds were operating at the end of 2022. Providers of (i) trust services; (ii) company services except the founding of legal persons and fiduciary services are not subject to the AML/CFT obligations under the LPMLTF.

90. The LPMLTF also provides for some exemptions from the application of CDD. The most notable one is in relation to lawyers and notaries who are not defined as reporting entities under the LPMLTF and thus not subject to the entire spectrum of AML/CFT obligations pertaining to all other REs. Lawyers and notaries are however subject to specific AML/CFT provisions under the LPMLTF which have some deficiencies, and which are analysed in detail under R.22 and R.23. Moreover, in relation to lawyers and notaries, which have been identified in the 2020 NRA as bearing a high and medium risk of ML respectively, this approach does not appear to be justified.

91. REs providing electronic money services are exempt from applying CDD measures subject to certain criteria and transaction limitations (however there were no electronic money

institutions operating in Montenegro in 2022). Moreover, insurance service providers and FIs licensed by the CBM may apply SDD in certain specific cases considered to present a negligible/lower risk of ML/TF. This approach is however not backed up by any findings of NRAs.

92. The exemptions and SDD scenarios mentioned above are not supported by the conclusions of either one of the NRAs, and neither do these NRAs provide any assessment which would substantiate lower ML/TF risks in relation to the above products/sectors and hence justify the application of these exemptions.

1.4.5. Legal persons and arrangements

93. The most prominent types of legal persons that may be established in Montenegro are regulated under the (i) Law on Companies and (ii) the Law on NGOs. As of December 2022, there were 66,260 legal persons registered in Montenegro (see Table 1.2). In Montenegro commercial activities may be carried through the following types of legal persons (general partnerships (GP), limited partnerships (LP), limited liability companies (LLCs), and joint stock companies (JSC). The most used form is the LLC (amounting to 54,666) and in particular the single member LLC.

94. NGOs are established in the form of associations or foundations. Their registration is voluntarily, however, they acquire the status of a legal entity on the day of entry into in the Register of the Ministry of Public Administration. NGOs are allowed to perform a limited economic activity (up to EUR 4 000 a year incrementable by 20% yearly). These NGOs are required to register with the CRBE (at the end of 2022, 356 associations and 19 foundations).

95. Taking into consideration the fact that Montenegro is not a financial nor a company formation centre the total number of legal persons appears to be significant and disproportionate to the country's economic profile and characteristics. There are various reasons contributing to this significant number of legal persons (see IO5). Approximately 16,000 LLCs have not submitted their financial statements which is indicative of a potential substantial number of inactive companies that are still registered.

Table 1.2 Types of legal persons registered in Montenegro

Type of Legal Person	Number as of 31 December 2022
General Partnership	365
Joint Stock Company	277
Limited Liability Company	54666
Limited Partnership	44
Cooperatives	108
Associations in CRBE[52]	356
Foundations in CRBE[53]	19
Alliances	1
Foreign branches	570
Institutions	1337
Other Forms of Business Activity (specific agencies and local municipality organisations)	28
TOTAL in CRBE	**57771**

[52] Only those NPOs carrying out an economic activity are required to register with the CRBE. The rest are required to register within the NPO register, see IO.10.
[53] Same as for association

Type of legal entities not performing economic activity	
Chambers And Business Associations	10
Political Parties	54
Religious Communities and Religious Groups	22
Trade Unions	1927
Non-Government Associations	6107
Foundations	249
International Organisations	120
Total	**8489**

96. During the past years, there has been a significant increase in the number of registered companies (i.e. from approximately 37000 partnerships and companies in 2017 to 56,000 by the end of 2022). This increase is mainly in relation to new LLCs.

97. Legal persons do not tend to present structure complexity. According to the statistics provided by the CRBE, the majority of LLCs are owned solely by natural persons (51,992 out of 54,666 as of December 2022). Around half of these companies are exclusively owned by domestic natural persons.

98. The Tax Administration administers the CRBE which holds basic information on legal persons and the CRBO (holding BO information). The CRBO was established in August 2021 and to date holds BO information on a very small number of companies (i.e. 32 out of 17,000 companies that are required to register BO information). The NPO register is administered by the Ministry of Public Administration, on holds information on registered associations and foundations.

99. Montenegrin legal persons are exposed to risk of abuse for ML/TF purposes as recognised by a number of risk assessments conducted by the country (see IO5). The most serious risks of misuse of Montenegrin legal entities is in relation to tax fraud, corruption, and linked ML, through fictitious transactions, and the misuse of offshore companies. The NRA identified the establishment of fictitious companies and the use of false invoices and cash withdrawals later reinvested as a *modus operandi* that a number of legal persons undertake to lower their tax obligations[54]. The 2021 SOCTA makes also reference to the misuse of legal persons (i) by OCG members who at times own such companies through foreign legal persons set up in offshore jurisdictions or through family members or close persons (i.e. strawmen)[55], (ii) establishment of legal persons for the purposes of obtaining a transit visa to reach the countries of final destination[56], (iii) misuse of e-commerce services by Montenegrin legal entities, which were registered at the same address, without civic number and with the same activity code (activity of computer programming services). These companies were operative for a short period of time and were subsequently deregistered from the CRBE[57], (iv) and companies engaged in import/export services and transport of goods are also used to smuggle drugs[58] .

100. Legal persons and namely LLCs have featured regularly in criminal proceedings and are the most often type of legal person used when committing criminal offences, including ML. The

[54] NRA page 56
[55] 2021 SOCTA, page 71.
[56] Serious and organized crime threat assessment, 2021, page 58.
[57] 2021 SOCTA, page 74.
[58] 2021 SOCTA, page 20.

risks associated with the misuse of LLCs is also confirmed by the FIU through the intelligence held, who identified the LLCs as the most vulnerable, based on the simple requirements to set them up and the low amount of capital required. Over the review period criminal proceedings were initiated against a substantial number of LLCs. There were 166 legal entities investigated and 23 legal entities were indicted for ML in 2017-2022, out which the court confirmed the indictments against 12 legal entities.

101. Legal arrangements cannot be formed in Montenegro. However, the LPMLTF provides for a definition of "trust" as well as CDD and other measures to be taken by REs when establishing a business relationship or carrying out occasional transactions with a client who is a foreign trust[59]. Statistics provided indicate that there is a limited presence of foreign trusts in Montenegro's financial sector (i.e. less than 10 foreign legal arrangements/ trusts have opened bank accounts with Montenegrin banks with insignificant amount of assets held), while they have rarely featured in STRs or incoming FIU intelligence.

1.4.6. Supervisory arrangements

102. Tables 1.3 and 1.4 list the authorities and self-regulatory bodies that are responsible for the licensing/authorisation/registration and AML/CFT supervision of REs in Montenegro. Recommendations 26 – 28 provide a detailed overview and analysis of the market entry procedures, AML/CFT supervisory powers and methodologies adopted by the respective entities.

Table 1.3 Supervisory arrangements for FIs

Type of RE	AML/CFT Supervisor	Licensing Body (Market Entry)
Banks	Central Bank of Montenegro	Central Bank of Montenegro
Microcredit Financial institutions	Central Bank of Montenegro	Central Bank of Montenegro
Payment Service Providers	Central Bank of Montenegro	Central Bank of Montenegro
Financial Postal Services	Agency for Electronic Communications and Postal Services	Government Concession
Financial Leasing Companies	Central Bank of Montenegro	Central Bank of Montenegro
Companies for purchase of receivables	Central Bank of Montenegro	Central Bank of Montenegro
Factoring companies	Central Bank of Montenegro	Central Bank of Montenegro
Investment Firms	Capital Market Authority	Capital Market Authority
Fund Management Companies	Capital Market Authority	Capital Market Authority
Insurance companies	Insurance Supervision Agency	Insurance Supervision Agency
Insurance intermediaries	Insurance Supervision Agency	Insurance Supervision Agency
VASPs	Central Bank of Montenegro	N/A

[59] See R.10 analysis

Table 1.4 Supervisory arrangements for DNFBPs[60]

Type of DNFBP	AML/CFT Supervisor	Licensing Body (Market Entry)
Organisers of Games of Chance	Administration for Inspection Affairs (Casinos)	The Administration for Games of Chance (Casinos)
Real estate agents	Ministry of Interior	N/A
Notaries	Notaries Chamber	Ministry for Justice
Accountants/Auditors	Ministry of Interior	Ministry for Finance
Lawyers	Bar Association	Ministry for Justice
Consultancy and Management of Businesses (Also providing CSP services)	Ministry of Interior	N/A
Dealers in precious metals and stones	Ministry of Interior	N/A

1.4.7. International co-operation

103. The area of MLA in criminal matters is governed by the Law on Mutual Legal Assistance in Criminal Matters. The Ministry for Justice is the central authority responsible for handling incoming and outgoing MLA requests related to any criminal offence, including ML/TF. The MoJ can act on some requests directly itself (e.g. provision of official certificates or records it has access to). Requests are forwarded to the competent court or prosecutor's office, depending on the type of legal assistance sought. The requested data or information, once obtained, is referred to the MoJ which forwards it to the requesting state (see IO2). Montenegrin judicial authorities may also provide or seek MLA directly with foreign counterparts (see IO2).

104. The Montenegrin FIU is a member of the Egmont Group and connected to the Egmont Secure Web system. The FIU has a dedicated International Cooperation Department, which is responsible for the incoming/outgoing exchange of information and is currently composed of five employees. The Montenegrin FIU was suspended from the Egmont Group and disconnected from the ESW (between May 2019 and November 2020) following the restructuring of the FIU and the shift from an administrative to a police type FIU. During this period international cooperation was limited (see IO2), however the AT noted that the FIU was active in finding alternatives to enable international cooperation.

105. The Department for International Operational Police Cooperation, the Asset Recovery Office Police Unit, and the Revenue and Customs Authority makes use of international networks such as Interpol, Europol, CARIN, World Customs Organisation, SELEC and OLAF for international cooperation purposes, as well as a number of bilateral agreements with counterparts from Albania, Bosnia and Herzegovina, Croatia, Hungary, Italy, Kosovo*, North Macedonia, Romania, Russia, Serbia, Slovenia, Ukraine, and United Kingdom.

106. The financial supervisors are integrated in the international community, through membership in international supervisory communities or via signature of multilateral or bilateral

[60] DNFBPs (supervised by the MoI) were until 2019 supervised by the FIU (APMLTF). Responsibility shifted to the MoI upon the transformation of the FIU into a police-type FIU.

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

agreements to facilitate international supervisory cooperation. The CBM also takes part international colleges set up to facilitate the consolidated supervision of financial groups.

107. The effective provision and use of international cooperation is fundamental for Montenegro considered that the main ML/TF threats in Montenegro have a strong international dimension (i.e. international drug trafficking, migrant smuggling, tax evasion and criminal activities of OCGs).

2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 1

a) Montenegro's competent authorities demonstrated a reasonably good understanding of the main ML risks in Montenegro, wider and more structured than the NRA conclusions. It is worth noting that the most developed risk understanding was demonstrated by the Judicial Authority, the SPO, SPU and FIU, and on the supervisory side the CBM and the ISA. The other supervisors' understanding is more limited. Most of the key CFT authorities (mainly the NSA, the Police and the FIU) were able to articulate a clear view on TF threats and vulnerabilities, including potential TF related typologies that might occur in Montenegro, this notwithstanding a limited TF analysis under the NRA.

b) Montenegro has carried out two National Risk Assessments, using the World Bank methodology, in 2015 and 2020. The 2020 NRA is more nuanced and includes a more comprehensive analysis. Authorities demonstrated a candid approach in detecting vulnerabilities. Nonetheless, the scope of the NRA should have been broader, and the analysis conducted more in-depth in relation to the following ML threats/vulnerabilities: (i) use of cash and informal economy, (ii) abuse of legal persons, (iii) high-level corruption and (iv) Citizenship by Investment Scheme. ML/TF Risks associated with OCGs (which is an overarching threat) were analysed through the 2017 and 2020 SOCTA. Other sectorial vulnerabilities within sectors other than the banking and insurance sector have not been extensively analysed.

c) Following the 2020 NRA exercise, an Action Plan and other numerous strategic documents have been adopted. The major risks identified are largely addressed through these documents and have partially resulted in mitigating measures applied by the authorities. Nonetheless, a number of actions are still pending notwithstanding their importance (e.g. improving capabilities and resources for prosecuting and convicting financial crime, and increasing the effectiveness of customs control mechanisms). Moreover, the numerous strategic documents adopted generate fragmentations and inhibit holistic coordinating actions.

d) The exemptions and simplified CDD measures set in the AML/CFT Law and Guidance are neither supported nor consistent with the results of the NRAs.

e) The Strategies "for the prevention and suppression of terrorism, money laundering and the financing of terrorism", the NRAs and the accompanying action plans have been used, to a large extent, to determine objectives and activities of some competent authorities.

f) The mechanism in place at policy level (BOC/NIOT, PCB and IIWG) demonstrated a certain level of effectiveness on national coordination for ML/TF issues. This was not

the case in relation to the PF. At an operational level, on ML, the SPO, the SPU and the FIU showed a certain level of operational coordination and cooperation. Cooperation is also established among some AML/CFT supervisors, and with the FIU. On TF, such cooperation exists among the NSA, Police and the FIU. This is not the case for PF, where coordination of actions to counter the financing of proliferation of WMD is not adequate.

g) REs were involved in the NRA process through partaking in questionnaires, interviews and other forms of data collection. Sector-wise, FIs were much more involved than DNFBPs. The 2020 NRA has been published on the Government of Montenegro's website, and dedicated awareness raising initiatives have been undertaken by the FIU and CBM for their reporting entities.

Recommended Actions

Immediate Outcome 1

a) Montenegro should appropriately consolidate and prioritise actions contained in various documents setting AML/CFT national policies, ideally in a consolidated AML/CFT Strategy document that would ensure a holistic and harmonised approach across all areas of AML/CFT. The Montenegrin authorities should also take swift action in relation to a number of activities which are still pending, completing the implementation of the 2020 NRA Action Plan and ensure that all competent authorities set objectives and activities which are coherent with the AML/CFT policies, and the risks identified.

b) Montenegro should analyse in further depth the ML risks associated with (i) the extent of use of cash for ML purposes as well as the sectors most exposed to it and this in light of the significant informal economy, (ii) high-level corruption to address the misalignment between the "medium" risk rating assigned in the 2020 NRA, and the higher risk of corruption perceived by the authorities in light of recent events, (iii) the misuse of legal persons as set out under RA(a) for IO5, as well as the TF risks as set out under RA(a) for IO9. Montenegro should continue monitoring the risks associated with OCGs and emerging threats. In relation to sectorial vulnerabilities (other than for banks and the insurance sector), Montenegro should (i) carry out more comprehensive assessments prioritising the more material FIs and DNFBPs (namely lawyers, notaries, organisers of games of chance, providers of company services, and investment firms), and (ii) assessing the risks associated with real estate agents and VAs/VASPs.

c) Montenegro should put in place an effective mechanism through which a risk assessment can be updated and adjusted whenever the circumstances, or important developments in ML/TF areas are observed or when intelligence/LEA activities may warrant for.

d) Montenegro should continue implementing the necessary measures to limit the impact of integrity issues on the judiciary and prosecution authorities' AML/CFT efforts.

e) A country-wide effort should be undertaken to bolster the retention of granular statistics which would permit the effective analysis and monitoring of ML/TF risks.

f) Montenegro should ensure that its domestic cooperation and coordination mechanisms (the PCB and IIWG) aimed at mitigating risks are effective in monitoring the implementation of NRAs and related Actions Plans. To this aim, Montenegrin authorities should guarantee the maintenance of inter-institutional coordination, stability in the organizational structure of the relevant competent authorities and adequate budgetary resources.

g) Montenegro should review the exemptions and the permissible SDD measures, particularly those regarding lawyers and notaries, to ensure that they are supported by the country's risk assessment findings and amend as appropriate.

h) Montenegro should take measures to mitigate the ML/TF risks associated with the use of cash, such as considering the introduction and implementation of a cash limitation policy.

108. The relevant Immediate Outcome (IO) considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

2.2.1. Country's understanding of its ML/TF risks

Overview

109. Montenegrin authorities have a reasonably good understanding of ML risks, whereas the TF risk understanding has been developed to a lesser extent. The most developed risk understanding was demonstrated by the Judicial authority, SPO, SPU and FIU. Based on their hands-on investigative experience, the authorities were able to articulate ML typologies for different types of predicate offences as described further below.

110. On the supervisory side, the CBM and the ISA demonstrated a good understanding of ML risks and the most developed among supervisors. The MoI (supervising the majority of DNFBPs) and CMA displayed an adequate level of understanding of general ML risks (however less developed regarding sectorial specific risks), while the other supervisors demonstrated a limited understanding (see IO.3).

111. The risk understanding in Montenegro stems from a range of sources other than the NRA findings[61]. This has been evidenced through in-depth discussions held on-site and information provided. This risk understanding was mostly reflected through in-depth knowledge and awareness on the key threats, including high level corruption and criminal activities associated with OCGs. In addition, the authorities demonstrated a broader awareness on potential misuse of

[61] Such as the domestic Serious and Organised Crime Threat Assessment reports (e.g. SOCTA 2017 and SOCTA 2021), operational information.

legal persons for ML purposes as well as risks of illicit flows entering the financial and real estate sectors. In some areas, such as corruption and organised crime, the authorities' understanding is sound given the SOCTAs exercises and the operational and investigative efforts. Details of authorities' risk understanding are analysed further below.

The NRA process

112. Montenegro undertook significant efforts in conducting two NRAs, published respectively in 2015 (available on the FIU's website) and 2020 (available on the FIU and Government of Montenegro website). Overall, the second (2020) NRA is reasonably structured, more nuanced and includes a more comprehensive analysis compared to the first NRA. The 2020 NRA results from the work carried out by the inter-institutional team led by the FIU. The inter-institutional team consisted of eight working groups, including representatives from 25 institutions. One of these eight working groups dealt exclusively with the assessment of TF risks. Private sector representatives were also involved in the process through partaking in questionnaires, interviews, and other forms of data collection.

113. Both NRAs were conducted using the World Bank's Risk Assessment Tool, based on a wide range of sources of information[62]. While the AT notes an increased quality of the analysis in the 2020 NRA, some shortcomings are still noted in relation to: (i) a lack of in-depth analysis in relation to high-level corruption, the misuse of legal persons and the use of cash, and (ii) a limited analysis of sectorial vulnerabilities (other than banks and insurance service providers).

114. Notwithstanding these shortcomings, it is worth mentioning that both NRAs acknowledge, given its geographical location on the "Balkan route", the country's exposure to cross-border risks in relation to "drug trafficking", "human trafficking", "smuggling in migrants" and "smuggling in goods", with a relevant involvement of domestic and foreign OCGs laundering proceeds of crimes in Montenegro and abroad. These conclusions appear reasonable to the AT, despite not being based on an extensive analysis.

ML risk

115. The ML risk understanding is reasonably good among most key stakeholders, going beyond the NRA findings and conclusions. The 2020 NRA concluded that the ML risk is "medium". Whereas the AT does not dispute the appropriateness of risk rating assigned, concerns remain with regards to the reasonableness and implications attached to the analyses of some key threats (high-level corruption) and vulnerabilities (use of cash, informal economy, analysis of sectorial vulnerabilities other than for banks and insurances).

[62] For the 2020 NRA, data was collected for the period 2014-2019. The collected data included: the annual reports of the Supreme Public Prosecutors' Office, SOCTA reports produced by the Ministry of Interior – Police Directorate, statistical data provided by the Supreme Court of Montenegro (e.g. confiscations of property) and by the Ministry of Justice (e.g. MLA requests for ML cases), FIU typologies and relevant information contained in different domestic Strategies. Moreover, NRAs also quote information contained in European institutions and agency reports (i.e. European Commission and Europol Reports) and foreign civil-society organization report (i.e. Global Initiative against Transnational Organized Crime).

116. The authorities demonstrated a good understanding of the environment (e.g. notably Montenegro's geographical position on the so-called "Balkan route") in which predicate offences are committed and the proceeds of crime are generated.

117. The authorities were able to articulate, based on the investigations carried out, how ML occurs for different types of predicate offences where the real estate sector resulted, by far, the "end user" of illegal funds. In relation to ML relating to tax evasion, the authorities highlighted how this mainly occurs through the abuse of domestic and foreign legal entities which usually provide fictious commercial transactions and services, and fake loans with the aim to justify operations at the domestic banks. In some instances, the cash generated by such illegal activities have been invested in real estate. Real estate sector is the sector where high-level corruption proceeds are invested, usually using family relatives and close associates as nominees. Funds generated by usury ("loan sharking") are often invested in real estate where properties are fictitiously owned by unemployed persons, acting as fronts. While local OCGs invest funds (generated by domestic and transnational illegal activities) mainly in the following sectors: banking sector, real estate sector and entertainment sector (e.g. gambling, restaurants, hotels).

118. Montenegro has identified in its 2020 NRA the following main ML threats: (i) high level - "drug trafficking at international level" (where Montenegro is considered a transit country), "loan sharking" (i.e. "usury") and "evasion of taxes and contributions", (ii) medium level - "corruption", "serious murders related to organized crime" and "drug trafficking at national level" and (iii) low level - "property crimes". Despite the shortcomings mentioned in the previous paragraph, the AT deems that the identification and analysis of the threats, as presented in the NRA is reasonable in the context of Montenegro.

119. With regards to OCGs, media reports and events that occurred during the referenced period[63] highlight their significant involvement in criminal activity perpetrated in Montenegro, despite a decrease noted in the number of active high-risk OCGs operating in Montenegro[64]. The findings and conclusions of the 2020 NRA as well as the 2017 and 2021 SOCTA illustrate that OCGs are an overarching threat connected to the main identified ML threats. Most notably, the 2020 NRA analysis acknowledges that OCGs, when laundering proceeds of international drug trafficking, use "sophisticated methods of electronic payment, offshore destinations, fictitious companies, false identity and the physical transfer of cash across the border"[65]. With regards to "loan sharking", identified as a high threat, it involves the use of significant amounts of cash and is also mainly perpetrated by OCG members, in some cases facilitated by lawyers and notaries who assist in drafting relevant contracts[66] or by their unwillingness to report suspicions.

120. The risks associated with OCGs activities, their structures, *modus operandi*, and typologies used to launder the proceeds of crime were analysed in-depth within the 2017, and more extensively, the 2021 SOCTAs. The 2021 SOCTA acknowledges, in relation to OCG: (i) their main activity to be related to smuggling of narcotics, primarily cocaine, at the international level, (ii)

[63] Bad Blood: A War Between Montenegrin Cocaine Clans Engulfs the Balkans - OCCRP
[64] Page 18, 2021 SOCTA
[65] Page 25 of the 2020 NRA. The same modus operandi was also mentioned in the 2015 NRA (Section 3.4 of the 2015 NRA).
[66] Page 20 of the 2020 NRA

misusing legal entities for laundering proceeds through investments in construction business, real estate acquisition or ownership of organisations of games of chance, both in Montenegro and abroad. While the 2020 NRA was not updated following the 2021 SOCTA conclusions, the AT deems that these have contributed to enhancing authorities' understanding.

121. During the on-site discussions, LEAs indicated that OCGs invest their illicit proceeds in several ways: (i) depositing cash or transferring funds on current accounts, (ii) acquiring property (e.g., apartments, hotels and resorts) and luxury vehicles, and (iii) misusing legal persons. These illegal activities are conducted using strawmen and/or domestic or foreign legal persons. Cash is also used for the financing of associates, including families whose relatives are in prison. The authorities could describe and analyse specific details of these OCGs activities.

122. Regarding high-level corruption, the 2020 NRA acknowledges its prevalence in Montenegro, with illegal proceeds acquired through these criminal offences being extremely high and running in millions of euros[67]. While there is uncertainty about the "medium" rating assigned in the 2020 NRA to this threat, the AT positively notes that the discussions held with the competent authorities, notably in relation to the existing cases, confirmed that "high-level corruption" is considered to constitute a significant ML threat in Montenegro. The NRA analysis and conclusion on corruption related ML threats, also in the light of some events[68] that took place right before and after the on-site, call for a more in-depth examination of this matter, and a possible reconsideration of this threat.

123. The NRA highlights that the use of cash is still considered to be significant in Montenegro although to a lesser extent (compared to the previous period analysed under the 2015 NRA)[69]. Montenegro is considered by the domestic authorities as a "cash-based economy" where the informal economy is estimated to constitute around 24.5% of the total economic activity (see section 1.4). Moreover, the physical transportation of cash across the border increased during the recent years: through the use of large denominations and payments of persons for money transfer[70]. During the discussions held on-site, the authorities demonstrated awareness of the ML risks associated with the use of cash, notably mentioning to the use of "money mules" to move cash across borders. Despite the lack of a comprehensive analysis in the NRAs, competent authorities are fully aware of this phenomenon and have proposed legislative amendments such as through limiting the use of cash in the country.

124. Although not mentioned in the 2020 NRA among the identified threats, "tobacco smuggling" has been analysed in more detail in the 2021 SOCTA, according to which smuggling of tobacco and drugs are the main crimes from which OCGs obtain important illicit funds.

125. Turning to the main ML vulnerabilities, the NRA listed the following: (i) inadequate normative framework in certain areas, (ii) actions needed to increase the number of identified, prosecuted and convicted ML cases, and capacities to confiscate proceeds of crime, including by

[67] Page 31 of the 2020 NRA
[68] https://balkaninsight.com/2022/12/09/montenegro-special-state-prosecutor-arrested-for-abuse-of-office/
https://balkaninsight.com/2023/07/24/montenegro-arrests-former-police-chief-for-abuse-of-office/
[69] Page 48 of the 2020 NRA
[70] *ibidem*

conducting financial investigations, (iii) lack of human resources and expertise in AML/CFT matters, (iv) an underdeveloped IT infrastructure (i.e. absence of case management systems and of electronic maintenance of statistics), and (v) incomplete statistics[71] which limit the quality of analyses undertaken. Beyond the NRA, the authorities demonstrated awareness in relation to other vulnerabilities such as budgetary issues (resources available for additional staff with expertise, and for technical equipment) as well as limited AML/CFT regulation and supervisory framework for some sectors (especially for DNFBPs). Moreover, concerns in relation to the independence and integrity of the judicial system have been highlighted[72] as well as the impact of the current fragile political and institutional architecture[73] has on AML/CFT efforts. During the on-site discussions, the vulnerability linked to tipping off and leaked documents and the need for IT solutions to mitigate these issues was highlighted both by the authorities and the private sector. The vulnerabilities as listed in the NRA and presented by the authorities appear realistic and the AT, during the on-site visit, observed that they are still present in the country.

126. The sectorial ML risk distribution is the following: (i) high-risk – lawyers, the real estate sector (i) medium-high risk - organisers of games of chance, particularly casinos, (ii) medium risk – the banking sector, the capital markets, notaries, accountants (iii) low risk – the insurance sector. Thus, overall, the DNFBP sector has been considered to be exposed to a higher ML risk when compared to FIs.

127. The AT considers the sectorial risk distribution to be reasonable, although the analysis of some sectors remains limited. Whilst the 2020 NRA does undertake an analysis of the ML/TF vulnerability of products and services provided within banking and life insurance sectors, for other sectors such as the Capital Markets, Real Estate, Organiser of Games of Chance, providers of company services, and Lawyers (these being the most vulnerable according to the 2020 NRA) the conclusion on the level of vulnerability does not properly take into account the type and extent of provision of various products and services as well as other crucial factors.

128. The real estate sector has been assessed as high risk under the 2020 NRA. The NRA highlights how based on FIU intelligence and practical experiences it appears that the acquisition or construction of real estate is the most frequent manner of "placement" of illicit funds where domestic and foreign OCGs are often involved. This has been confirmed onsite by all competent authorities. The NRA 2020 considers persons involved in the construction, trade or mediation of real estate to be exposed to the same level of risk (i.e. high risk of ML/TF). While this appears to be clearly the case for persons involved in construction and trade of real estate, the rationale for considering real estate agents to be exposed to the same heightened risk is unclear to the AT. This since the NRA does not seek to analyse and understand the specific exposure of real estate mediators (i.e. agents) to ML/TF risks in view of the extent of their involvement in property transactions, their role in property transfers (e.g. whether they handle funds or merely fulfil a

[71] Page 16 of 2020 NRA and Para 3.3. "System vulnerability on national level" of the 2015 NRA.
[72] European Commission Report on Montenegro concluded that, with regard to the judicial system, "effective independence, integrity, accountability and professionalism need to be further strengthened", page 5, link: Page 5 of the Montenegro 2022 Report by European Commission [SWD(2022) 335 final] https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf
[73] EC report 2022 https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en - page 4

mediation role) and risks associated with type of clients they service, among other elements. The NRA 2020 merely highlights that while construction companies are cash-oriented, the real estate agents tend to operate more through current accounts[74]. This is however insufficient to reach a proper conclusion on the level of risk exposure for real estate agents, and the risk level attributed to real estate agents does not appear justified considering the huge discrepancy in turnover made by estate agents compared to construction companies (see section 1.4.3.).

129. Turning to lawyers, notaries and accountants, their risk exposure comes (to different extents) from their involvement in real estate transactions and in providing services for legal persons. However, the analysis does not consider the extent to which each of these respective professionals provide services connected with real estate and company formation services which would have a significant bearing on the ultimate risk exposure. By way of example during the on-site discussions it transpired that notaries are more heavily involved in property deals in comparison to lawyers since every property deal must be published by a notary. It was also explained that accountants are more involved in the provision of company formation services compared to lawyers. This does not correspond to the ultimate risk scoring for lawyers (being high) in comparison to the medium risk assigned to notaries and accountants[75].

130. With regards to the gambling sector the factors underlining the medium-high risk were mainly to: (i) the size of the sector, (ii) the use of cash, (iii) relevant presence of foreign visitors (around 80%)[76], and (iv) the issuance of bearer winning tickets. There is scope to enhance the weighting attributed to the ownership structures of the operators, volume of funds handled, risks associated with the types of games and volume of attached gaming and the level of AML/CFT controls to derive a more solid conclusion. With the collection of more granular data through the risk evaluation questionnaires launched for the gaming sector in 2023 (see IO3) the authorities will be in possession of detailed information to address this gap.

131. The 2020 NRA indicates that OCGs may be using VAs to launder proceeds of their criminal activities[77]. VAs and VASPs were subject to a separate ML/TF risk assessment carried out jointly by the CBM and the FIU, based on a domestically developed methodology. The specific risk assessment sought to examine the exposure of the domestic banking and investment sectors to VAs (see section 1.4.3). The identified VA activity appeared to be modest compared to the activity occurring within more important sectors. The authorities, however, acknowledged that this analysis and obtained activity data is not entirely reliable, and believe that there exists a higher risk of use of bank payment systems for VA/VASP trade.

132. The overall conclusion was that the sector was exposed to a high ML risk in relation to VAs/VASPs. The conclusion was based on a prudent and candid analysis of various sources, including a study on banking codes that international card issuers use with the aim to track VA-related banking operations and intelligence confirming the appetite of OCGs in relation to VAs, which, once converted into fiat currencies, would be invested in real estate (although limited in

[74] Page 247 of 2020 NRA
[75] Page 16 of 2020 NRA
[76] Page 258 of 2020 NRA
[77] Page 25 of the 2020 NRA

number of cases and amounts involved). The analysis acknowledged the absence of a dedicated regulatory framework, the lack of accurate data on the size of the VASPs and VA activities in Montenegro and their potential misuse. The discussions held on-site suggest that the risk understanding in this area is developing. Thus, the AT concluded that all the domestic competent authorities (the SPO, SPU, Police, NSA, the FIU and CBM) are aware of the potential ML/TF risk which might be associated with VASPs and VAs having regard to the risks and context of the country. However, their risk understanding needs to be further consolidated, for this reason a more in-depth risk analysis on the use of VAs and VASPs in Montenegro is needed.

133. Despite the absence of a dedicated regulatory framework, the AT deems this risk analysis to be a first positive step in understanding the ML/TF risks linked to VAs and VASPs and their potential misuse, whereas in relation to misuse by OCGs, in particular through purchasing real estate as reflected in the 2020 NRA and in the VAs/VASP risk analysis, there is scope to further develop the understanding.

134. Elements of ML/TF risks associated with legal persons and typologies of misuse appear in a number of streams, including the 2020 NRA, however Montenegro has not yet conducted a comprehensive and integrated risk assessment in relation to legal persons (see IO.5 for further details). The understanding of ML/TF risks associated with legal persons was the most developed among the LEAs and the FIU (which have dealt with criminal cases involving legal persons), and the CBM, which is the main AML/CFT supervisor. These authorities demonstrated an adequate understanding of the current risk of abuse of legal persons in relation to both ML and TF. There however seems to be a lack of appreciation of vulnerabilities of Montenegrin legal persons and an understanding of the effectiveness of the control framework to prevent misuse of legal persons for ML/TF (including the roles played by CSPs, accountants, lawyers and notaries providing services related to the formation, management of and accountancy services for the domestic legal persons) and ensure the provision of adequate and up to date basic and BO information.

135. No ML/TF risk assessment was conducted on the Citizenship by Investment scheme. Over the period that this scheme was in operation (from 1 January 2019 to 31 December 2022) around €80 million have been generated. This turnover when compared to the turnover generated through other products and sectors (e.g. real estate sector and gaming) is modest and should be taken in consideration when reflecting on the weighting of this lack of analysis. Based on information provided onsite, it resulted that, although the MoI (in liaison with other national authorities from which useful intelligence/information is sourced – see section 8.2.3) was, to a certain extent, involved in the verification process, most of the due diligence process on applicants' profiles and origin of funds was carried out by foreign Due Diligence Agencies. The AT questions the appropriateness of the mechanism adopted and highlights possible conflicts of interests among the parties involved (i.e. applicants, DDAs and "intermediate agents" who introduce the applicants to the programs). The weak domestic controls, coupled with the potential conflict of interest among the parties involved in this scheme are indicative that the scheme was potentially vulnerable to being exploited for ML/TF purposes.

136. On new emerging ML/TF risks, the Montenegrin authorities (i.e. the FIU and the CBM) elaborated on the increase in the number and volume of deposits held by non-residents, following the Russian Federation's military aggression against Ukraine. These funds are mainly deposited

in banks and/or invested in the real estate sector with a spill over effect in the price of construction and real estate. The SPO also mentioned that footprints of VAs have been identified in the course of investigations. Authorities indicated, that to mitigate these emerging risks, at least, provisions limiting the use of cash and regulation for VAs are needed respectively. Police Forces also indicated that cyber-crime is considered a potential threat related to ML risk.

TF risk understanding

137. Montenegro's TF risk exposure was assessed as low and considered primarily in the context of the terrorism threat. The AT has some concerns on the reasonableness of this conclusion.

138. The 2020 NRA analysis is quite generic in relation to both TF vulnerabilities and threats. The potential TF threats were identified to be: (i) ideologically and religiously motivated terrorism and emerging trends propagating radicalism of all forms[78]; (ii) participation of some Montenegrin citizens in armed conflicts abroad, including in Syria, and their return to the country[79]; (iii) terrorist infiltration linked to a massive influx of migrants and refugees[80]; (iv) use of modern technologies and social networks to propagate ideas and raise funds, including through the use of virtual assets[81].

139. The quality of the TF risk analysis in both NRAs needs improvement notably by covering more thoroughly the TF risk exposure through cross border cash movements, movements of funds through banks and MVTSs, as well as threats of TF associated with misuse of NPO activities and the emerging trend of using virtual assets.

140. In relation to OCGs, the Montenegro authorities have indicated a lack of connection between OCGs and religious extremism. This is based on the experience of the authorities and their intelligence gathering efforts as well as the absence of any connection revealed by supervisory findings, STRs and other financial intelligence, the activities of LEAs and prosecutors or through international cooperation. OCGs operating in Montenegro are profit-driven rather than ideologically motivated, and the authorities are of the view that OCGs would regard extremism as destabilizing their profit base (see IO.9).

141. In relation to the NPO sector, the 2020 NRA has identified it as more vulnerable to TF risks due to the lack of an effective system for the control of NPOs' financing, notably in respect of monetary donations, especially from abroad[82]. The analysis reflected in the NRA concluded on a low the level of TF risk in the NPO sector without adequate substantiation[83].

142. The assessment of the TF sectorial vulnerabilities remains limited, with no analysis of the vulnerability of products, services, client risk and outgoing transactions to understand the sectorial TF risk exposure, and this despite banks, MVTSs and NPOs being acknowledged to be vulnerable to the financing of radical religious groups. Moreover, the AT notes the absence of

[78] NRA 2020, p,275; Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24; SOCTA 2021, p.77
[79] NRA 2020, p.275, 277; Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24; SOCTA 2021, p.77
[80] Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24
[81] NRA 2020, p.293
[82] page 291 of the 2020 NRA
[83] page 292 of the 2020 NRA

adequate monitoring of NPOs (see IO.9 and IO.10). Thus, AT considers that the conclusion on TF vulnerabilities in the risk assessment is impacted by an underweighting of some important elements.

143. Overall, despite the aforementioned gaps in analysing the TF vulnerabilities, most of the authorities demonstrated a generally good understanding of TF risks, going beyond the NRA conclusions, which derives mainly from the intelligence-based analysis and investigations conducted. The authorities acknowledge that Montenegro, like other countries in the region, has been facing a long-term increasing trend of radical propaganda activities, with a number of so-called "parajamats" of these groups carrying out religious indoctrination. There are, however, no indications that these structures provide facilities for the recruitment and training for the planning and execution of terrorist activity[84]. The authorities also showed awareness about the potential threat posed by members of radical groups from the region which might support or be linked to terrorism (see IO.9).

144. The NSA dedicates considerable resources to intelligence gathering and monitoring of individuals and organisations potentially linked to terrorism, including their financial flows (see cases under IO.9).

2.2.2. National policies to address identified ML/TF risks

145. Since 2015, Montenegro has produced a number of AML/CFT policy documents, which were adopted by the Government, including: (i) the Action Plans attached to both NRAs (hereafter the 2015 Action Plan and the 2020 Action Plan) and (ii) two Strategies "for the prevention and suppression of terrorism, money laundering and the financing of terrorism" (2015-2018 and 2022-2025, hereafter the "AML/CFT Strategies") and their respective biennial Action Plans.

146. At the national AML/CFT policy level, the coordinating bodies (PCB and IIWG) for monitoring the implementation of the Actions Plans of the NRAs and on AML/CFT measures have been established and operate with adequate degree of effectiveness: the legislative and regulatory measures proposed by these bodies were implemented (e.g. amendments to the AML/CFT law and the conduct of a VASP/VA risk analysis). The implementation of both AML/CFT Strategies and their respective Action Plans is monitored by the Bureau for Operational Coordination (BOC), supported by an operational working team (i.e. NIOT) that is entrusted to monitor the concrete actions undertaken (see R.2 for further details).

147. At operational level, on the law enforcement front, as planned, some of the measures set out in the 2020 NRA Action Plan to strengthen the FIU have been adopted (e.g., re-organization of the FIU within the Police Directorate, re-connection to the Egmont Group, direct access to Europol and Interpol databases). However, several other activities on national ML vulnerabilities, among which, improving capabilities and resources for prosecuting financial crime and for court proceedings[85] and increasing the effectiveness of customs control mechanisms[86] have not been undertaken yet. Turning to supervision, some amendments to the sectorial legislation in relation

[84] 2021 SOCTA, p. 77.
[85] Respectively, "operational goal 4" "operational goal 5" of the Action Plan of 2020 NRA.
[86] "operational goal 6" of the Action Plan of 2020 NRA

to capital markets have been adopted, the CBM has enhanced its AML/CFT supervisory framework, and financial supervisors (the CBM, the ISA, the CMA and EKIP) have been carrying out supervisory and training activities to varying degrees with the CBM being the most active. However other legislative, regulatory and operational activities to strengthen the supervision of FIs are still pending, such as drafting by laws under the LPMLTF, ensuring an operational BO register, promoting FIs' IT developments, organizing training, adequate screening of employees, and improving AML/CFT compliance systems. Moreover, none of the activities set in the Action Plan of 2020 NRA in relation to DNFBPs were adopted by the end of the onsite visit.

148. While the 2015 Action Plan included 34 actions based on identified ML/TF risks, the AT is of the view that its content remains broad and general with regards to the actions to be undertaken, without any mentioning of priorities, deadlines and allocation of resources. On the other hand, the 2020 Action Plan contained information on strategic and operational goals with indication in terms of initial status and expected results. Each operational goal is detailed with a list of activities aimed at implementing it. For each activity, result indicators are established, deadlines are set, and responsible competent authorities are appointed, as well as the source of funds used (budget or donors). While priorities are not clearly set in the Action Plan, this can be inferred from the urgency attached to the deadlines, despite the latter not having been met in several instances. To a large extent, the actions contained in the 2020 NRA Action Plan, are comprehensive and appropriate to mitigate the vulnerabilities detected and to reduce the identified ML/TF risks.

149. Based on information provided, 48% of the measures contained in the 2020 Action Plan had been implemented or in the process of being implemented at the time of the on-site visit. While in relation to CFT few activities envisaged by the Action Plan of 2020 NRA have been undertaken so far, other measures contained in the AML/CFT Strategies, have been undertaken by domestic authorities. Nonetheless, it is worth mentioning that during the referenced period, Montenegro has demonstrated a good level of proactivity in implementing several measures aimed at addressing identified ML/TF risks, notably in relation to higher risk sectors and areas. For instance, in relation to the real estate sector, (i) public notaries have been required to notify the FIU, on a weekly basis, about property sale contracts where the financial transactions exceed EUR 15,000; (ii) construction companies and traders in real estate (whose materiality constitute around 12% of the GDP) have been included as REs under the LPMLTF. Moreover, in relation to the misuse of cash and the high level of informal economy, initiatives have been undertaken at a legislative and operational level to monitor cash payments exceeding EUR 10.000 (through CTR submissions) and a new IT solution has been set up by the RCA for storing cross border declarations, with the FIU being given direct access thereto.

150. The two AML/CFT Strategies contain more counter terrorism elements rather than CFT elements. Some of the measures contained in the 2022-2025 Strategy emanate from the 2020 NRA conclusions. This is a positive approach in term of coordination on AML/CFT policy documents. It's worth mentioning that, in relation to 2022-2025 AML/CFT Strategy, the activities requested by the Ministry of Interior, the Ministry of Defence, the Police Directorate and the National Security Agency (NSA) have been largely implemented while others are in the process of being implemented. Worth noting that the measures contained in this document complement

the measures contained the Action Plan of 2020 NRA and thus, indirectly, support the implementation of the latter.

151. In relation to VA and VASPs, the 2022-2025 AML/CFT Strategy and the VA/VASP risk analysis of 2021 include actions and recommendations entailing the licensing and supervision of VASPs, legal amendments to ensure compliance with R.15 and upskilling of various competent authorities amongst others. Other than the AML/CFT regulation of VASPs and these prospective plans, Montenegro took no risk-based measures to prevent and mitigate ML/TF risks within this area. Overall, Montenegro has adopted valuable AML/CFT policy setting documents. The strategic and operational goals set in the 2020 Action Plan are largely in line with the NRA findings and the related activities are formulated in an appropriate manner with measurable indicators. However, certain actions set in the Action Plan of 2020 NRA have not yet been implemented or have not been implemented in due time. On the positive side, the authorities have adopted ad-hoc measures with a specific focus on higher identified ML/TF risks and other measures originating from the AML/CFT Strategies. For this reason, the authorities have yet to consolidate and prioritize mitigating measures to ensure a holistic and harmonized approach and adopt swift actions with the aim to bring together a consolidated AML/CFT strategy.

2.2.3. Exemptions, enhanced and simplified measures

152. The Montenegrin AML/CFT framework caters for some exemptions and simplified measures as follows.

153. As for lawyers and notaries, they are not defined as reporting entities (REs) but are subject to specific AML/CFT provisions which demonstrated a number of deficiencies (see R.22 and R.23). This "lighter framework" does not appear to be justified given that the 2020 NRA identified lawyers as bearing a high ML risk and notaries as bearing a medium ML risk. The AT holds the view that more serious concerns impact the application of preventive measures by these sectors (see IO4) beyond these technical deficiencies.

154. Furthermore, trust service providers, and providers of company services other than company formation and fiduciary services (which is undefined) are not covered for AML/CFT purposes. This does not appear to be justified having regard to the higher ML/TF risks emanating from the misuse of legal persons. The AT noted that the impact of these exemptions is limited in the case of accountants (see IO4), and also considering the limited use of foreign trusts in Montenegro (see section 1.4.3.).

155. Moreover, as stated under c.10.18, the Guidelines issued by the ISA (point 87) and the CBM (section 4.1.2) applicable to insurance service providers and FIs licensed by the CBM permit the application of SDD in certain specific cases considered to present a negligible/lower risk of ML/TF. Although this approach is reasonable it is however not backed up by any findings of NRAs.

156. REs providing electronic money services are, exempt from applying CDD measures, if, on the basis of the entity risk assessment, it is established that there is lower ML/TF risk and a number of conditions are met (see c.1.6 under R.1). These exemptions do not apply when a transaction or customer are linked to ML/TF suspicions, when electronic money is bought in cash or where the payment instrument allows for cash withdrawals of more than €100. The

exemptions pertaining to electronic money issuers are purely technical considered that there were no such institutions active in Montenegro.

157. The exemptions and SDD scenarios mentioned above are not supported by the conclusions of either one of the NRAs, and neither do these NRAs provide any assessment which would substantiate lower ML/TF risks in relation to the above products/sectors and hence justify the application of these exemptions.

2.2.4. Objectives and activities of competent authorities

158. The AML/CFT Strategies "for the prevention and suppression of terrorism, money laundering and the financing of terrorism", the NRAs and the attached Action Plans have been used, to a large extent, to determine objectives and activities of some competent authorities.

159. At a policy level, based on the findings of NRAs and activities indicated in the actions plans attached to NRAs and to the AML/CFT Strategies, certain initiatives have been undertaken in line with the identified ML/TF risk. For example, amendments to the AML/CFT Law have been proposed with the aim to limiting the relevant use of cash, to include construction companies and traders in real estate among REs and to establish a BO register for legal persons. These measures are coherent with and focused on higher identified ML/TF risks in the NRAs.

160. At an operational level, few competent authorities provided information on how the identified ML/TF risks have been incorporated in their objectives and activities. For instance, in relation to cross-border movement of cash, the FIU and the Customs have signed an MOU based on which the FIU has online access to the passenger movement data, cash declarations and seized cash since January 2023. In relation to the real estate sector, the FIU collects from notaries, on a weekly basis, information on property contracts exceeding €15,000. This constitutes the basis for additional source of information for intelligence in relation to riskier sectors and areas in the country.

161. The CBM provides information on the AML/CFT activities carried out in the course of the years through annual reports[87]. These include: participation in the drafting of AML/CFT legislation, issuance of guidance and ML/TF indicators, supervisory activities carried out and results emerged, as well as other-related initiatives from the private sector (e.g. new IT tools adopted) and from the CBM (e.g. projects connected with new technologies). The information provided in the CBM reports suggests that AML/CFT activities have been increasing over the years which demonstrate the level of commitment by the CBM on this matter (e.g. development of a structured risk-based approach) are risk based and follow the outcome of NRAs.

162. Moreover, the CBM and the FIU have identified as emerging risks the increase in number and in volume of current accounts held by Ukrainian and Russian citizens, complemented by a growth in the use of cash and consequence rise in the price of real estate where these persons have invested. AT was informed that the Montenegrin competent authorities are monitoring this potential emerging risk through various means, in particular by receiving information on the level of deposits within the banks (for each bank full info on amount, period of time, on non-residents

[87] Central Bank of Montenegro Annual Report for 2021, page 63 and 64.

specially) that contains information on the percentage of the nationality of clients that are making deposit, by each bank. Based on the information provided by Montenegro, this is used for thematic off-site supervision of the banks regarding the increasing level of clients from these jurisdictions.

163. In relation to real estate sector (identified as exposed to a higher ML/TF risk), the MoI has, since the adoption of the 2020 NRA, slightly increased the number of inspections and imposed some administrative actions due to the violations identified. Although as set out under IO3, these supervisory activities are not sufficient.

164. As far as the gaming sector is concerned, which has a higher ML/TF risk exposure, the Administration for Games of Chance (regulating this sector) has in 2017 established an IT system (ISONIS) where all the online operators are registered, and required to report each transaction executed by customers including the following data: number/amount of payments, number/amount of payouts, ID details and identification of the gaming station used to play. However, the FIU and other competent authorities do not have direct access to this IT system which might be beneficial for its functions.

165. In relation to NPOs, the CBM (according to its risk based supervisory activities) always selects NPO-clients when verifying the compliance of AML/CFT requirements of FIs. This emphasizes the importance given by the CBM on monitoring business relationships held by NPOs which might be at TF risk abuse. The lack of a comprehensive risk assessment of NPOs by Montenegro is an obstacle for setting risk-based AML/CFT measures for banks regarding NPOs, which opt to classify NPOs as high risk or decide not to service them. Worth indicating that the CBM has issued guidance for banks which requires the latter to classify NPOs as high-risk by default. The issuance of this guidance demonstrates the attention posed by Montenegrin Authorities to TF-related issues. However, on a less positive side, based on the information provided onsite, the CBM's measures are indiscriminately applicable in respect to all NPOs irrespective of their scope. This leads to excessive due diligence and has the effect of discouraging clients from the NPO sector conducting legitimate activities through financial regulated channels and results in an unintended consequence of the AML/CFT measures.

166. The RCA in its annual reports[88] provides insight of the activities carried out, including actions against fraud, cross borders smuggling, "grey economy" and other irregularities. These activities have been taken cooperating with international and foreign counterparts (among which, OLAF and Interpol) and in cooperation with domestic authorities (i.e. State Prosecution Office and Police). These lead to investigations and criminal reports. Such activities show that the RCA's activities address some of the main identified ML threats of the NRAs (i.e. fraud, goods smugglings, informal economy, misuse of cash).

2.2.5. National coordination and cooperation

167. Competent authorities (SPO, SPU, the FIU and some supervisors, under respective competences) demonstrated setting and operating various co-ordination and co-operation mechanisms aimed at ensuring the implementation and monitoring of various strategies,

[88] Work Report of Customs Administration for 2020, page 12.

including those on the prevention of ML/TF and terrorism, at monitoring the enhancement of the compliance of Montenegro with the international AML/CFT standards, and also aimed to facilitate operational co-operation. Overall, a good level of coordination and cooperation among authorities have been demonstrated at a policy and an operational level.

168. At a policy level, Montenegro has indicated that the National Security Council (NSC) coordinates the work of the intelligence and security sector. The operational tasks are performed by BOC which is established by the Government and tasked with, among others, forming interinstitutional working teams for operational issues. BOC has established the National Interdepartmental Operational Team for the Suppression of Violent Extremism, Terrorism, Money Laundering and Terrorist Financing (NIOT). The task of the NIOT is, among other things, to manage, coordinate and monitor the activities of state bodies, state administration bodies and other relevant institutions for the prevention and suppression of violent extremism, terrorism and ML/TF (further information is provided under R.2).

169. The NIOT meets on a monthly basis with the aim to monitor the effective implementation of the activities set in the AML/CFT Strategies and to draft and submit periodic reports to the BOC on the level of implementation. The periodic reports contain detailed information on the degree of realization of activities, the results achieved, the challenges encountered and linked recommendations, and the financing of the planned activities. Moreover, the progress made in relation to each operational goal (which constitutes the strategic goal of the AML/CFT Strategy) is presented in detail. In addition to this monitoring function, the NIOT is also in charge of drafting other strategic documents, and exchanges with regional and international bodies involved on the topics for which it carries out the monitoring functions.

170. The latest periodic report by the NIOT in relation to the implementation of 2022-2025 AML/CFT Strategy shows that in the period 2022-2023 most of the activities envisaged under the respective operational goals have been implemented or are continuous actions (such as training initiatives). These activities and actions include the adoption of legislative acts on preventing and countering terrorism and on critical infrastructure. Other activities are related to the establishment of databases on restrictive measures and related training initiatives as well as other training courses for Judges, prosecutors, LEAs and personals dealing with CT as well as other operational activities in the field of CT and WMD. This shows a certain good level of effectiveness in relation to national coordination for the implementation of the 2022-2025 AML/CFT Strategy.

171. As for the implementation of Actions Plans related to NRAs, the FIU has played a relevant role in this regard. In 2021, the Government established the IIWG with the task to coordinate all the activities in the AML/CFT area. Since the end of 2022, a Permanent Coordinating Body (PCB) was also established and tasked with the preparation of the NRA and the Action Plan, monitoring of the implementation thereof as well as the coordination and direction of activities on the AML/CFT by competent authorities (for further details see Rec.2).

172. The PCB holds its meeting once a month and if necessary additional meetings are organised. The agenda of the meetings refers to issues related to fulfilment of measures defined in the Action Plan, challenges that the competent authorities meet in this regard, and other related

AML/CFT issues. When performing its functions, the PCB is authorized to involve any of the authorities in its work when it is necessary and to create ad hoc working groups (e.g. when drafting specific sectorial risk assessments).

173. More broader is the list of the 21 members of the IIWG compared to PCB members (see R.2 for details) where representatives of the key AML/CFT competent authorities are included, among which representatives from the Supreme Court, the SPO, the Police, the NSA, the FIU, Supervisors, Tax and Revenue and Customs Authority, Registers of legal persons, and representatives of main Ministries involved in the AML/CFT process. Representatives of the Agency for Anticorruption are not included, which given the risk profile of the country on that matter, would be beneficial.

174. Beside the coordinating functions on the implementation of the international AML/CFT standards domestically, the role and function of the IIWG is also to raise awareness among its members about new AML/CFT obligations that fall under the scope of their competences, to inform them on the measures adopted and results achieved in the AML/CFT field and to take account of the AML/CFT achievements each authority obtained under its competence.

175. The IIWG informed the AT that, among others, the following topics were discussed: TF, NPOs, VA/VASPs and TFSs-related issues: the IIWG elaborated its proposal in relation to the harmonization of the LPMLTF with the V AML EU Directive, approached SRBs acting as DNFBPs supervisors for Lawyers and Notaries, invited the CBM and FIU to carry out a ML/TF risk analysis of VA/VASPs sector and proposed amendment to the Law on IRM with the aim to incorporate elements of TFSs related to the proliferation of WMDs.

176. It was observed that the overarching issue of the political stability impacts the output of the various interagency mechanisms (i.e. BOC (which is chaired by the Prime Minister) and IIWG (which is chaired by the Ministry for Interior) and thus on the effective implementation of the national AML/CFT legislation and policies.

177. At operational level, on countering ML, the SPO, the SPU and the FIU showed a certain level of operational coordination and cooperation when performing their activities. The SPO, when coordinating investigations, resorts on the SPU staff and when the case is triggered by the FIU, this is involved in the investigation (JIT). This also includes JITs with foreign counterparts (please see Case No. 3.5: "MIG" – 2021 and Case 8.9 – Use of Joint Investigation Teams). Worth saying that the RCA is not involved in national JITs.

178. On preventing AML measures, the cooperation mechanism between the CBM and the FIU (based on MOU) functions adequately, while meetings and information sharing among AML/CFT supervisors (including the ISA and the CMA) take place.

179. The RCA has been cooperating with domestic authorities (i.e. SPO, Police) for the investigations and criminal reports on some of the main identified ML threats (i.e. fraud, goods smugglings). These actions have also been taken cooperating with international and foreign counterparts (among which, the OLAF, Interpol).

180. In relation to CFT, at a policy level, competent authorities (e.g., Police, the FIU, the NSA and RCA) are regular members of the NIOT that is tasked to monitor the implementation the two

Strategies "for the prevention and suppression of terrorism, money laundering and the financing of terrorism" mentioned above. Based on the list of actions set in the respective biennial Actions Plans, so far, most of these activities have been successfully undertaken.

181. At operational level, with regards to the CFT, the NSA and the Police Force cooperate in relation to terrorism, and this has been done also with the support of the FIU when the financial component is present. As detailed under IO9, that Montenegrin Authorities adopted an intelligence-based approach to reveal, detect and investigate terrorism and TF suspicions, which represents a strong element, and ensures a sufficient and effective level of detection and immediate coordinated response to potential terrorist acts.

182. On proliferation financing, as regards the cooperation and coordination among authorities aimed to develop and implement policies and activities to combat the financing of proliferation of WMD, Montenegro has adopted the National Strategy for non-proliferation of WMD (2016 - 2020) aimed at improving the coordination for suppression of WMD, strengthening the capacities for gathering and exchanging intelligence necessary to detect, identify and monitor threats caused by WMD and dual use items. This Strategy resulted, inter alia, in the creation of the National Coordination Body on Counter-Proliferation (NCBCP). While, according to the authorities, these measures have contributed to ensuring the prevention of financing of proliferation of WMD, no information has been provided in relation to coordination and cooperation of policies and activities in relation to the financing of WMD.

2.2.6. Private sector's awareness of risks

183. The level of understanding of ML/TF risks varied across sectors. Banks and MVTSs that are part of international groups and some of the domestic banks demonstrated a sophisticated understanding of ML risks to which Montenegro is exposed especially in terms of ML threats, noting that OCGs, use of cash, tax evasion, and misuse of legal entities, amongst others, are serious ML threats for Montenegro. The other non-bank FIs' understanding of ML risks is adequate but mainly confined to the NRA conclusions. To the exception of accountants (which also provide company services) and auditors, the other DNFBPs did not display appropriate knowledge of ML risks, including of the NRA outcomes. In relation to TF risks, the understanding was generally low across all sectors.

184. As for the 2020 NRA, a large number of representatives of the private sector met onsite confirmed their involvement in the process, through replying to questionnaires and attending meetings, and were able to elaborate on its findings. Some of the financial supervisors (CBM and CMA) have circulated the NRA findings or organized training seminars on the main outcomes and have requested REs to review their AML/CFT internal policies and procedures in the light of the 2020 NRA findings.

185. The authorities explained that, after their adoption, the 2015 NRA, and the related Action Plans were published on the website of the FIU. The 2020 NRA has been published on the

Government of Montenegro website on the 21 February 2021[89]. The financial supervisors (CBM and CMA) have also notified their respective REs about the publication of this document, while this was not the case for other supervisors. The FIU and the CBM also provided information about the NRA, during seminars held with representatives of banks and other REs.

Overall conclusions on IO.1

186. Competent authorities demonstrated a reasonably good understanding on how ML occurs in Montenegro. The understanding of the Montenegrin Authorities is wider and more structured compared to the analysis and findings of the NRAs. There is scope to enhance the risk understanding of some important ML threats and vulnerabilities (e.g., high level corruption, misuse of legal persons, VASPs, CSPs, misuse of cash and informal economy) notably by carrying out an in-depth analysis, supported by appropriate statistics.

187. Most of the key CFT authorities demonstrated a generally good understanding of TF risks, going beyond the NRA conclusions, which derives mainly from the intelligence-based analysis and investigations conducted. The assessment of the TF sectorial vulnerabilities remains limited and needs improvement notably by covering more thoroughly the TF risk exposure through cross border cash movements, movements of funds through banks and MVTSs, as well as threats of TF associated with misuse of NPO activities and the emerging trend of using virtual assets.

188. While Montenegro has adopted national AML/CFT policies which consist of two AML/CFT Strategies, two NRAs and the related Actions Plans, the country needs to do more with the aim to consolidate and prioritize actions contained in these various documents ensuring a holistic and harmonised approach across all areas of AML/CFT.

189. Montenegrin authorities should also take swift action in relation to a number of activities which are still pending, completing the implementation of the 2020 NRA Action Plan and ensure that all competent authorities set objectives and activities which are coherent with the AML/CFT policies and risk identified.

190. There are mechanisms in place at policy level (BOC/NIOT, PBC and IIWG) which demonstrated a certain level of effectiveness on national coordination for ML/TF issues. This was not the case in relation to the PF. At an operational level, on ML, investigating authorities showed a good level of operational coordination and cooperation when performing their activities. Cooperation is also established among AML/CFT supervisors. On TF, such cooperation exists among the NSA, Police Force and the FIU, while this is not the case for PF.

191. The exemptions and simplified CDD measures set in the AML/CFT Law (especially those related to lawyers, notaries and CSPs) are neither supported nor consistent with the results of the NRAs. This is relevant given the risk and context of the country (i.e. misuse of real estate and legal persons), thus the country should remedy these deficiencies.

192. **Montenegro is rated as having a Substantial level of effectiveness for IO.1.**

[89] Nacionalna procjena rizika od pranja novca i finansiranja terorizma sa akcionim planom (www.gov.me)

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

a) The competent authorities access a wide variety of financial intelligence and other relevant information when conducting criminal and financial investigations. This information is mainly used to develop evidence on and trace proceeds of predicate offences. Its use to identify and investigate ML occurs to a lesser extent. Financial intelligence has not led to TF investigations, though LEAs systematically use it to conduct intelligence-based analyses and preliminary investigations.

b) The FIU regularly disseminates information to the LEAs, which is largely aligned with the country's risks and considered to be of good quality. The LEAs and state prosecutors make use of FIU disseminations to launch ML/TF preliminary investigations and investigations into other crimes, however, do not sufficiently use it to trigger ML investigations. This results from the over focus on evidencing the underlying predicate crime when investigating and prosecuting ML and the general lack of prioritisation of the ML offence (see IO.7). A positive practice of forming investigative teams with the involvement of the FIU to investigate ML has recently been established, while there is insufficient feedback provided by the LEAs to the FIU.

c) The level of reporting is low across all sectors, and in particular high-risk sectors such as lawyers, notaries, providers of company services and casinos. The FIU has noted improvements in the quality of STRs filed by some of the banks. STRs constitute the main trigger of FIU disseminations and are fairly usable in this respect.

d) The FIU makes effective use of the extensive intelligence pool (i.e. STRs, CTRs, property contract reports and cross-border cash declarations among others) to conduct operational and tactical analysis, but to a lesser extent for strategic analysis purposes to detect and disseminate information on ML/TF trends and typologies in higher risk areas, such as use of cash, corruption, drug trafficking, organized crime, and tax evasion. The monthly strategic analysis on the quality of the STRs submitted by banks is commendable and a useful asset for the CBM's supervisory activities.

e) Important steps were taken to strengthen the FIU's capacities and its performance. The FIU has increased its budget, human and IT resources which is commendable, but further enhancement of resources (especially in the IT infrastructure, adequate STR prioritization and filling the vacant positions) is still required. This is especially relevant considering the required initiatives to increase the submission of STRs.

Immediate Outcome 7

a) The prosecutorial and police authorities of Montenegro have sufficient powers to identify and investigate ML. However, in practice they did so in a limited number of situations, mostly in connection to ML related to domestic predicate offences. It was

largely caused by (i) the absence of a clear policy, criteria and an appropriate coordination mechanism applicable to different branches of prosecution and police to identify and investigate ML, (ii) the limited scope of financial investigations (including informal ones) which are concentrated on establishing assets subject to confiscation and do not aim at the identification and investigation of ML, and (iii) the limited use of incoming international cooperation requests to start ML investigations notwithstanding the high risk of laundering of foreign crime proceeds.

b) The ML investigations and prosecutions are consistent with the risk profile of the country to a limited extent. The prosecutors often prefer pursuing the confiscation of predicate crime proceeds rather than investigating and prosecuting associated ML. The high-risk proceeds-generating offences were insufficiently considered for identifying, investigating, and prosecuting ML.

c) In the absence of judicial practice, which is still expected, the prosecutors and judges have an uneven understanding of what constitutes proceeds of criminal activity in stand-alone ML cases. This led to setting a high evidentiary standard for proving ML. There are no guidelines to assist the authorities.

d) The ML prosecutions were on the decline throughout recent years, while the number of ML convictions is very low which does not correspond to the ML risks. The prosecution and conviction of third-party, stand-alone ML and ML with foreign predicates has been insufficiently pursued. This has been done relatively better in terms of self-laundering prosecutions, but still at an unsatisfactory level. Legal persons were insufficiently pursued in ML cases despite their frequent use in ML.

e) Lengthy court proceedings (including to a lesser extent confirmation of indictment proceedings) are leading to undue delays in most ML cases. This had a negative impact on the effectiveness of the criminal justice system for combating ML.

f) Montenegro has a shortage of human resources at the Police, the SPO and the judiciary to deal with ML cases. The level of expertise at the prosecutorial and police offices, other than the SPO and the SPU, is insufficient for properly detecting ML. There is a need for continuous AML trainings for the Police, the Prosecution Service and the Judiciary, including on the elements of ML offence and evidentiary standards.

g) Criminal sanctions for ML were not applied in an effective, proportionate, and dissuasive manner. The authorities were however at an advanced stage of revising the sanctioning policy, which is expected, upon adoption and implementation, to have a positive impact on applying criminal sanctions for ML.

h) Montenegro can use alternative criminal justice measures in cases, where it is not possible to secure ML conviction. However, no such measures were applied during the evaluation period.

Immediate Outcome 8

a) The competent authorities of Montenegro have powers to trace, seize and confiscate criminal proceeds, instrumentalities, and property of equivalent value. They pursue these measures as policy objectives. Further results are expected through the

implementation of remaining relevant objectives under the 2020 NRA Action Plan and the AML/CFT Strategy for 2022-2025.

b) To some extent the authorities conducted financial investigations, which resulted in confiscation of certain criminal assets. However, such investigations were not applied in a sufficiently consistent and effective manner, due to: (i) lack of awareness and expertise of prosecutors and police (other than the SPO and SPU), (ii) insufficient implementation of the existent policy for financial investigations resulting also from ineffective monitoring thereof; and (iii) the shortages of human resources at the SPO and the SPU.

c) To some extent the authorities pursued the confiscation of proceeds of domestic predicate offences. Foreign proceeds of crime have been confiscated to a limited extent. Confiscation of property of equivalent value and confiscation (including repatriation, sharing and restitution) of proceeds moved to other countries have not been carried out. A third-party confiscation took place only once. Exact scope of confiscating instrumentalities is unknown.

d) Montenegro has to some extent confiscated proceeds generated from a number of serious crimes, such as organised crime, drug trafficking and corruption. However, the overall value of confiscated assets derived from the commission of high-risk predicate offences (including drug trafficking involving major OCGs and high-level corruption) is still inconsistent with the risk-profile of the country.

e) Montenegro does not have a practice for the identification, tracing, seizure, confiscation and management of virtual assets. The legislative and operational frameworks have never been tested in this respect.

f) The detailed breakdown of confiscated assets per proceeds of crime and instrumentalities was not available. It impeded a holistic assessment of the effectiveness of the system.

g) The authorities have some experience in managing the value of seized and confiscated assets. However, it does not include the experience in selling confiscated immovable assets and seized movable assets, except for the perishable goods. Undue delays in criminal proceedings put extra pressure on the management of seized assets.

h) The permanent confiscation of falsely/not declared cross-border movements of currency and bearer negotiable instruments is not available as a sanction in Montenegro. Respectively, it has never been applied in practice. Such currencies and BNIs can only be confiscated through criminal or extended confiscation proceedings, if they meet the additional criteria, i.e. they are proceeds or instrumentalities of crime or are disproportional to the legitimate income of a person.

i) The controls on cross-border cash movements have yielded some results. Nonetheless considering the country's risks associated with cash usage and cross-border crimes, coupled with the lack of dissuasive enforcement of cross-border cash declarations, more efforts are needed to effectively control cross-border cash movements. The FIU has recently started making use of information on cross-border cash movements for

tactical analysis purpose to detect and pursue analysis into ML/TF suspicions. Such information is however not effectively used for strategic analysis purposes to develop trends and typologies.

Recommended Actions

Immediate Outcome 6

a) Montenegrin LEAs and the SPO should enhance the use of financial intelligence and FIU disseminations to investigate ML associated with the main proceeds generating crimes.

b) The FIU and supervisory authorities should enhance the volume and quality of the STRs by: (i) providing substantial feedback to REs on the outcomes and the quality of STRs; (ii) providing targeted guidance and training to REs (prioritising the more material ones) on reporting of STRs and disseminating information on specific ML/TF typologies; (iii) examining and taking appropriate steps to address legal and practical obstacles that are hampering the reporting and timely reporting of STRs by some banks, MVTSs, lawyers and notaries; and (iv) ensuring the practical access and use by all REs to the new electronic system for filing STRs, prioritising the more material ones.

c) The LEAs and SPO should provide regular feedback to the FIU to inform it about the outcome, usefulness, and quality of disseminations with the aim of maximizing the FIU's disseminations for pursuing ML/TF investigations in line with Montenegro's risks. Authorities should maintain detailed statistics on the use of FIU disseminations.

d) The FIU should continue increasing and strengthening its human (number of analysts) and IT resources, including the introduction of an effective STR prioritization process. The FIU should fulfil its vacant positions as a matter of priority.

e) The FIU should improve its strategic analysis to identify emerging trends and typologies, focusing on higher risk areas (i.e. use and movement of cash, corruption, drug trafficking, organised crime and tax evasion). Strategic analysis to identify trends and typologies should be developed based on wider sources of information that the FIU has access to beyond ML criminal investigations and be properly disseminated to the REs and competent authorities.

f) The FIU should cooperate with the supervisory authorities more proactively. As a priority, information on unreported STRs should be communicated to the supervisors for further targeted actions.

Immediate Outcome 7

a) Montenegro should define a clear policy for prioritising the identification, investigation and prosecution of ML in line with its risk profile. This should include the creation of an effective system for monitoring the application of this policy and adjusting it when necessary.

b) Montenegro should develop guidelines on identifying and investigating ML offence for all prosecutors and police officers dealing with predicate crimes and/or ML,

addressing, *inter alia*, the matters of using predicate crime investigations, financial investigations, incoming international cooperation requests and own intelligence for the identification and investigation of ML. The guidelines should contain clear criteria on the level of required evidence in stand-alone ML and be followed by training for all relevant police staff, prosecutors and judges. The authorities should monitor the effective implementation of the guidelines.

c) Montenegro should significantly improve the identification, investigation and prosecution of all types of ML, including focusing more on third-party ML, stand-alone ML, ML with foreign predicate offence and misuse of legal persons.

d) Montenegro should analyse the reasons for undue delays in judicial proceedings of ML cases and introduce remedial measures, including the prioritization of such cases, further specialization of judges and if necessary, legislative amendments.

e) Montenegro should address the issue of shortages of human resources at the Police, the SPO and the judiciary to deal with ML cases.

f) Montenegro should revise the sanctioning policy for ML and ensure its implementation by applying ML sanctions in effective, proportionate, and dissuasive manner.

Immediate Outcome 8

a) Montenegro should ensure the effective implementation of the policy on confiscation of criminal proceeds, instrumentalities, and property of equivalent value. This should include the creation of an effective system for monitoring the application of this policy and adjusting it when necessary to ensure the results of seizure and confiscation efforts are in line with risks.

b) Montenegro should strengthen the cross-border controls by (i) introducing more detailed criteria for the Revenue and Customs Administration and Border Police to detect cross-border movements of currency and BNIs that are suspected to relate to ML/TF and associated predicate offences or that are falsely / not declared, (ii) making effective use of data on declarations through strategic types of analysis to detect ML/TF trends and typologies, (iii) conducting respective trainings and (iv) revising the sanctioning regime to make sure that confiscation regarding falsely / not declared cross-border movements of currency and BNIs is applicable as an effective, proportionate and dissuasive sanction.

c) The authorities should enhance the standard operating procedures on conducting parallel financial investigations to: (i) clearly establish when preliminary financial investigations, as opposed to financial investigations, are to be launched, and (ii) ensure tracing of domestic and foreign criminal assets (including proceeds moved abroad), focusing on proceeds generated from high-risk predicates, including drug trafficking, high-level corruption and other serious crimes perpetrated by organised crime groups in Montenegro. The authorities should raise awareness about these procedures among all prosecutors and monitor their practical implementation with a view of applying adjustments when necessary.

d) Montenegro should undertake more proactive actions aimed at tracing and confiscating foreign proceeds and proceeds moved to other countries.

e) In order to monitor the functioning of the provisional measures and confiscation regimes, the authorities should maintain detailed statistics on confiscation (including repatriation, sharing and restitution) of the proceeds and instrumentalities of crime, and property of an equivalent value, distinguishing the domestic and foreign predicate offences and proceeds which have been moved to other countries.

f) The authorities should enhance the framework for the detection, tracing, seizure, confiscation and management of virtual assets by: (i) ensuring that the legislation permits these actions, (ii) developing procedures, and dedicated tools, and (iii) building the expertise of the Prosecutor's Office, the Police and other competent authorities in this area.

g) Authorities should ensure that adequate human resources are deployed at the SPO, the SPU and other prosecution and police divisions dealing with asset tracing and confiscation. They, together with the judges, should be subject to regular training on asset tracing and confiscation matters.

193. The relevant IOs considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)

3.2.1. Use of financial intelligence and other information

194. The competent authorities (the FIU, the Police Directorate and Prosecutor's Office) have direct and indirect access to a wide variety of relevant information held by state authorities and the private sector. However, shortcomings are identified in relation to some of the databases, notably the CRBE and the CRBO (see IO5). Competent authorities actively communicate with each other to obtain the necessary financial intelligence for their operational needs, primarily for conducting financial investigations. Financial investigations are mainly conducted with the aim of tracing and identifying proceeds of crime, rather than for detecting ML (see IO7).

195. The Montenegrin FIU represents an important source of financial intelligence for the NSA, LEAs and prosecutors to detect ML, TF and other predicate offences, and to trace and identify proceeds of crime. It is the central authority for the receipt and analysis of STRs, CTRs, information on property contracts submitted by notaries, information on ML/TF suspicions received from other competent authorities and cross-border cash transportation reports made available by the RCA. These sources of information, together with the information received via international channels (namely the ESW) represent the primary source for the FIU to produce financial intelligence.

196. The FIU intelligence serves as a useful basis to trigger and, largely, to support ongoing preliminary investigations and to trace criminal proceeds. LEAs use it mostly to pursue

investigations into predicate offences, and to a lesser extent into ML, although the majority of ML investigations (i.e. 14 out of 25) were triggered by FIU disseminations. This is mainly due to the LEAs' focus on predicate crimes and lack of ML prioritization policy (see IO.7). Financial intelligence has not led to TF investigations, though LEAs systematically considered this when conducting intelligence-based analyses and pre–investigations (see IO.9).

Access to financial intelligence and other relevant information

197. The FIU became a law enforcement type of FIU in 2019 (previously an administrative type of FIU) and gained direct access to a wide range of databases, except for the Real Estate Register for which only indirect access is provided (see Table 3.1). Currently no legal provisions restrict FIU's powers to access and obtain information. The FIU advised that, up until 2019, the lack of access to these databases has impeded its effective functioning. With regards to basic and BO information on legal persons the AT noted shortcomings with the basic and BO information held in the CRBE and CRBO. The CRBO was, at the time of the on-site mission, insufficiently populated (only 32 legal persons submitted BO information) and concerns were also identified with respect to the verification measures undertaken by the CRBE (see IO.5). The FIU nonetheless advised that the basic information held with the CRBE was found to be accurate and has not impeded its work, while BO information is available from other sources.

198. Since 2017, an MoU on the improvement of the cooperation in combatting organized crime, corruption and other criminal offences was signed by a number of competent authorities, including the FIU, the CBM, the MoJ, the MoI, the Supreme Court, the Supreme State Prosecutor's Office and the Ministry of Finance. Based on this MoU, automatic exchange of a wide variety of information is foreseen through secure communication channels. The signatories to this MoU can access data through a special computer network administered by the MoI. The access for each authority is granted according to their legal mandate, pursuant to the conditions prescribed by the Rules of Procedures to the MoU. The FIU directly accesses the data of other state authorities, i.e. their databases, as stated in the table below from its application.

Table 3.1: Databases available to the FIU

Database	Type Public/private	Access mode Direct (on-line) / indirect
a. Central Population Register (all persons with Montenegrin citizenship and all foreigners granted temporary residence)	Private	on-line web service
b. Central Register of Business Entities	Private	on-line web service
c. Central Register of transaction accounts	Private	on-line web service
d. Register of issued identification documents (passports, ID cards, residence permits, driver's licenses)	Private	on-line web service
e. Register of motor vehicles	Private	on-line web service
f. Records on border crossing	Private	on-line web service
g. Register RB90 (foreigners staying in Montenegro for up to 90 days)		
h. Sanctions records	Private	on-line web service
i. Records on persons serving a prison sentence	Private	on-line web service
j. Misdemeanour records	Private	on-line web service

k. Court proceedings records	Private	on-line web service
l. Event records kept by the Police Directorate	Private	on-line web service
m. Records of court verdicts	Private	on-line web service
n. Interpol FIND	Private	on-line web service
o. Databases of central register of tax payers and insured persons	Private	on-line web service
p. Databases of paid income tax and social security contributions for natural person's incomes	Private	on-line web service
q. Beneficial owners register (CRBO)	Private	on-line web service
r. Records on crimes, perpetrators and injured parties	Private	on-line web service
s. Records on persons and objects sought[90]	Private	on-line web service
t. Records on persons who have been restricted or deprived of their liberty on any grounds	Private	on-line web service
u. Register of money transfers across the state border	Private	On-line application Customs and Revenue Administration[91]

199. The Central Population Register holds information on all persons with Montenegrin citizenship, and all foreigners granted temporary residence. This would also include information on individuals and family members that acquired citizenship through the citizenship by investment scheme. Further information on these individuals, applicants and the application granting process can also be obtained indirectly from the MoI which is responsible for administering this scheme.

200. Other Police departments (LEAs) do not have a direct access to all databases (except for the police databases and the ones on civil status[92]) and obtain financial intelligence and other relevant information upon request from the FIU, REs, public authorities and other sources. The LEAs also have access (upon request or provided spontaneously) to financial intelligence produced by the FIU. The LEAs can obtain financial information from REs directly or through the FIU. The authorities do not face any impediments in relation to banking secrecy. The SPO has direct access to most of the databases[93], while other information is delivered upon request. The SPO and SPU have direct access to the information held by REs without the need to lift confidentiality obligations through a court order.

201. LEAs also use other relevant platforms, such as the CARIN network, Interpol network and liaison officers to obtain information which would help them in on-going investigations when seeking ML/TF/predicate offence related evidence or tracing assets. While carrying out a financial investigation, competent authorities collect information and data from different sources/databases.

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[90] The database deals with the persons and property under search or wanted.

[91] The application has a built-in notification mechanism for each data entry when transferring money across the state border. When the RCA enters data on cash movements, the FIU automatically receives an email that data has been entered into the database of the RCA, and imports it into its CM application, ensuring availability of data on the transfer of money across the state border within minutes if the entry is during working hours or the next day of outside FIU working hours.

[92] This includes the databases listed under points (a), (b), (d - i), (l), (n), (r - t) in Table 3.1.

[93] Central Population Register (all persons with Montenegrin citizenship and all foreigners granted temporary residence), Records on border crossing, Sanctions records, FIU hit/no hit service, Central Register of transaction accounts , Central Register of Business Entities, Databases of central register of tax payers and insured persons, Databases of paid income tax and social security contributions for natural person's incomes, Real estate register (on-line application of Real Estate Administration)

202. Until January 2023, the RCA provided data on passenger movements, cash declarations, and cash seized to the FIU in a paper-based form. Ever since, this data is provided electronically through an online application.

Use of financial intelligence and other information

203. The FIU shares intelligence with the Police and the SPO spontaneously and upon request. Where following the conclusion of an analysis the FIU has reasons to suspect that ML/TF has been committed, an analytical report is prepared and submitted to the SPO. On the other hand, where the FIU suspects that other criminal offences (other than ML/TF) are committed, the analytical report is submitted to the Police Directorate, and the latter further develops that report and reports to the prosecutors where it establishes a reasonable suspicion of another crime. Prior to becoming a Police FIU (i.e. before 2019), besides analytical reports the FIU was also submitting relevant intelligence (i.e. apart of analytical reports) to the SPO.

204. Intelligence (other than analytical reports on ML/TF which are addressed to the SPO) is also shared with the Police Directorate, NSA, or other authorities such as the RCA and the CBM.

205. The SPO extensively relies on the information received from the FIU for triggering preliminary investigations of ML. During the course of preliminary and formal investigations the SPO and SPU make extensive use[94] of other databases, including central register of business accounts, CRBE, population register, and database on paid income tax. When information is provided by the FIU, the SPO uses the information to assess (through the conduct of preliminary investigations) whether there are sufficient grounds to initiate an investigation[95]. Preliminary investigations may also lead to direct indictments without the need to initiate an investigation. This however never took place in the case of ML (see IO.7).

206. As advised by the SPO in most cases investigative teams are formed, which conduct preliminary investigations that include financial aspects. These teams are formed of FIU and Police directorate respective divisions and are led by a prosecutor. This practice has been widely used recently, while throughout the majority of the review period, preliminary investigations were conducted without the FIU's direct involvement. Nevertheless, information requests were sent to the FIU and Police when needed. Since implementation of the recent practice, the FIU has taken part in every ML investigation irrespective of the type of associated criminal offence being investigated, with the purpose of tracing assets and identifying potential ML suspicions. At the same time, the SPO and other departments of the Police send requests to the FIU, mainly to obtain bank account or BO information. While the volume of requests made by the Police Directorate in pursuing ML are substantial, this is not the case for the requests by the Prosecutors and reflects the general trend of insufficient pursuance of ML investigations.

Table 3.2: Number of requests sent to the FIU by the LEAs

	2017		2018		2019		2020		2021		2022	
LEAs	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**

[94] SPO accessed the databases 546 times in 2022, 726 times in 2023. The SPU made use of databases in 846 instances in 2021 and 2084 instances in 2022.
[95] See IO7 for an explanation of the distinction between preliminary investigations and investigations.

Prosecutors[96]	6		6		3		3		11		6	
Police Directorate	27		37		55		88		85		47[97]	1
Total	**33**		**43**		**58**		**91**		**96**		**54**	

207. All the requests sent to the FIU were related to ML cases. Only one request was sent in relation to TF. All those requests were subsequently forwarded to all the banks operating in Montenegro as the FIU also search for the person acting as an authorised person and not just an account holder. The FIU has not experienced any difficulties in receiving responses from the banks so far. The FIU has also regularly forwarded requests to other REs, which were duly responded to.

208. The SPO and Police frequently use the FIU international cooperation channels for obtaining additional intelligence to assist in ongoing ML/TF preliminary investigations and investigations. In fact 45 and 67 requests respectively for the period of 2017-2022 were sent by the FIU to its foreign counterparts based on the SPO and Police inquiries.

209. Over the observed period, the FIU disseminated a total of 172 ML–related analytical reports to the SPO. Although the FIU is the main trigger to launch ML investigations by the SPO (14 ML investigations out of a total of 25 ML investigations), this still took place in a limited number of cases (i.e. 14 ML investigations in six years). Holistically while there seems to be a good level of conversion of FIU disseminations into ML preliminary investigations, there is a much lower conversion into formal ML investigations (see Table 3.3).

210. This low conversion rate is considered to be the result of: (i) the uneven understanding by prosecutors and judges of what constitutes proceeds of criminal activity for pursuing stand-alone ML cases which is leading to setting a high evidentiary standard for proving ML and over focus on evidencing the underlying predicate crime; and (ii) the main focus on investigating predicate offences and a general lack of prioritisation of the ML offence (see IO.7). This was observed through discussions with the SPO which when highlighting the improvements in the quality of FIU disseminations stressed the fact that these are now containing clearer indications of ML and the underlying predicate offences.

211. The FIU provided statistical data on the predicate offences underlying the analytical reports submitted to the SPO between 2019-2022. In most cases (33% of the 63 reports submitted over this period) the FIU identified no specific underlying crime. This is a positive trend indicating the readiness of the FIU to submit reports on purely ML suspicions formed through noted typologies or other adverse intelligence even where the underlying crime could not be determined. This is even more commendable within the country's context where the judicial and prosecutorial authorities are overly focusing on establishing clear evidence of the underlying crime to investigate and prosecute ML. In other cases where the FIU determined the suspected

[96] Special Prosecutor's Office and High Prosecutor's Office

[97] The decrease in the number of requests sent is due to the fact that during 2022 Police focused on complex investigations and the requests sent to the FIU were aggregated including inquiries on 515 natural persons and 96 legal persons.

underlying crime this was mainly tax evasion (22%), drug trafficking (14%), fraud (13%) and abuse of office in business operations (13%). This is to a large extent aligned with the ML/TF risk profile of Montenegro.

Table 3.3: FIU disseminations leading to ML investigations by the SPO

Year	2017	2018	2019	2020	2021	2022
Analytical Reports forwarded to the SPO	63[98]	46[99]	11	15	18	19
Preliminary investigations launched	37	29	11	15	18	17
Preliminary investigations ongoing	13	3	2	8	13	12
Closed preliminary investigations[100]	19	25	7	3	3	3
Launched ML investigations	4	1	2	4	2	1
Handed over to the Basic State Prosecution	1	0	0	0	0	1
Ratio Dissemination/ Launched preliminary ML investigations	58,7%	63%	100%	100%	100%	89,5%
Ratio Dissemination/ Launched ML investigations	**6,4%**	**2,2%**	**18,2%**	**26,7%**	**11,11%**	**5,3%**

212. The table below depicts the extent of use of intelligence shared by the FIU with the SPO/HPO upon request to assist in investigations and gather evidence. It can be noted in line with the trend highlighted above (i.e. the main focus on investigating predicate offences and a general lack of prioritisation of the ML offence) that most of these requests were intended to assist in the investigation and eventual prosecution of crimes other than ML/TF.

Table 3.4: Use of FIU intelligence provided upon request – SPO/HPO

Year	Number of SPO/HPO requests	FIU requests			Status[101]
		No of requests sent to banks	No of requests sent to other reporting entities	No of requests sent to foreign FIU	
2017	6	96	0	2	3 convictions 1 indictment
2018	6	96	0	13	1 convictions 2 indictments 1 investigation
2019	3	42	0	3	1 convictions

[98] Prior to becoming a Police FIU (i.e. before 2019), besides analytical reports the FIU was also submitting intelligence.
[99] Prior to becoming a Police FIU (i.e. before 2019), besides analytical reports the FIU was also submitting intelligence.
[100] SPO closed the preliminary investigation because it believes that there are no elements of a criminal offence
[101] All the convictions and indictments were in relation to other crimes not ML, and mainly drug trafficking, criminal organisation and human trafficking.

					1 indictment
2020	3	39	3	0	2 indictments
2021	11	132	14	4	5 convictions 1 preliminary investigation 2 indictments 1 investigation
2022	6	72	17	0	1 convictions 1 indictment
Total	**35**	**477**	**34**	**22**	

Case No. 3.1 – Use of Financial Intelligence

The FIU received an STR from a bank in respect of a foreign citizen MM. The report was submitted in view of inflows of significant amount of funds onto the account (which was inactive for a long time), and regular transfers of funds from accounts owned by connected legal persons and MM based on the Loan Agreements.

The FIU performed initial checks, i.e. searches of its databases (STR, cash transactions, notarial deed), police databases, available databases of the Tax Administration, CBMNE and searches of other available sources, which yielded no adverse information, however revealed that MM owned Montenegrin legal entities involved in the construction and hotel industries and which owned real estate in the country.

The FIU analysed MM's bank accounts and accounts held by legal persons of which he was co-owner with a Montenegrin national NN. The FIU in this case also requested intelligence from a foreign FIU (home country A of MM) which revealed that MM was being investigated along with several other persons (including NN and other legal persons in which they were associated) in conjunction with migrant smuggling and counterfeiting of documents. The FIU extended the analysis of bank documentation for other persons who were reported to be under investigation. This analysis revealed their business connections and transactions with multiple legal and natural persons in Montenegro.

The FIU informed the counterparts that there is suspicion that funds (around EUR 2,600,000) originated from crime activity, submitted an analytical report to the SPO and a joint international operation involving FIU was initiated by EUROPOL. Namely, the competent authorities of Country A determined that several persons, including persons MM, NN, and another citizen of EU country A (AA) operated as an organized criminal group and committed several criminal offences and thus acquired material benefit in the amount of around EUR 21,000,000.

The criminal group transferred the proceeds of crimes committed in Country A to accounts in other countries. The FIU established that transactions totalling EUR 2,300,000 were received in the accounts of legal persons (owned by NN and AA), the personal account of AA and a close family relative. Also, FIU determined that almost all of the mentioned funds were used for the acquisition of land and construction of an apartment complex in Montenegro. It also transpired that €180,000 were transferred to bank accounts held by MM in Montenegro and €60,000 to the accounts held by NN in Montenegro. NN and MM withdrew funds in cash, while MM deposited funds in a foreign commercial bank which were subsequently frozen after the foreign competent authorities were informed. Another €100,000 were transferred to legal and other natural persons that had business or personal connections with NN and MM which were predominantly used to pay for construction services. The FIU noted that almost all transactions were carried out based on Loan Agreements and repayment of the loan.

The FIU carried out checks on the real estate properties which were acquired through criminal activity, and informed international counterparties, who accordingly requested through MLA the temporary seizure of assets that were acquired from criminal activities. Upon receiving the requests, by the decision of the High Court, a legal person and natural persons MM, NN and AA were issued a decision on a

provisional measure - freezing of property (apartment and residential complex) and disposal of funds, for the amounts that FIU determined to be acquired from the criminal activity.

On the basis of this dissemination by the FIU the SPO, initiated an investigation and which is still on-going.

213. Apart from the financial intelligence obtained from the FIU, the LEAs have initiated a total of 145 ML preliminary investigations of which 11 formal investigations were opened. These resulted from criminal reports received, investigations into other predicate offences, and to a more limited extent from incoming MLAs. The AT also notes how financial investigations are mainly geared at tracing and detecting proceeds of crime subject to confiscations rather than to detect possible ML. In fact throughout the review period none of the financial investigations conducted led to the identification of ML (see IO7).

TF related financial intelligence

214. Financial intelligence on TF is disseminated to the NSA, SPU and the SPO. The NSA is not entrusted with law enforcement powers, but has the power to collect, analyse, and exchange, data that are relevant for national security and should inform the Police and the SPO on suspicions of terrorism and TF. The FIU shares any intelligence with potential TF connections to the NSA and SPU, while it also shares with the SPO analytical reports related to TF suspicions where, following the conclusion of its analytical work, it confirms that there exist reasonable grounds to suspect TF. There have been five analytical reports on TF shared with the SPO.

Table 3.5: FIU TF related disseminations

FIU/TF cases and dissemination				
	No. of opened cases	**Disseminations to NSA**	**Disseminations to Police Directorate**	**Analytical reports disseminated to SPO**
2017	17	7	3	4[102]
2018	23	6	6	1[103]
2019	13	1	2	
2020	32	5	4	
2021	57	4	9	
2022	43	1	0	
Total	**185**	**24[104]**	**24[105]**	**5**

215. Based on these disseminations, there were no TF investigations over the assessed period. No feedback was provided to the FIU on the use of its disseminations by the LEAs.

216. Beside the FIU intelligence, several TF related preliminary investigations have been launched by the SPO during the period under review. A total of three preliminary investigations were opened which were triggered by operational measures and activities and notification from

[102] Also disseminated to the NSA
[103] Also disseminated to the NSA
[104] 13 of these cases were sent to both NSA and SPU
[105] 13 of these cases were sent to both NSA and SPU

foreign partners. In those cases NSA has cooperated with the authorities by sharing intelligence where appropriate.

Use of FIU Intelligence and power to suspend funds

217. The LPMLTF enables the FIU to suspend transactions (including assets) which might be related to ML, predicate offences and TF. This power enables immediate freezing before a court order is issued and prevents the dissipation of funds. The FIU initiated a considerable number of suspensions and monitoring of transactions, both spontaneously and upon requests of LEAs. Table 3.24 (providing statistics on FIU postponement orders) and the case examples provided to the AT, demonstrate the capacity of competent authorities to identify and trace criminal proceeds.

3.2.2. STRs received and requested by competent authorities

218. The FIU is the central authority for the receipt and analysis of STRs and CTRs. The FIU also accesses information on cross–border cash declarations and receives information on property contracts.

STRs

219. In 2020, the FIU introduced an electronic STR reporting system, which aims at facilitating reporting. STRs are submitted using a pre-defined template with information contained thereon being automatically transferred to the FIU database. Nonetheless, this system is solely used by banks, and to some extent by the gaming sector and notaries (which provide scanned copies of property contracts and other information), thus not covering all the important reporting sectors. The STRs submitted by other REs are still sent via post or email, which poses the risk of timeliness and confidentiality and need to be imported to the system manually by the operators. The volume of STR from these sectors is low and hence not considered to pose an administrative burden for importing data. Nonetheless this will be a potential issue resulting from added awareness raising initiatives to make the high-risk sectors report more STRs/CTRs. It is worth mentioning that since 2022 all the REs are required to report electronically and REs are being introduced to the use of the new system gradually according to the importance and volume of reporting.

220. The STR reporting levels by different sectors are illustrated in the Table 3.6. Banks account for the majority of submitted STRs (which is consistent with their materiality), followed by Payment Service Providers, with very few reports coming in from other sectors. This is not consistent with the level of risk posed by some of these sectors, notably lawyers, notaries, providers of company services and casinos, which, given the risk profile of their activities, are expected to have a more significant contribution in terms of STR reporting (see further IO.4). As explained under IO4 the distribution of STRs within the banking sector is widespread across the entire sector however the volume of STRs submitted by banks is generally low taking into account their level of risk exposure and volume of transactions they process. The volume of STRs has been fairly constant all throughout the review period. Certain material Banks are also submitting a low number of STRs (see IO4). Overall, the STRs are predominantly based on the red flags/ indicators provided by the FIU.

221. TF related STRs are mainly (except for 1 STR submitted by a bank) filed by the Payment Service Providers (183 STRs). Some of the smaller banks were also unaware of their obligation to report suspicious attempted transactions and preferred simply to desist from carrying out such

transactions without reporting. Some MVTSs are also clearing STR submissions with international payment institutions they are agents for, which clearance at times takes up to a month and hampers the prompt submission of STRs by Montenegrin payment institutions.

Table 3.6: Volume of STRs per sector

Reporting entities	2017		2018		2019		2020		2021		2022	
	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF
Banks[106]	194	0	178	1	202	0	162[107]	0	201	0	233	0
Payment Service Providers	7	4	8	19	6	10	29[108]	30	41	53	17	67
Post of Montenegro	0	0	0	0	3	0	2	0	1	0	0	0
Financial Leasing Companies	0	0	1	0	0	0	2	0	0	0	1	0
Investment Firms	0	0	0	0	2	0	1	0	0	0	1	0
Life insurance companies	0	0	0	0	0	0	2	0	0	0	0	0
Notaries	0	0	0	0	12[109]	0	5	0	2	0	0	0
Construction Companies	0	0	0	0	0	0	1	0	0	0	1	0
Auditors and accountants	0	0	0	0	0	0	2	0	0	0	0	0
Games on gaming devices	0	0	0	0	0	0	5[110]	0	0	0	0	0
Total	**201**	**4**	**187**	**20**	**225**	**10**	**211**	**30**	**245**	**53**	**253**	**67**

222. Concerns remain on DNFBPs reporting, which is low. The notaries opted to file all property contracts to the FIU, rather than analysing particular cases and reporting STRs, for fear that the suspect might become aware about the STR reporting (as also confirmed by the FIU).

223. Notaries and Lawyers on the other hand opined that STR reporting goes against client confidentiality especially so since reports are based on mere suspicions (see IO4 for more details). Moreover, the reporting obligation is not effectively supervised for all DNFBPs, which also constitutes a major shortcoming taking into account the risks posed by some of those sectors.

[106] The number of licensed banks went down from 15 to 11 over the review period.
[107] This decrease in STRs was owed to a slow-down of cash transactions and account opening challenges for staff working remotely.
[108] Increase in reports by PSPs since 2020 is also owed to the added focus placed on ongoing monitoring and STR reporting through supervisory examinations and measures by the CBM.
[109] Spike in STRs is the result of defensive type of reports which had no basis of suspicion.
[110] Spike in STRs is the result of defensive type of reports which had no basis of suspicion.

These deficiencies within the STR reporting framework hamper STRs from efficiently contributing to successful investigations of ML/TF cases.

224. Some REs (i.e. some smaller banks and lawyers) highlighted that they would prefer to terminate business relationships or not to execute transactions rather than reporting attempted transactions. These situations might represent missed opportunities for the FIU to develop its analysis and are indicative of the need for additional targeted measures (including training) on the steps to be taken once a suspicion arises.

225. A positive feature of the system is the level of cooperation between the FIU and some supervisors (mainly the CBM) to act on cases of unreported suspicions. Over the review period the FIU identified 51 potential cases of non–reporting, some of which were forwarded to the supervisory authorities and led to the application of remedial measures or sanctions (see IO3). 17 of such cases were identified through matches between CTRs and the police database, to which the FIU has access, and hence were not flagged to supervisory authorities for further action, as it was deemed that the RE could not have enough information to formulate a suspicion.

226. With regards to the quality of the reports submitted to the FIU, their content and descriptions appear to be generally adequate for some of the banks, while some concerns have been noted in relation to other sectors as described below. The FIU has conducted an analysis of the quantity and quality of STRs submitted by banks based on several criteria, including the size of the bank, share of the STRs out of the sector's total, volume of STRs where suspicion was established and usability of those STRs for dissemination purposes. This analysis highlighted that some banks, including the largest two in Montenegro, would report only in case of a highly grounded suspicion. It was also noted (though to a lesser extent) that some banks tend to submit defensive types of reports which arise out of the strict adherence to the list of suspicious indicators.

227. An analysis of the usability of STRs submitted, the large majority of which by banks, (see Table 3.7) indicates that a fair number of STRs are being disseminated (i.e. 18% of all STRs submitted over the review period), while STRs constitute the main trigger for disseminations by the FIU to Montenegrin competent authorities. (see Table 3.9).

Table 3.7: Number of STRs/SARs triggering dissemination to the LEAs

Year	2017	2018	2019	2020	2021	2022
	ML/TF	ML/TF	ML/TF	ML/TF	ML/TF	ML/TF
Number of STRs received by the FIU	203	217	240	241	298	321
Number of STRs disseminated	**37**	**48**	**21**	**58**	**75**	**38**

228. The FIU indicated that the REs mainly submit STRs due to suspicions related to the origin of the funds or in view of adverse publicly available information on the suspect. It was also indicated that REs do not usually indicate the underlying predicate offence. Nonetheless, upon instances when the underlying predicate offence is indicated, it is usually fraud or tax evasion, which is partly aligned with Montenegro's ML/TF risk profile. The lack of comprehensive

information on the underlying crimes outlining these STRs however does not fully enable the AT to conclude on the alignment of incoming STRs to the country's risk profile.

229. After receiving an STR, the FIU sends follow–up requests to REs to get additional information including from other REs beyond the ones submitting the initial STR, on a regular basis. REs are obliged to answer to an FIU request for additional information without delay and not later than within eight days. The FIU highlighted that responses are received smoothly, in particular by banks, although specific statistics are not kept.

Case No. 3.2 – STR triggering dissemination to the SPO

In April 2021, a bank submitted a STR to the FIU regarding a legal person MC in view of irregularities in business operations related to recycling of sorted waste. The ownership structure involved natural persons from a foreign country A, i.e. SOB (director) and KAY (100% shareholder).

The FIU analysis revealed that legal person MC received in its bank account a foreign inflow of about €170.000,00 made by legal person (DS) registered in country B. The inflow was allegedly related to export/import which is not the main business activity of legal person MC. It transpired that the company MC paid the received funds onto the account of the legal person SP for purchasing residential facilities. The further FIU analysis revealed that another legal person (EB) which also had SOB as director operates using the same *modus operandi*. This legal person is also registered in Montenegro and also received €380,000 from legal person DS, which were remitted to legal person SP to purchase residential facilities.

Legal person DS concluded identical contracts with legal persons MC and EB to cover the above-mentioned transfers of funds on the basis of import/export of goods. The RCA however informed the FIU that legal persons MC and EB did not transport (import/export) any goods through the customs territory of Montenegro. The FIU hence concluded that alleged rationale for the payments was suspicious and fictitious. Information sourced from the Cadastre Administration revealed that in July 2021 legal person SP was still not registered in the cadastral records. This took place later on once the properties were constructed and the ownership was transferred.

The FIU also sought intelligence from the FIUs of countries A and B. According to the response from country B legal person DS was linked to several STRs and was suspected for tax evasion and money laundering. The country A's FIU provided information indicating that legal person DS is related to analysis conducted in 2018 and 2021, connected with ML suspicions related to waste recycling.

The FIU established suspicions that the €560,000 used to acquire residential properties in Montenegro were derived from proceeds of crime and in December 2021 submitted an analytical report to the SPO.

STR Feedback

230. The STRs are followed by feedback from the FIU. Nonetheless this feedback is more formalistic, where the FIU informs the RE on the status of the report (whether the suspicion was grounded or did not give rise to further FIU analysis). In addition, the FIU provides a monthly analysis on the quality of STRs to the CBM for targeting its further supervisory actions. The FIU also has regular information communication with REs (namely banks) on cases and their quality.

231. Nonetheless the AT observes that, in respect of REs other than banks, there is lack of sector-specific or case by case timely feedback on submitted STRs and their level of quality suspicions. Feedback on usability and quality to the REs is often limited to the FIU Annual Reports and conferences, which focus mainly on banks. Although this partially corresponds to the NRA findings in terms of high ML/TF risk, there is still lack of outreach, especially to notaries and

lawyers and other sectors rated as medium-high for ML/TF risks to adequately cover the reporting landscape of the country.

Other forms of reporting (CTRs, and property contracts)

232. In addition to STRs, REs also submit reports on cash transactions in the amount of at least €15,000. Notaries are also required to report to the FIU on a weekly basis property transactions exceeding €15,000. These contracts are reported via email to the FIU. CTRs have to be submitted not later than three working days since the day of execution of the transaction. CTRs are delivered through the Case Management System in the same manner as the STRs and reviewed by FIU on daily basis. Information on the number of CTRs and the main sectors reporting those is provided under Table 3.8 hereunder and IO4.

233. One analyst is assigned to review and analyse incoming CTRs on a daily basis and contracts coming from the notaries per week. Based on prioritisation criteria (including the amount and persons involved) preliminary analysis is conducted and a decision is made whether to open a FIU case. This practice has proven to be an effective tool for the FIU to identify potential unreported STRs and analytical cases on its own initiative. In the period from 01.01.2019 until 24.01.2023, the FIU worked on 70 cases that arose from the aforementioned activity. There were seven disseminations made to the SPO and Police Department as a result of this tactical analysis over the review period. Besides triggering new analytical cases CTRs and property contracts are also used to enrich the FIU's database and are used as a source of information while analysing incoming STRs or other intelligence.

Table 3.8: Number of CTRs triggering dissemination to the LEAs

	2017	2018	2019	2020	2021	2022
Number of CTRs, other forms of reporting submitted to the FIU	31908	32845	35801	26107	30978	45193
Disseminations to SPO	3	0	0	1	0	0
Disseminations to Police Department	0	1	0	1	1	0

Use of incoming FIU international cooperation

234. Additionally, the FIU also makes effective use of incoming intelligence from FIU counterparts to detect and open analytical cases. Over the review period the FIU received 285 requests for information and 130 spontaneous reports from foreign FIUs. These led to 49 disseminations being made to local competent authorities and 15 analytical reports being sent to the SPO.

Cross-border cash declarations

235. The FIU has been accessing information on the carrying and attempted carrying, across the state border, of money, cheques, bearer securities, precious metals and stones through a dedicated online application (see Table 3.1). Prior to January 2023 the data was submitted in paper form and the entry of data into the CMS was done by the FIU. The RCA also reports any identified ML/TF suspicions to the FIU. Over the review period the RCA sent six STRs which the FIU used to enrich its database and develop its cases. Analysis of these cases by the FIU led to one dissemination being made to the SPO on suspicions of ML (see Case No. 3.3).

Case No. 3.3: STR submitted by the Customs Administration

In December 2021 the Revenues and Customs Administration notified the FIU that one individual was detected crossing the border with an undeclared amount of €38,000. The money was hidden in a separate compartment in a vehicle. The individual provided a real estate purchase agreement as proof of the origin of funds which was formalized by a notary in a neighbouring country. The Revenues and Customs Administration confiscated the said funds, in accordance with the Law.

The FIU initiated an analysis and requested information from: commercial banks and other payment institutions, Cadastre and State Property Administration, the Revenues and Customs Administration, and the Department for Fight against Crime requesting delivery of available data on the said individual. This Department informed the FIU that this person is interesting from the aspect of committing criminal acts with elements of violence, drug smuggling and usury. The said activities are reflected in transporting large quantities of narcotic drugs from the territory of the neighbouring country to the territory of Montenegro, as well as in frequent contacts this individual has with persons of interest.

The analysis of obtained data has revealed that there have been no significant turnovers on the accounts in Montenegro, that the subject individual is unemployed and that he owns a real estate he purchased for the amount of €25,000. Accordingly, it has been concluded that, in the analysed period, this individual didn't have onto his accounts any legal incomes that would justify the expenses, so there is suspicion of ML. The FIU of the neighbouring country was requested to check the authenticity of the real estate purchase agreement he submitted as the proof of the origin of the funds. The neighbouring FIU informed us that the said agreement was not signed in the Notary's office, and thus it was not registered under the given number and date.

The FIU concluded that there were suspicions of ML and forgery. In July 2022 the FIU shared the information with the Special State Prosecutor's Office (SPO), which led to the opening of a preliminary investigation.

236. Before 2023, the information received from the RCA was mainly used for identification of non-declarations. Starting from January 2023 the FIU is using the information from the declarations it receives electronically to develop cases. Through this practice the FIU has identified and 2 potential ML cases, which are now ongoing.

Case No. 3.4: Use of cross-border declarations to develop an FIU case

Two citizens of Montenegro, during their joint crossing of the state border, in February 2023, transported cash in the total amount of EUR 35,000.00. The FIU determined that they were connected to subjects of interest and that one of the persons is registered as perpetrator of criminal offence with elements of drug trafficking and assault on a public official. Also, as proof of the origin of the funds, the persons submitted a contract on the sale of passenger motor vehicle with a citizen of a neighboring country.

Searching the database of motor vehicles, it was determined that the persons did not own a passenger motor vehicle. In accordance with the above, the FIU opened a case (February 2023) with the aim of determining the origin of the funds, i.e. whether they originate from the criminal activity of drug trafficking, car smuggling or some other criminal activity.

Through further work on the case, it was established that the persons do not record significant turnovers in their bank accounts, and they are not registered as owners of movable and immovable property. It was also established that one person is the founder of a legal person in Montenegro, but that accounts of the mentioned person also did not record any turnover relevant to the work on the case.

According to the aforementioned information, the FIU carried out detailed searches of the available databases, which determined that the subject persons intensively cross the state border with another citizen of a neighbouring country, for whom there is operational data that he is the actual buyer of the passenger motor vehicle. Through a search of police databases, FIU determined that this person was registered in Montenegro as the perpetrator of criminal offence from the field of drug trafficking.

At the beginning of March, FIU started checks through international cooperation with the partner FIU of neighbouring country, which is home country of natural person who owns passenger motor vehicle, in order to determine the validity of the Contract and its subject matter - passenger motor vehicle. Through international cooperation, it was established that there is a probability that the person, named in the contracts as the buyer of passenger motor vehicle, changed his name which is another indicator that the funds may originate from criminal activities, as well as that the contracts were falsified or concluded subsequently in order to justify the real origin of the funds.

Additional data is awaited from the partner FIU in order to complete the analytical report and submit it to SPO.

237. Additional information on cross-border cash declarations, detected non-declarations and false declarations are provided in IO.8. As discussed under core issue 8.3, the AT is of the view that the system for cross-border cash movement controls requires strengthening, while there appears to be a lack of awareness on ML/TF issues by the RCA. Thus, the AT is of the view that the level of intelligence sharing and potential use thereof would greatly benefit from such enhancements, considering the country's risks associated with usage of cash and international drug trafficking.

3.2.3. Operational needs supported by FIU analysis and disseminations

FIU structure and resources

238. The FIU was, until 2019, an administrative authority, and has been ever since integrated within the Police Directorate as an organisational unit. The FIU is independent in exercising its powers when performing activities prescribed by the LPMLTF and in decision-making related to the reception, gathering, keeping, analysing and delivering data, notifications, information and documentation and delivery of the results of its strategic and operational analyses to the competent authorities and foreign FIUs. It has dedicated human, technical and financial resources.

239. As regards the structure of the FIU, it consists of four divisions as follows: (i) Division for suspicious transactions and strategic analysis; (ii) Division for suppression of money laundering and terrorist financing; (iii) Division for international financial intelligence cooperation; (iv) Division for financial intelligence information system, data protection and prevention. The first division deals with operational and strategic analysis. The second division is entrusted with LEA powers as prescribed by the CPC and is involved in investigative teams dealing with financial investigations.

240. While the number of positions has increased from 30 to 40 during the year 2022, the positions actually filled are 27. The Division for suspicious transactions and strategic analysis has 12 dedicated positions of which nine are filled. It should be noted that the change of FIU status did not lead to changing the personnel. Experienced staff remained thus preserving the

institutional memory. The FIU expressed concerns on the limited number of staff actually working in the FIU, however also mentioned difficulties in hiring specialised and experienced personnel. The personnel has been provided with adequate training, however still lacks training on strategic analysis. The budget of the FIU over the past three years has been increased substantially from EUR487,000 in 2021 to an annual budget of EUR800,000 in 2023.

241. The FIU has its own information system (FIU IS) which was completely renewed in the period October 2020 to May 2021 and connected to the computer network of the other authorities[111] involved in, or whose data is relevant, for combating crime. The FIU uses the Case Management System (CMS), tailor made for the FIU, as its main workflow database. The FIU's work process[112] is conducted through the CMS, from receiving requests and documentation, opening cases, working on the case (creating analysis, collecting data from all the available resources, generating reports - financial analysis) and to delivering requests and reports, receiving, and replying to foreign FIUs' requests. The CMS is located on the FIU IS infrastructure, which has a number of security measures and protection systems at a physical level, network level, operational system level and application level[113]. The access to the CMS is enabled only upon electronic identification with Montenegrin ID card (electronic ID card). The data backup is made once a day.[114] The repair of IS FIU in a case of incident is prescribed by an internal act[115].

242. As already analysed above only banks, organisers of games of chance and notaries are connected to the FIU system. All the other reports are received through other means and are transposed to the system by two operators.

Operational analysis

243. The following sources of information form the basis for the FIU to start operational analysis: (a) CTRs/STRs received from REs; (b) information from the databases (e.g. information on property contracts and police database); (c) open-source information; (d) disseminations/requests received from foreign FIUs and (e) information transmitted by the national authorities.

Table 3.9 - Information sources triggering FIU case analysis and dissemination

	STRs	Foreign FIU Intelligence	Supervisors Exchanges	Open Source	Police Requests	Other	Total
2017	**37**	**15**	**1**	**10**	**17**	**17**	**97**
2018	**48**	**8**	**0**	**3**	**36**	**15**	**110**
2019	**21**	**4**	**2**	**5**	**33**	**2**	**67**
2020	**58**	**2**	**10**	**19**	**67**	**12**	**168**

[111] The computer network of the authorities engaged in, or whose data are needed for combating crime, is administered by the Ministry of Interior. This computer network uses dedicated (optical) links that, through the Ministry of Interior, connect the FIU, Ministry of Interior, Police Directorate, State Prosecution, courts, Ministry of Justice, Administration for the Execution of Criminal Sanctions, Revenue and Customs Administration, Central Bank of Montenegro.
[112] The work process is prescribed by an internal act – Internal instruction for opening, conducting case analysis and delivering information
[113] The detailed description of protection is prescribed in internal documents: General principles of the FIU's information system protection, Physical protection plan, Access control, Confidential data protection plan and Instructions for entering the FIU.
[114] The backup policy is prescribed by an internal act – Data backup procedure.
[115] Acting procedure in the case of incident.

2021	**75**	**13**	**25**	**10**	**68**	**19**	**210**
2022	**38**	**7**	**7**	**7**	**17**	**7**	**83**
Total	**277**	**49**	**45**	**54**	**238**	**72**	**735**

244. FIU Internal instructions on opening, conducting case analysis and delivering notifications prescribe the procedures for prioritisation of incoming intelligence and processes for opening and dealing with FIU cases. The highest priority (very urgent) is given to the initiatives related to TF, STRs involving suspension of transactions, and foreign requests marked as urgent. STRs unrelated to TF, foreign requests and SPO requests related to ML are marked as urgent, whereas cash transactions, ML requests of the Police and FIU operative information is dealt with in a regular manner.

245. All STRs (apart from TF STRs and STRs involving suspension of transactions – considered very urgent) are treated as urgent, however there are no mechanisms or prioritization criteria for assigning a risk score to these STRs and determine the priority with which they should be handled. The FIU advised that prioritization can be independently determined by the Head of the Division on a case-by-case basis. The FIU explained that very urgent STRs are analysed within the same day and the urgent STRs are analysed within five days.

246. The AT is of the view that introducing a formal prioritization mechanism to determine which STRs merit being analysed and with which priority their analysis should be initiated is crucial. This in view of the limited resources that the FIU has and the volume of other intelligence and requests that the FIU receives and is required to process. Such prioritisation should place more focus on STRs linked to predicate crimes and typologies that are considered to pose a high ML threat to the country (e.g. international drug trafficking, high-level corruption and tax evasion among others).

247. Based on the FIU's Internal instructions, the head of the operational analysis division opens an analysis after which assigns the main analyst in charge of the case and other employees who should work on that analysis. An initial analysis is conducted, and where a suspicion of a crime is identified an analytical case is opened. The highest average workload for an analyst is 68 cases per year, or 6 cases per month. The average workload for officials on an annual basis is 37 cases per year, or 3 cases per month. The average time for conducting the analysis is 30 days, but if there is a response to come from the foreign FIU, then the average time for making the analysis is 90 days. When conducting operational analysis, the FIU makes a good use of its powers to access a number of databases as is demonstrated from the analytical case studies included under this IO. The FIU has a dynamic internal database that encompasses a broad range of information from private and public sectors, including foreign sources.

Table 3.10 - FIU Cases Initiated and Cases Pending

	Cases Initiated per year	**Pending at 2017 end**	**Pending at 2018 end**	**Pending at 2019 end**	**Pending at 2020 end**	**Pending at 2021 end**	**Pending at 2022 end**
2017	339	33	6	0	0	0	0
2018	332		28	0	0	0	0

2019	364			68	3	0	0
2020	463				55	7	4
2021	561					53	8
2022	443						41
Total pending at year end		33	34	68	58	60	53

248. As provided above, the number of FIU cases analysed during the period under review has increased in particular since 2020, while the cases pending at year end have slightly increased (see Table 3.10). The number of disseminations to the SPO to trigger ML/TF investigations has marginally increased and has not seen any noteworthy improvements (see Table 3.3).

249. Results of the FIU analysis are disseminated to the SPO, the Police and the NSA. The disseminations related to ML and TF should be made to the SPO, while information on possible suspicion of predicate offences is forwarded to the Police.

250. The SPO and the Police expressed satisfaction with the financial intelligence provided by the FIU. As highlighted by the SPO, there was a recent improvement in the quality of the FIU disseminations, which now contains clear indications of ML and predicate offences. Nonetheless the statistics provided (see core issue 6.1) indicate that while the FIU regularly disseminates information to the LEAs, these are not sufficiently used to initiate ML investigations.

251. SPO/LEAs provide little to no feedback to the FIU on the quality and the use of their disseminations. The lack of such feedback does not allow the FIU to appropriately align its efforts with the priorities of the LEAs in line with the risk profile of the country and enhance coordination in the AML/CFT efforts among competent authorities.

252. An IT system is yet to be implemented to support case management and electronic circulation of information among LEAs, other competent authorities and the FIU.

Strategic analysis

253. FIU carries out strategic analysis which contribute to establishing the most common typologies and trends in ML. These trends and typologies are mainly identified through the analysis of ML investigations and are included in the FIU's annual reports distributed to competent authorities and made available to REs, which have highlighted their usefulness. The AT notes that the FIU is making limited use of the wide range of intelligence it possesses or has access to, with the aim of identifying trends and typologies in higher risk areas, including use of cash, corruption, drug trafficking, OCG, and tax evasion.

254. Another useful type of strategic analysis conducted by the FIU related to the quality of STRs. The FIU has developed an internal procedure on assessing the quality of STRs and CTRs. The assessment includes the overall quality of reporting by the banking sector, which is conducted based on the data required to be delivered to the FIU. The FIU assesses to what extent

the STRs meet all the formal criteria, including whether the fields are properly filled in, among other things. As a second step, it further assesses the usefulness of the information for the FIU analysis purposes. Results of the analysis provide for the level of quality assigned to each of the banks based on their submissions on a monthly basis. Results are disseminated to the CBM for better planning their supervisory activities.

255. As discussed under core issue 3, the FIU makes good use of CTRs, reports on property contracts and cross-border cash declarations to carry out tactical types of analysis and identify potential operational cases. This pool information which provides valuable data on some of the riskiest channels for ML/TF abuse in Montenegro (i.e. cash and property sales) is not sufficiently exploited to identify ML/TF trends and typologies through strategic types of analysis.

Dissemination

256. The main addressee of FIU disseminations are the SPO and other Police units. SPO would only receive analytical reports when there is a higher level of suspicion that laundering of proceeds of crime took place.

Table 3.11 – Disseminations Received by Competent Authorities (2017-2022)

SPO	172
NSA	71
Police Directorate	483
BPO	4
HPO	7
Supervisors	39
Total	**776**[116]

3.2.4. Cooperation and exchange of information/financial intelligence

257. At an operational level, there is extensive cooperation and information exchange on a regular basis among the Montenegrin authorities. This was demonstrated during the exchanges held on-site as well as through the number of information requests sent by LEAs to the FIU and the case examples provided. Nevertheless, the abovementioned lack of feedback throughout all the competent authorities on the use of the FIU disseminations constitutes a systemic issue.

258. FIU and supervisors - The FIU regularly communicates with the CBM in the framework of AML/CFT supervision of financial institutions. Since 2019 the CBM is also regularly sharing with the FIU reports on supervisory examinations conducted on REs. The CBM also shares specific reports when identified irregularities with the reporting obligation are identified. Over the review period 72 reports were shared. Such reports would include information on any unreported suspicious activity, but also information on the reporting framework of the RE and the quality of its STRs. The FIU analyses these reports and forwards any identified suspicious transactions to the FIU analysts for further action. The FIU also considers conclusion on the RE's

[116] The total in Tables 6.11 and 6.13 do not match since some disseminations may be sent to more than one entity (e.g. NSA/SPU).

reporting framework and determines whether to recommend any targeted controls (see IO3 for statistical data). Other supervisors sent ten such reports. Based on the reports submitted to the FIU, 45 disseminations were made to the LEAs (i.e. two to SPO and 43 to the Police Directorate). The cooperation between the CBM and FIU and to a lesser extent other supervisors, showcases a very good operational practice benefitting both parties in their relative functions. In fact as can be seen from IO3 a number of targeted controls were carried out by the CBM as a result of FIU feedback while 45 disseminations were made by the FIU to Montenegrin competent authorities.

259. In addition, the FIU and the CBM cooperate in providing training and guidance to REs. The AT has however noted that cooperation between the FIU and CBM is not fully effective, as the FIU does not inform the supervisors on issues related to underreporting, as well as there is lack of coordination in developing better targeted strategic analysis.

260. Starting from 2020, the Section for AML/CFT Supervision within the MoI submits a monthly control plan to the FIU. After conducting its controls, the MoI (Section for Supervision) informs the FIU about any issued misdemeanour orders against legal persons and responsible natural persons. Between 2020 and 2022, 36 control plans were submitted to the FIU, covering the control of 203 legal persons and information was provided on 235 misdemeanour orders issued against legal persons and responsible natural persons (118 legal persons and 117 responsible persons, with the total amount of fines being EUR 394.739). This data is used by the FIU for operational analysis and allows the FIU to give feedback on REs subject to inspections, and, if necessary, offers suggestions on relevant factors to consider during the control process.

Overall conclusions on IO.6

261. LEAs access a wide range of financial intelligence and other relevant information, and actively communicate with each other and with the FIU during preliminary investigations and investigations. The FIU has access to a broad range of information which are routinely used for operational and tactical analysis purposes and the FIU is considered to provide good quality disseminations which are useful to assist the LEAs, other intelligence authorities, as well as some supervisory authorities in conducting their functions.

262. The AT notes that while LEAs and the SPO are actively using FIU information to launch preliminary ML/TF investigations, they are not sufficiently using it to trigger ML investigations, while no TF investigations were triggered based on FIU disseminations. The limited use of financial intelligence is resulting from (i) the uneven understanding by prosecutors and judges of what constitutes proceeds of criminal activity for pursuing stand-alone ML cases which is leading to setting a high evidentiary standard for proving ML and over focus on evidencing the underlying predicate crime; and (ii) the main focus on investigating predicate offences and a general lack of prioritisation of the ML offence (see IO.7). SPO/LEAs provide little to no feedback to the FIU on the quality and the use of disseminations. This hinders the coordinated response of the authorities to the main ML/TF risks.

263. Banks and PSPs are the top reporters of STRs, with very few reports from other sectors, which is not consistent with the level of risk posed by sectors such as lawyers, notaries, providers of company services and casinos. The volume of STRs submitted by banks is generally low taking into account their risk exposure and volume of transactions they process. TF STRs are

predominantly submitted by PSPs, with very few being submitted by other REs including banks. STRs are partly in line with the country risk profile and constitute the main trigger for FIU disseminations, and a fair number of incoming STRs are useful to trigger disseminations.

264. The FIU lacks an effective prioritization system, which would become ever more important with increases in the volume of STRs as a result of further awareness raising, which is needed. Moreover, the FIU is commended for the use it makes of the significant pool of intelligence it possesses for operational and tactical analysis purpose. This pool is however not significantly exploited for strategic analysis purposes to identify trends and typologies connected with the most prominent ML/TF risks in Montenegro.

265. Overall, the system requires major improvements to ensure effective use of financial and other information for pursuing ML, associated predicate offences and TF investigations.

266. **Montenegro is rated as having a Moderate level of effectiveness for IO.6.**

3.3. Immediate Outcome 7 (ML investigation and prosecution)

267. Montenegro has two stages of a criminal investigation, preliminary investigation[117] and investigation. If started, the first always precedes the other, but the latter can be initiated independently. The difference between the two is that a lower standard of proof applies for opening a preliminary investigation. The Police are obliged to launch it and undertake the necessary measures, proactively or upon the request of a prosecutor, when there are grounds for suspicion that a crime has been committed. It is conducted under prosecutorial guidance with the aim of collecting evidence and establishing whether a reasonable suspicion that a crime has been committed by a specific person exists. The latter is the standard of proof, required to start a criminal investigation. When the available information complies with this standard of proof, whether gained through preliminary investigation or not, a prosecutor launches an investigation. There is no difference between these two stages of investigation in terms of investigative powers. There are several peculiarities though. No formal document is issued for starting a preliminary investigation and therefore it is not strictly registered, unlike an investigation. A preliminary investigation is considered to be launched from the moment of undertaking the first investigative action regarding the criminal complaint. It does not have a time limit, while for a criminal investigation, it is expected to be concluded within six months. If an investigation is not completed within six months, the prosecutor should notify the immediate superior prosecutor, who should take the necessary measures for its completion.

268. The investigation of ML in Montenegro belongs to the competence of the Special State Prosecutor's Office (SPO). It also investigates organised crime, high-level corruption, terrorism financing and war crimes. The role of the Police is to conduct preliminary investigations of ML and assist the SPO in the investigation of ML. The Special Police Unit (SPU) in particular is tasked to work with the SPO on ML investigations. Apart from the SPO, the Prosecution Service of Montenegro is composed of the Supreme State Prosecutor's Office, the High State Prosecutor's Office of Podgorica, the High State Prosecutor's Office of Bijelo Polje and 13 Basic State

[117] This procedure is referred as preliminary inquiry under the Law on Special Prosecutor's Office of Montenegro.

Prosecutor's Offices in 13 municipalities. These Prosecutor's Offices (other than the Supreme State Prosecutor's Office) are competent to investigate predicate offences falling under their territorial jurisdiction. They do not have a mandate to investigate related ML. Their role ends with detecting ML and forwarding the associated predicate crime investigation case to the SPO. The Police units other than the SPU assist them in predicate crime investigations. With respect to ML, the role of these Police Units is also to detect it and forward the case to the SPO. The Supreme State Prosecutor's Office does not itself investigate ML. To a certain degree, it might intervene in such investigations, if merited by complaints of interested parties. Montenegro does not have an appropriate mechanism for coordinating the activities of the different prosecutorial and police divisions to identify ML. Also, there are no comprehensive statistics on ML investigations, prosecutions, and convictions. This undermines the capacity of the country to target ML in a holistic manner.

3.3.1. ML identification and investigation

269. There are significant shortcomings in identifying ML. The authorities do not undertake consistent and systematic measures for addressing it. The Prosecution Service and the Police do not have an institutional policy in place prioritising the identification of ML and providing applicable actions and criteria.

270. In 2017-2022, the SPO received 272 criminal reports on ML[118], which have resulted in equal number of ML preliminary investigations. Though, during the last three years under the assessment (2020-2022) the number of these criminal reports and follow-up preliminary investigations has been declining. It was 36 in 2020, 22 in 2021 and 11 in 2022 (see Table 3.12 and Table 3.13). Only 9% of preliminary investigations led to investigations. Overall, the number of ML preliminary investigations is considerable, but its declining trend and low output in terms of launching ML investigations, is concerning.

271. Between 2017-2022, the SPO received 16 cases from the other Prosecutor's Offices concerning tax evasion, abuse of trust and fraud offences to investigate associated ML. Out of these cases, the SPO followed up with an ML investigation of two cases in 2018 and 2020, the latter resulting in issuing an indictment. The remaining 14 cases (87.5 %) were not considered to warrant an ML investigation, while in only two of these cases ML preliminary investigations were conducted. Considering the exclusive ML investigation competence, a very low number of cases (three per year on average) were forwarded to the SPO by other prosecutors' offices. This fact exposes the problem of identifying ML, which was mentioned earlier in the text. Another conclusion that follows from the reviewed data concerns the quality of cases sent to the SPO. The fact that only 12.5% of these cases resulted in ML investigations also suggests the existence of problems in this respect.

272. Montenegro has conducted 25 ML investigations during the review period, which is a limited number. It means that on average four ML investigations were started annually. Out of the total ML investigations, 11 investigations (i.e. two per annum) were opened upon the initiative of

[118] The number of reports and the number of perpetrators contained within the criminal reports equal to each other. For instance, in 2022 the number of reports on ML offences was 11 and the number of perpetrators was also 11.

prosecutors based on the investigation of predicate offences. The ratio of ML investigations originating from the investigation of predicate crimes is very small (0.9%) compared to the number of cases, where convictions were rendered for the predicate crimes posing a high ML risk to the country (see Table 3.20). These factors further indicate that the identification of ML related to predicate offences is not pursued on a consistent and a systematic basis. The prosecutorial and police offices, other than the SPO and the SPU, are mainly oriented towards the investigation of predicate crimes under their respective jurisdictions and treat the identification of ML to be of a less priority. This is also owed to the absence of a clear policy, identification criteria and appropriate coordination mechanism. It is a significant deficiency.

Table 3.12: Number of criminal reports on ML

Year	Number of natural and legal persons subject to criminal reports sent to the Prosecutor's Offices concerning all crimes	Number of ML perpetrators / offences contained within the criminal reports	Amount of laundered money in EUR contained within the criminal reports
2017	823	28	NA
2018	997	89	NA
2019	912	86	NA
2020	1072	36	NA
2021	988	22	NA
2022	1339	11	NA
Total	**6131**	**272**	**NA**

Table 3.13: Number of ML investigations and indictments

Year	Number of preliminary investigations on ML[119]	ML investigations			ML indictments (total)			ML indictments (confirmed by court)		
		Cases [120]	Persons		Cases	Persons		Cases	Persons	
			N[121]	L[122]		N	L		N	L
2017	28	7	24	0	1	11	0	1	11	0
2018	89	3	81	96[123]	1	1	0	1	1	0

[119] SPO keeps records on criminal records and preliminary investigations per a person. When SPO initiates investigation, data are collected per case.

[120] While in the case of ML criminal reports, each report concerns one suspect/person, which is relevant to the beginning of ML preliminary investigations, this is not necessarily the case for all ML investigations. Some ML investigations involve more than one suspect, since preliminary investigations might lead to the identification of additional suspects following the receipt of the report. Also, not all investigations are initiated based on a criminal report, some result from other investigations.

[121] Natural person

[122] Legal person

[123] On 2 cases.

2019	86	3	65	57[124]	3	9	1	3	3	1
2020	36	5	19	12[125]	5	27	14	3	15	11
2021	22	5	15	1	2	25	8	1	1	0
2022	11	2	4	0	3	5	0	1	2	0
Total	**272**	**25**	**208**	**166**	**15**	**78**	**23**	**10**	**33**	**12**

273. According to the LSC[126], financial investigations are carried out based on the order of a prosecutor, if there is a well-founded suspicion that material benefit was derived from a criminal activity. However, the scope of financial investigations under the law is limited to asset tracing and confiscation. It does not include the identification of ML. The Standard Operating Procedures on Financial Investigations provide for the same limited scope. In 2017-2022, the Prosecutorial and Police authorities conducted a low number of financial investigations (see Table 3.14) in comparison to the number of convictions for high ML risk proceeds generating offences (see table 3.20). The main underlying offences for financial investigations were the creation of a criminal organization, unauthorized production, possession and distribution of narcotic drugs, trafficking in human beings, tax crimes and abuse of office. ML has never been identified through financial investigations, owing to the above-mentioned limited scope of their application.

274. Prosecutors explained (after the on-site mission) that when they do not start financial investigations, they still carry out informal financial investigations as part of the criminal case and collect same information and evidence that are normally collected in a financial investigation. The existence of informal financial investigations was not established during the on-site interviews with the police, prosecutorial and judicial authorities, while the Standard Operating Procedures on Financial Investigations issued by the Supreme State Prosecutor's Office say nothing about "informal financial investigations" and there is no other document on financial investigations stipulating it. In addition, the rationale for deciding whether to apply informal financial investigations or financial investigations is unclear.

275. The prosecutors referred to several ML investigations as being started based on informal financial investigations. Throughout the six-year review period, there were only 11 ML investigations that did not originate from the FIU source. Even if presuming that all these ML investigations were started based on informal financial investigations", their low number (two per annum), is an indication that the informal financial investigations, if carried out, had the same purpose as formal financial investigations, but with some exceptions. Thus, the deficiency of not applying financial investigations as a tool for the identification of ML is relevant to both financial investigations and informal financial investigations. The approach of targeting assets and not ML is based on the rationale that by depriving criminals of their proceeds on top of holding them criminally liable for predicate crimes, the goal of the fight against crime is mainly achieved. Therefore, there is no further need to also pursue ML, which is a burdensome process with

[124] On one case.
[125] On one case.
[126] Article 11

considerable obstacles. This is a problematic approach, which contradicts the very essence of what the idea of identification and investigation of ML stands for.

Table 3.14: Number and nature of financial investigations conducted by the authorities

	Competent authority	2017	2018	2019	2020	2021	2022
Number of financial investigations	**Ordered by SPO**	19	7	15	12	25	12[127]
	Ordered by High State Prosecutor's Office of Podgorica	3	6	7	3	8	8
	Ordered by High State Prosecutor's Office of Bijelo Polje	0	0	0	0	0	0
	Total number	22	13	22	15	33	20
	Leading to identification of ML	0	0	0	0	0	0
Underlying offences to financial investigations	**ML**	3	0	2	2	4	0
	Creation of a Criminal Organization	8	2	11	13	12	0
	Corruption	0	0	0	0	0	0
	Unauthorized production, possession and distribution of narcotic drugs	4	6	9	5	8	8
	Trafficking in Human Beings	0	0	7	0	0	8
	Migrant smuggling	0	0	0	0	1	0
	Tobacco smuggling	0	0	0	0	0	0
	Smuggling (other)	0	0	3	2	1	0
	Tax crimes	0	1	4	2	1	0
	Loan sharking	1	0	0	0	0	0
	Robbery or theft	0	0	0		0	0
	Fraud	1	1	0	1	0	0
	Terrorism Financing	0	0	0	0	0	0
	Misuse of authority in business operations	1	0	1	0	1	0
	Abuse of office	2	2	2	3	4	0
	extortion	1	0	0	1	0	0
	Active Bribery	1	0	1		1	0
	Abuse of office in business operation	1	0	1	1	4	0
	Aggravated murder	3	0	1	1	6	0
	Unlawful possession of weapons and explosive substances	2	0	3	3	2	0
	Terrorism	0	0	1	0	0	0
	Homicide	0	0	1	4	6	0
	Trading in influence	0	0	0	0	1	0
	Abduction	0	0	0	0	1	0
	Computer fraud	0	0	7	0	0	0

[127] 12 financial investigations and one extension order for an on-going financial investigation.

276. One of the sources for the identification of ML are the FIU disseminations. Over the review period there were 127 ML preliminary investigations and 14 ML investigations triggered by 172 FIU disseminations.

Table 3.15: ML investigations launched based on FIU disseminations

	2017	2018	2019	2020	2021	2022	Total
Total No. of Disseminations by the FIU to the SPO	63	46	11	15	18	19	**172**
ML Preliminary Investigations based on FIU Disseminations	37	29	11	15	18	17	**127**
ML Investigations Launched following FIU Disseminations	4	1	2	4	2	1	**14**

277. The statistics indicate that 74% of FIU disseminations triggered preliminary investigations into ML. This trend is not reflected in so far as ML investigations are concerned, since only 11% of these preliminary investigations and 8% of overall FIU disseminations triggered ML investigations during the review period. It is 14 ML investigations during six years, which is on average two ML investigations per annum. This points towards insufficient use of the FIU source for identification of ML. Notably, a good number of the preliminary investigations originating from the FIU disseminations are ongoing (40% are still pending at the SPO, regarding 47% the SPO concluded that there were no elements of a criminal offense, while 11% led to launching an investigation).

278. The authorities explained that the FIU disclosures are of good quality, which has been seen to improve in recent times (see IO6). Most of these disseminations relate to cross-border cases, which according to the SPO are more challenging to investigate and to obtain evidence from foreign counterparts to establish that funds involved originate from a criminal activity. While the AT understands the difficulties associated with gathering intelligence and evidence abroad, it did not observe a large scale and systemic failure of the international cooperation mechanism and believes there are more concerning matters limiting the launching of ML investigations based on the FIU information, which reasons are discussed further down under this core issue.

279. In 2017-2022, the RCA submitted six ML STRs to the FIU regarding the cross-border transportation of currency. Out of those, the FIU made three disseminations to the SPO. Two of them were followed by ML preliminary investigations by the SPO (see case no. 3.3). Regarding the other dissemination, the SPO did not establish any signs of crime. None of the disseminations prompted a ML investigation. In view of ML threats for Montenegro due to its transit location on the so–called "Balkan route" and the significant use of cash including by OCGs (see Chapter 1), the AT would expect it to have more than six ML STRs from the RCA, more than two ensuing ML preliminary investigations, and to have at least some ML investigations rather than none,

throughout the review period. The lack of sufficiently detailed criteria for the identification of ML at the borders and respective awareness could be the underlying factors.

280. The SPO often forms domestic investigation teams for the investigation of complex ML cases. It is a normal practice for the FIU to be involved in these teams. The SPO and Police also have an experience of participating in joint investigation teams (JITs) with foreign counterparts for the investigation of ML. (See case no. 3.5: "MIG" – 2021). The AT welcomes this practice and encourages the competent authorities of Montenegro to continue it.

Case No. 3.5: "MIG" - 2021

It was a complex money laundering case, which was opened in 2021 by the SPO, when a joint investigative team was formed for the first time with the foreign state. This JIT was created with another jurisdiction, where criminal investigation was conducted against several persons, for drug trafficking and participation in a criminal organization. The head of that organization and his wife used proceeds obtained from those criminal activities to buy two properties in Montenegro, and also established a Montenegrin company, through which they bought two luxury motor vehicles.

The sale of narcotics in the foreign country was done through Telegram app, and the proceeds in the amount of EUR 1 500 000 was obtained through that sale. The head of the criminal organization withdrew almost EUR 800 000 from the commercial banks in Montenegro on several occasions and in different amounts, using large number of payment cards, connected to the accounts of third parties, held at commercial banks in the foreign country. He would first transfer money from the sale of drugs from the foreign jurisdiction to bank accounts held in yet another third country, and then he would use those assets to purchase real estate properties and vehicles in Montenegro.

Based on the cooperation in the framework of the JIT and collected evidence, on 24 March 2023, the SPO indicted 2 persons for money laundering and submitted the case to the High Court of Podgorica, while other persons were prosecuted in the foreign jurisdiction for predicate criminal offences.

281. The authorities indicated that they use incoming MLA and other international cooperation requests as a potential source for opening domestic ML investigations, however the SPO only made reference to two cases, where a ML investigation was initiated based on information received from international partners. (Case 3.5:"MIG" – 2021 and Case 3.8: F.S. Case). This is quite a low figure taking into account that over the review period there were 70 incoming MLA requests and 231 incoming police to police requests related to ML.

282. The SPO has investigated and prosecuted a number of complex and serious ML cases. It explained to the AT that in ML investigations, where relevant, it pursued the practice of creating investigation teams with the participation of FIU, involving financial experts, conducting financial investigations, obtaining and analysing information from different financial and other institutions, using search and seizure measures and employing international cooperation against multiple natural and legal persons involved. The AT welcomes this approach of investigating ML and recommends following it in practice in a consistent and systematic manner. However, in order to assess the effectiveness of ML investigations during the review period, it is important to take into account the major indicators, such as prosecution and conviction results. There is a substantial decline of ML prosecutions in the last three years under the assessment (2020-2022) and very few ML convictions (see the detailed overview of ML prosecutions and convictions below). This shows that ML investigations during the review period were not carried out in a

sufficiently effective manner. The prevailing reason for that has often been the insufficiency of collected evidence during criminal investigations to satisfy the applicable evidentiary standard for prosecution and conviction of perpetrators.

283. To summarize, the main underlying factors leading to shortcomings in identification and investigation of ML are: (1) absence of a clear policy, criteria and appropriate coordination mechanism for the identification of ML, (2) limited scope of financial investigations, (3) preferring to pursue the confiscation of proceeds of criminal activity instead of identifying and investigating ML, (4) uneven understanding of what constitutes proceeds of criminal activity and setting a high evidentiary standard which hampers the pursuance of stand-alone ML, (5) insufficient expertise, (6) lack of human resources and (7) possible integrity issues. The first three deficiencies are already discussed in text. The AT would like to elaborate about the remaining four shortcomings:

284. **Uneven understanding of what constitutes proceeds of criminal activity and setting a high evidentiary standard hampering the pursuance of stand-alone ML** – The criminalisation of ML in Montenegro foresees the possibility of proving the existence of a ML offence without needing the conviction for a predicate offence. The on-site discussions have shown that the practitioners do not have a common understanding of what the proceeds derived from criminal activity would mean in practice in terms of the required evidentiary standard in stand-alone ML cases. This has been contributing to the extensive focus on the predicate offence for being on the safe side and setting high evidentiary standard for proving ML. The above-mentioned factors created a certain hesitation to start ML investigations unless there is relatively strong evidence about the specific predicate offence.

285. **Insufficient expertise** – The expertise to pursue ML cases is higher at the SPO and SPU than in the other prosecutorial and police offices. The latter Prosecutorial and Police authorities, which deal with the investigation of predicate offences per their jurisdiction, have a very important task of detecting ML. If their expertise is insufficient, it creates a serious gap in the ML identification system. These prosecutorial and police authorities would benefit from further capacity building on the identification and investigation of ML. In view of the lengthy court proceedings and very few ML convictions in six years, none of which had been delivered through the hearing on the merits, it is opinion of the AT that judges could also benefit from the AML trainings on evidentiary standards.

286. **Lack of human resources** – There is a shortage of human resources in the SPO, the SPU and the judiciary to deal with ML cases. There are in total 15 prosecutorial positions at the SPO. Out of those, 14 positions are filled. From the available prosecutors, 2 prosecutors, assisted by 2 financial experts, mainly work on ML cases, but not only. They also deal with other crimes. The remaining prosecutors mostly work on crimes other than ML, but they can also deal with ML cases if needed. The SPU has 23 positions filled out of the available 50. The special department at the High Court of Podgorica has only 6 judges to handle ML and other crimes per its specialisation (i.e. organized crime, high-level corruption, ML, terrorism and war crimes). The lack of resources in these three institutions has a negative impact on the identification and investigation of ML and the timely court proceedings. In addition, if the prosecutorial and police offices improve the system of identification of ML through the investigation of predicate offences, which is necessary, this would lead to an increased number of notifications to the SPO regarding the potential ML,

which will further impact its ability to properly and efficiently investigate these cases as well as affect the already stretched judicial resources struggling to deal with the existing workload.

287. **Integrity issues** - The AT is also concerned with the corruption-related issues (see Chapter 1) involving high-level officials within the SPO and the SPU which could potentially have had a negative impact on the effective identification, investigation and prosecution of ML cases. Recently the SPO took actions to address the integrity issues at the Police and the Prosecution, which is a positive development and commendable, though, the ultimate results still need to be demonstrated. It is also positive to note that recently, the SPO has been able to prosecute a number of relatively serious and complex ML cases.

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

288. According to the NRA, the open sources and the on-site discussions with the authorities, Montenegro has a high ML risk emanating from predicate offences, such as organised crime associated with criminal groups operating in Montenegro, drug trafficking, arms trafficking, trafficking in human beings, migrant smuggling, tobacco smuggling, corruption, tax evasion and loan sharking. The Police, the Prosecutorial and the Judicial authorities demonstrated a good understanding of these ML risks.

289. Notably the NRA 2020 Action Plan envisages the activities such as improving the balance of achieved results in identifying and prosecuting ML and associated criminal offences, strengthening the system of criminal and parallel financial investigations and improving the Police capacity for proactively conducting financial and ML investigations. These high-level objectives are commendable; however, they are yet to be implemented in practice and translated into the results.

290. The exact information on predicate offences involved in ML preliminary investigations is not available. Information was however provided indicating that at the end of the review period there were four ongoing preliminary ML investigations into high-risk predicate offences (including organised crime and drug trafficking). Most of the 25 ML investigations carried out throughout 2017-2022 concerned the predicate offence of creating a criminal organisation, around 15 ML investigations involved tax evasion, 4 involved smuggling, 3 involved fraud in exercising official duty (corruption) and one involved drug trafficking as predicate offences. While to some extent they are aligned with some of the ML risks of the country, the AT notes that only one of these investigations started in 2022 related to drug trafficking and smuggling involving the organised criminal group operating in Montenegro. The authorities reported starting another similar investigation in 2023 related to a different Montenegrin OCG. None of the ML investigations concerned high-risk predicate offences, such as: trafficking in human beings, arms trafficking, migrant smuggling, tobacco smuggling and loan sharking.

Table 3.16: Number of ML investigations per predicate offences in 2017-2022

Year	Cases	Predicate offences
2017	7	Creation of a criminal organisation
2018	3	Creation of a criminal organisation, tax evasion, counterfeiting official documents
2019	3	Creation of a criminal organisation tax evasion, abuse of office in business operations, fraud in the conducting official duty
2020	5	Creation of a criminal organisation, tax evasion, Smuggling
2021	5	Creation of a criminal organisation, tax evasion, Misuse of Authority in Business Operations, Counterfeiting Official Documents
2022	2	Creation of a criminal organisation, Counterfeiting Official Documents, drug trafficking, smuggling
Total	**25**	

291. The same concern also arises in relation to ML prosecutions. According to the provided data on total ML indictments and confirmed ML indictments[128], the large majority of ML prosecutions were related to the predicate offence of creating a criminal organisation, while a significant number involved tax evasion and fraud in exercising official duty (corruption) as predicate offences. None of the 2017-2022 ML prosecutions concerned the high-risk predicate offences, such as: organised crime associated with criminal groups operating in Montenegro, drug trafficking, arms trafficking, trafficking in human beings, smuggling and loan sharking.

Table 3.17: Number of ML prosecutions per predicate offences

Year	All ML Indictments			Only Confirmed ML incitements		
	Cases	Natural persons	Predicate offences	Cases	Natural persons	Predicate offences
2017	1	11	Creation of a criminal organisation	1	11	Creation of a criminal organisation
2018 [129]	1	1	Tax evasion *(third-party ML)*	1	1	Tax evasion *(third-party ML)*
2019	3	9	Creation of a criminal organisation, tax evasion	3	3	Creation of a criminal organisation, tax evasion,
2020	5	27	Creation of a criminal organisation, tax evasion, fraud in the	3	15	Creation of a criminal organisation, tax evasion, fraud in the

[128] Confirmation of indictment means submitting the indictment to the court for control and confirmation. The court evaluates its legality and justification, including whether there is sufficient evidence for the reasonable suspicion that the accused person has committed the offence s/he is charged with. An indictment enters into force after the court issues a ruling on its confirmation.

[129] The year only applies to "ML indictments". The confirmation of indictments did not happen necessarily during that same year.

			conducting official duty, counterfeiting documents, Counterfeiting official documents, fraud			conducting official duty, counterfeiting documents, Counterfeiting official documents, fraud
2021	2	25	Creation of a criminal organisation, misuse of authority in business operations, counterfeiting official documents, tax evasion	1	1	Creation of a criminal organization, tax evasion
2022	3	5	Creation of a criminal organisation, counterfeiting documents *(stand-alone ML prosecution in one case against 2 persons)*	1	2[130]	N/A *(stand-alone ML prosecution)*
Total	**15**	**78**		**10**	**33**	

292. The AT also notes that the ratio of ML investigations and prosecutions towards convictions for high ML risk predicate offences is low. In 2017-2022, Montenegro has convicted 1539 individuals in 1233 cases for the predicate offences posing high ML risk, such as: participation in an organized criminal group and racketeering, corruption, illicit trafficking in narcotic drugs and psychotropic substances, human trafficking, sexual exploitation, smuggling, including migrant and tobacco smuggling, tax crimes and loan sharking (see Table 3.18). In comparison to these cases, the ratio of all ML investigations is 2%, (originating from the FIU disseminations is 0.9%), the ratio of ML prosecution cases is 1.2% per all indictments and 0.8% per confirmed indictments. The ratio of natural persons prosecuted for ML is 5.1% per all indictments and 2.1% per confirmed indictments in comparison to the natural persons convicted for the selected high-risk predicate offences.

293. According to Article 288 of the Criminal Procedure Code of Montenegro, it is possible to indict an individual without conducting an investigation, if gathered crime information and testimony of an accused person provide sufficient grounds for bringing a direct indictment. No person was directly indicted for ML during the review period.

294. One of the main ML threats for Montenegro emanates from its location on the so–called "Balkan route" which makes it a transit point for arms trafficking, trafficking in human beings, drug trafficking, often perpetrated by organised crimes groups operating in Montenegro. The authorities have had some complex cases of prosecuting related predicate offences. However, as noted above, the authorities have been focusing on the predicate offences and not addressing the associated ML. In view of this, the results are not consistent with the ML risks posed by the so–called "Balkan route" as well.

[130] The court confirmed the indictment on 13 March 2023.

Table 3.18: Number of convictions for selected predicate offences posing high ML risk (2017-2022)

Offence[131]	Cases	Persons
Participation in an organized criminal group and racketeering	20	108
Corruption and bribery	182	223
Illicit trafficking in narcotic drugs and psychotropic substances	611	743
Human trafficking	3	4
Sexual exploitation, including of children	61	66
Smuggling, including migrant and tobacco smuggling	313	336
Tax crimes	23	39
Loan sharking	20	20
Total	**1233**	**1539**

295. The authorities also presented case examples to illustrate the type of ML investigations and prosecutions related to high-risk predicate offences. One such case included the prosecution of an owner of two commercial banks in Montenegro and other commercial banks in foreign countries who stands accused of creating a criminal group and laundering the proceeds of tax evasion through the misuse of e-commerce banking facilities, and Montenegrin legal persons.

296. The risk of misuse of legal persons for ML is identified as high in Montenegro. According to the provided statistics, the authorities have shown ability to investigate and prosecute legal entities for ML. This is demonstrated by the fact that over the review period 23 legal entities were indicted for ML, out which the court confirmed the indictments against 12 legal entities. The latter confirmed indictments concerned self-laundering of proceeds of tax evasion and creation of criminal organisation and were issued on two cases. The modus operandi involved formation and use of legal entities for tax evasion and ML through appointing nominee founders and directors and operating their bank accounts. Thus, channelling the crime proceeds under the guise of conducting a legitimate business.

297. The AT while commending the Montenegrin authorities for taking action to investigate and prosecute legal persons in relation to ML, however, notes a declining trend in prosecutions of legal persons since 2020, to a total absence of such prosecutions in 2022 (from 14 to 0, per all indictments and from 11 to 0, per confirmed indictments. See Table 3.19). During the review period, a single legal entity was convicted for the self-laundering of tax money. These factors indicate that legal persons were still insufficiently pursued in ML cases, regardless of the risk of their frequent misuse in this offence. The potential reasons include the absence of the clear policy, scarce judicial practice, burdensome process of proving ML and lack of resources. The identified

[131] Illicit arms trafficking was not included in view of significantly inaccurate statistics. The authorities however pointed out that there were only a limited number of attempted arms trafficking case.

technical deficiency in the criminal liability of legal persons (see R.3) concerning the requirement to prove an intention of a perpetrator to obtain any gain for the legal entity, might be also a contributing element. All these factors put together create certain hesitation and lack of willingness to pursue ML with respect to legal persons in a sufficiently effective manner.

Table 3.19. Number of ML prosecutions against legal persons

Year	ML indictments (total)	ML indictments (confirmed by court)
	Legal persons	Legal persons
2017	0	0
2018	0	0
2019	1	1
2020	14	11
2021	8	0
2022	0	0
Total	**23**	**12**

298. Notably, the number of ML convictions compared to the number of convictions for predicate offences posing high-risk for ML is very low. Over the period of six years, five natural persons and one legal entity were convicted for ML in four cases. Comparing the cases to cases and persons to persons, these 4 ML cases and 5 convicted natural persons represent 0.3% of the high-risk predicate offence conviction cases and convicted natural persons respectively. Not all predicate offences are supposed to result in ML, but such a discrepancy is an indication that the results of ML investigations and prosecutions in terms of achieving ML convictions are not in line with the risks of the country.

299. It was also concerning to note significant delays in processing ML cases, owing to the lengthy court proceedings and confirmation of indictment hearings. Throughout 2017-2022, in most ML cases, where there were multiple defendants, witnesses, experts and documents, the indictment confirmation hearings and court proceedings lasted with interruptions from around 3 to 5 years. Various reasons were named for that during the on-site, including the frequent practice of court needing to conduct its own investigation to obtain additional evidence regarding the crime, defendants and witnesses failing to appear before the court and the application of different defence tactics to delay the proceedings. The discussions with the authorities, provided data and the review of cases suggest that more significant delays occurred at the trial stage of proceedings and to a lesser extent at the confirmation of indictment hearings.

300. The analysis of the nature of ML investigations and prosecutions throughout the review period indicates that to some extent these are in line with some of the ML risks of the country. Nonetheless the extremely small ratio of ML investigations and prosecutions in comparison to the number of convictions for the high ML risk predicate offences, and the lack of pursuing ML emanating from high-risk predicates, including organised crime connected with Montenegrin OCGs, drug trafficking, arms trafficking, trafficking in human beings, migrant smuggling, tobacco

smuggling, and corruption is concerning and not in line with the risk profile of the country. The authorities have been mainly focusing on investigating predicate offences and putting very limited efforts to investigate ML. In view of the above, the ML investigations and prosecutions in Montenegro only to a limited extent reflect the risks that the country faces.

3.3.3. Types of ML cases pursued

301. The SPO is a competent authority to investigate and prosecute different types of ML, including self–laundering, ML with foreign predicate, third–party ML and stand–alone ML.

302. As noted earlier, during the evaluation period, there were six ML convictions (in four cases) against five natural persons and one legal entity. All ML convictions were for self-laundering with one person being convicted for laundering the foreign proceeds of crime (see Case 3.8: F.S. Case). These conviction cases were of relatively simple nature. There have been no third-party and stand-alone ML convictions in Montenegro (see table below). However, the AT positively notes the recent efforts to initiate and prosecute stand-alone type of ML.

Table 3.20: Number of ML convictions

Year	Total number of ML convictions			Self-laundering convictions			Third-party ML convictions			ML convictions with foreign predicate			Stand-alone ML convictions		
	Cases	Persons		Cases	Persons		cases	Persons		Cases	Persons		Cases	Persons	
		N[132]	L[133]		N	L		N	L		N	L		N	L
2017	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2019	2	2	1	2	2	1	0	0	0	1	1	0	0	0	0
2020	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2021	2	3	0	2	3	0	0	0	0	0	0	0	0	0	0
2022	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	**4**	**5**	**1**	**4**	**5**	**1**	**0**	**0**	**0**	**1**	**1**	**0**	**0**	**0**	**0**

303. The NRA 2020 Action plan also includes a number of objectives to increase the country's effectiveness in dealing with ML cases, including action point 2.4.2, which is focused on improving the capacity of the SPO to proactively conduct investigations on ML as an independent criminal offence, which is a positive step. In line with this national policy objective, the SPO informed the AT that they had recently started the process of changing the predicate-oriented practice by

[132]Natural person
[133]Legal person

starting to pursue more effectively stand-alone ML. This has led to the SPO indicting two persons in one stand-alone ML case in 2022. It successfully passed the confirmation of indictment stage on 13 March 2013. (See Case No. 3.6). Through this case the SPO has to some extent demonstrated ability to investigate and prosecute stand-alone ML. This case is still to be processed by the court and hence the judicial system is yet to be tested in this respect.

Case No. 3.6: 2023 stand-alone ML prosecution case

The High Court of Podgorica has confirmed the indictment of the SPO on 13 March 2023, stating that two natural persons (foreign citizens) have committed the extended criminal offense of money laundering as stand-alone criminal offense.

The indictment charges the defendants A and B. that were aware of their act, during a specific period of time, transferring money in amounts exceeding EUR 40,000, with the knowledge that it was obtained through criminal activity, with the intention of concealing and falsely representing the origin of the money. The defendant A made multiple individual deposits of funds in the range from EUR 50,000 to EUR 300,000 and in different banks for which he was aware that were obtained through criminal activity, as there was no evidence of their lawful origin. He used specific payment orders in the banks to falsely represent the origin of money as lawful. The defendant B transferred money in multiple individual amounts, ranging from EUR 30 000 to EUR 200 000 during the specific period of time, knowing that the funds were obtained through criminal activity. Similarly, he used specific payment orders to falsely represent money as lawfully obtained.

The indictment proposes that the Court, during the evidentiary proceedings, hears the defendants and examines evidence, including the documentation from relevant banks, correspondence between the Police and the Customs and Revenue Administration, as well as findings and opinions of the court expert. The case is pending at the court.

304. Despite this positive development, the analysis of the overall practice and the on-site discussions dictate that throughout the assessment period the overwhelming majority of ML prosecutions were for self-laundering, which in view of the overall number of cases is still low. There were also few prosecutions for third-party ML and ML with foreign predicate offences. A more precise breakdown of this data is not available.

305. Article 268 of the Criminal Code criminalising ML incorporates the concept of laundering the proceeds of criminal activity. It aims at allowing to prove the existence of a ML offence without needing the conviction for a predicate crime. Notwithstanding this being the idea of ML criminalisation in Montenegro, the on-site discussions have shown that the authorities have an uneven practical understanding about the required level of proof in stand-alone ML cases. This has been contributing to setting a high evidentiary standard for proving the existence of proceeds of criminal activity in ML offence and leading to an extensive focus on prosecuting ML together with the predicate offence.

306. The authorities provided the case example on ML conviction.

Case No. 3.7: "BAUER- 2017" case

In 2017, BF the founder and director of the legal entity "A." DOO Kotor, through manipulating the business records of this legal entity and submitting a false tax return to the Revenue and Tax Administration of Montenegro, decreased the taxable income of "A." DOO Kotor in the amount of EUR 998 000 by showing it as an expense. Through this conduct, it avoided paying EUR 89 820 profit tax to the state budget of Montenegro.

Later, BF laundered the EUR 89 820 proceeds of tax evasion by transferring it abroad from the bank account of "A." DOO Kotor to the bank account of the foreign legal entity as a payment for goods per contract and respective invoice. On 5 April 2019, the SPO concluded a plea agreement with defendant BF and legal entity "A." DOO Kotor. On 10 May 2019, the SPO submitted it to the High Court in Podgorica, which adopted it.

Based on the court judgment, BF was found guilty of tax evasion and ML. He was sentenced to home imprisonment for 5 months and fined with EUR 3 000. The court also found legal entity "A" DOO Kotor guilty of tax evasion and ML. As a sanction the court imposed a fine in the amount of EUR 75 000 and the obligation to pay EUR 3 000 for humanitarian purposes. Based on the judgment, "A." DOO Kotor also reimbursed EUR 89 820 unpaid tax to the state budget of Montenegro.

307. Montenegro pursued ML cases concerning proceeds of crime committed abroad to a limited extent. It sent a moderate number of MLA requests in this respect to foreign jurisdictions. There has been only one ML conviction of a legal person. It further transpires that legal persons were insufficiently pursued in the context of ML (see Core Issue 7.2) despite the identified high risk of their use in ML.

308. In view of the above, it is to a limited extent that different types of ML cases were prosecuted, and offenders convicted during the review period. The main reasons for that include: (1) insufficiently pursuing the prosecution and conviction of offenders for self-laundering and putting lesser efforts into prosecuting and convicting perpetrators for third-party ML, stand-alone ML and ML with foreign predicates, (2) Uneven understanding of what constitutes proceeds of criminal activity and setting a high evidentiary standard which hampers the pursuance of stand-alone ML, (3) lack of human resources, potential integrity issues and lengthy confirmation hearings and court proceedings. The shortcomings in the identification and investigation of ML have also a bearing on the limited number of prosecutions and convictions concerning different types of ML. Refer to see section 3.3.1 for more detailed explanation on these issues.

309. The authorities suggested that the ML indictments filed in the last few years are currently before the court at different stages: some waiting for the confirmation, while others that passed this stage were either awaiting a hearing or were in the process of being heard. According to the authorities, these are very complex cases, in which extensive financial banking documentation with foreign elements was obtained and submitted as evidence.

310. The AT takes into account that several complex ML cases are currently processed in the court. It is a positive fact and could possibly lead to more successful ML prosecutions and convictions. However, this assessment is heavily based on the achieved results during the specified period. The ongoing court cases could be promising, but they are few and not finalized. It is not sufficient to change the current findings of the report, the grounds of which are elaborated in the text.

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

311. The sentences applied by the courts for ML were very lenient. They were disproportionate to the gravity of the crime and related risk in Montenegro. For instance, no imprisonment sentence at the penitentiary has been applied. The imposed sanctions mainly included home detention for 5-6 months and fines. The authorities acknowledge the mild nature of those sanctions.

Table 3.21: Highest sentences for ML during the period 2017-2022

Year	Highest Non-Custodial Sentence	Highest Custodial Sentence
2017	-	-
2018	-	-
2019	75 000 EUR fine	5.5 months home detention
2020	-	-
2021	3 000 EUR fine	6 months home detention
2022	-	-

312. The CPC provides for the plea agreement mechanism. It requires a court approval. Montenegro has used plea agreements to reach all six ML convictions (five against natural and one against legal persons). The plea agreement mechanism can be a very important tool for targeting the high-ranking criminals and serious organised crime by the way of obtaining valuable information in exchange for entering into plea agreement with certain individuals. This mechanism can also speed up the criminal justice process, release the criminal justice institutions from the unnecessary workload and make more resources available for addressing the most serious forms of criminality. To summarise, if applied on justifiable grounds, the plea agreements could play a positive role. However, in the case of Montenegro, no such grounds were identified with respect to the ML sanctions.

313. In view of the above-mentioned, the overall conclusion of the AT is that the sanctions applied by the courts for ML were not effective, proportionate, and dissuasive.

314. Notably, for revising the sanctioning policy, the Supreme Court and the Supreme State Prosecutor's Office of Montenegro developed draft guidelines concerning the adoption of plea bargains. The draft guidelines recommend judges to take a more critical approach towards plea bargains in ML cases having in mind the necessity of applying proportionate and dissuasive sanctions. According to the authorities, the document is sent to international experts for review. The AT commends the authorities for the initiative and expects its positive practical impact.

3.3.5. Use of alternative measures

315. Montenegro can use alternative criminal justice measures in cases where it is not possible to secure ML conviction. The authorities to some extent pursued the extended confiscation by using the LSC. However, in view of the limited practical scope of financial investigations, they have not done so after first pursuing a ML investigation and establishing that it was not possible, for justifiable reasons, to secure a ML conviction.

316. The asset recovery measures are very much commendable, but they should not diminish the importance of, or be a substitute for, prosecutions and convictions for ML offences. The way of applying the extended confiscation measure in Montenegro, tends to both substitute the prosecutions and convictions for ML offences and diminish their importance.

317. Based on the available information, the AT would conclude that during the assessment period the authorities did not apply the extended confiscation or took any other actions as an alternative measure in a manner that would be in line with the standard.

Overall conclusions on IO.7

318. Montenegro has broad powers to identify, investigate and prosecute ML. Recently, the authorities were able to put forward a number of complex ML cases. They have also started to widen the scope of practical application of ML offence, by pursuing the stand-alone ML and trying to test it at the judiciary. In addition, the authorities took actions to address the integrity issues at the Police and the Prosecution. These are the promising developments, and the AT commends these endeavours.

319. As to the overall practice and effectiveness of combating ML throughout the six years under the assessment, the number of ML investigations, prosecutions and convictions was relatively low compared to the convictions for proceeds-generating high-risk predicate offences. The ML prosecutions are on the decline. The number of formal financial investigations was also relatively low and aimed to establish assets subject to confiscation and not the identification of ML. Informal financial investigations, if carried out, had the same purpose, but with some exceptions.

320. The country showed ability to prosecute and convict offenders for self-laundering, third-party ML, stand-alone ML and ML with foreign predicates although to a limited extent. This has been done relatively better in terms of self-laundering prosecutions, but still at an unsatisfactory level. A significant number of legal persons have been investigated and a modest number prosecuted. More efforts are required in pursuing legal persons involved in ML considering their high-risk of misuse for ML. The criminal sanctions for ML were not applied in effective, proportionate and dissuasive manner.

321. Montenegro can use alternative criminal justice measures in cases, where it is not possible to secure ML conviction. However, the competent authorities did not apply those measures during the evaluation period.

322. The authorities have made some efforts for combating ML. The achieved results in terms of ML identification, investigations, prosecutions, and convictions are consistent with the risk profile of Montenegro only to a limited extent. Major improvements are needed, to address a number of deficiencies leading to this situation. The following are the most notable ones: (1) absence of a clear policy, criteria and appropriate coordination mechanism to identify an investigate ML, (2) limited scope of financial investigations, (3) preferring to pursue a confiscation of proceeds of criminal activity instead of identifying and investigating ML, (4) uneven understanding of what constitutes proceeds of criminal activity in stand-alone ML cases and setting a high evidentiary standard, (5) insufficiently pursuing the prosecution and conviction of offenders for different types of ML, (6) insufficient expertise, (7) lack of human

resources, (8) lengthy confirmation hearings and court proceedings and (9) possible integrity issues.

323. **Montenegro is rated as having a Moderate level of effectiveness for IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

324. Montenegro pursues confiscation as a policy objective. The CC, the CPC and the LSC provide for the possibility to secure and finally confiscate proceeds of crime, instrumentalities, and property of equivalent value. The legislation of Montenegro goes beyond the requirements of the FATF standards and allows application of extended confiscation. According to the LSC, it applies if there is a well-founded suspicion that a material benefit has been derived from criminal activity, whereby the perpetrator fails to make plausible its legal origin and if he/she was convicted by a final judgment for a set of defined offences. Those cover a broad range of crimes, including the ones within the FATF designated categories. The same law also provides the grounds for application of non-conviction-based confiscation in exceptional circumstances precluding prosecution, including the death of a perpetrator[134].

325. In addition to the legislative framework, a number of national strategies set a range of strategic goals and targeted actions for increasing the confiscation of proceeds of crime. Among those:

326. The National Strategy for Prevention of Terrorism, ML and TF for 2015-2018 sets as a priority the measure to carry out financial investigations regarding terrorism and related offences. The National Strategy for Prevention of Terrorism, ML and TF for 2022-2025 stipulates the need for conducting specialist training for prosecutors dealing with terrorism, other offences related to it and ML in the areas of financial investigations and confiscation of property benefits acquired through criminal activity.

327. The 2020 NRA Action Plan envisages actions to be taken to improve the performance of the Police, the Prosecutor's Office, the judiciary and the FIU through issuing standard operating procedures better defining the role of the various authorities in financial investigations and conducting trainings. The Action Plan sets targets for enhanced actions for identification and tracing of proceeds of crime by means of FIU intelligence, financial investigations conducted by the Police and the Prosecutor's Office, increased detection of cash movement by the RCA and improved results in terms of permanent confiscation of property by courts.

328. The Strategy for Countering Transnational Organised Crime for 2023-2026 defines a strategic goal to have a unified approach in the fight against organised criminal groups and application of zero tolerance policy to all forms of organised crime and ML. The performance

[134] See c.38.2

indicator is set as the increased number of final court decisions on permanent confiscation of property and the increased number of initiated financial investigations.

329. Reorganising the Police and replacing the former structures by the new specialised structural units, such as the Division for the Fight Against Corruption, Economic Crime and conducting Financial Investigations and the Asset Recovery Office, demonstrates the commitment of the authorities to tackle financial crime and deprive criminals of their ill-gotten gains, as a policy objective. This structural change was aimed at improving the capacity for identification and tracing assets domestically and abroad. While the results of the Financial Investigations Group are not yet demonstrated, the ARO work led to an increase in the number of requests sent abroad for tracing assets and conducting checks on individuals.

330. In the support of its strategic goals, the authorities have conducted regular trainings for the competent authorities on the detection, seizure and confiscation of criminal assets. In particular, between 2017-2023, the Centre for Training in the Judiciary and the State Prosecutor's Office held 41 such trainings for 287 representatives of the judiciary (judges and advisers), the Prosecutor's Office, the Police Administration, including FIU and the RCA. The prosecutorial and judicial candidates are also trained in the above-mentioned subjects as part of their initial training. The Council of Europe experts are often invited as trainers.

331. Furthermore, to facilitate the identification, seizure and confiscation of the property derived from criminal activity, on 25 September 2019, the Supreme State Prosecutor's Office of Montenegro adopted the Standard Operating Procedures for Financial Investigations. This is a set of written instructions on actions that prosecutors should undertake in financial investigations. During the on-site mission, the existence of the SOP was unknown by some of the prosecutors outside of the SPO.

332. The efforts discussed above demonstrate that the authorities consider seizure and confiscation of criminal assets as an important policy objective and a priority and have already taken numerous actions to implement the objectives set out in these strategic documents. The implementation of some other national objectives set out in these strategic documents is still underway and is expected to yield more results. Currently, the achieved results meet the objectives to some extent.

3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

333. Montenegro has a solid system for depriving criminals of their ill-gotten gains. The authorities apply confiscation upon conviction to target the assets that are derived from the commission of a crime. The authorities also make use of an extended confiscation mechanism to confiscate assets from convicted individuals in respect of property, which is not directly derived from the specific crime, but for which there is no plausible explanation as to its legitimate origin. Results achieved through both mechanisms are encouraging.

Financial Investigations

334. In Montenegro, there are two types of financial investigations, formal and informal. The aim of these investigations is the identification of assets subject to confiscation (see the detailed information in section 3.3.1 and Table 3.14). The SPU is tasked to conduct financial investigations for the SPO. The Unit for the Fight against Corruption, Economic Crime and Conducting Financial Investigations at the Police Directorate conducts financial investigations for other Prosecutor's Offices. In exceptional circumstances, e.g., high workload of the SPU, the SPO can also order the above-mentioned unit to conduct financial investigations. In the process of financial investigations, the SPU and the Unit for the Fight against Corruption, Economic Crime and Conducting Financial Investigations can seek co-operation from other agencies, including the FIU and the RCA.

335. In 2017-2022, the authorities conducted 125 formal financial investigations, which resulted in the extended confiscation in seven cases (see Table 3.26). They were mainly initiated with respect to offences, such as creation of a criminal organisation, unauthorised production, possession and distribution of narcotic drugs, trafficking in human beings, tax crimes, abuse of office, unlawful possession of weapons and explosive substances and smuggling (see Table 3.14). There is one ongoing financial investigation being conducted by the SPO with respect to persons charged with terrorism. Compared to the selected high-risk crimes conviction cases (see Table 3.20), the ratio of formal financial investigations is 10%, while the output of conducted formal financial investigations in terms of leading to extended confiscations is 6%. This suggests that formal financial investigations were conducted to some extent, but not in a sufficiently consistent and effective manner. The AT considers that this is owed to the (i) lack of awareness and expertise of prosecutors and police (other than the SPO and SPU), (ii) insufficient implementation of the existent policy for financial investigations resulting also from ineffective monitoring thereof; and (iii) and the shortages of human resources at the SPO and the SPU (see section 3.3.1).

336. There are no statistics about informal financial investigations conducted in the framework of preliminary investigations or investigations. The consistency and effectiveness of their application however can be judged based on the seizure and confiscation results. The overview of these results (see further below) indicates that informal financial investigations were pursued to some extent, but still not in a sufficiently consistent and effective manner.

337. With regards to the detection of VAs the AT notes that the FIU (which provides useful financial intelligence to assist in financial investigations) has four officials trained in conducting financial analysis involving VAs as well as a dedicated chain analysis software. The SPO explained that when searches are conducted by State Prosecutors, they seek to detect VAs, through the analysis of documents, computer, mobile phone data and other information. The FIU explained that so far, they have been able to detect two cases (the analysis of which are ongoing) of suspected proceeds of crime in the form of VAs. Considering that conducted risk assessments highlight the potential misuse of VAs by OCGs (see Chapter 1) and that potential proceeds of crime in the form of VAs have only been detected in two FIU analytical cases, the AT is not convinced about the ability of the system (i.e. applicability of legislation and operational framework) to detect (particularly by authorities other than the FIU), seize, confiscate and manage VAs.

338. In Montenegro, compensation of the victims of crime is given priority. Authorities indicated that when in a criminal case there is a claim by a victim, the court first decides on this claim and then proceeds with confiscation order (c.4.3.). No statistical data was provided in this respect.

Seizure

339. A seizure order is issued by the court upon the prosecutor's motion for imposing a provisional security measure. Discussions with the Police and the prosecutors did not reveal any particular difficulties in this respect.

340. Montenegro applies provisional measure of seizure of assets for the purpose of subsequent confiscation through criminal or extended confiscation proceedings. The authorities provided the list of seized property (see Table 3.22 and 3.23). Information on the value of many movable and even more immovable assets was not available.

341. According to the provided data on the applied seizures, apart from VAs, the authorities have seized a wide range of property including movable and immovable assets (residential and non-residential premises and land), movable property (vehicles and yachts), cash and money in the bank accounts.

342. The available statistics did not distinguish between proceeds of crime and instrumentalities. However, based on the provided general data, case examples and discussions with the authorities, it was understood by the AT that the majority of seized assets were proceeds of crime, which mostly related to domestic crimes, however in some cases the authorities did manage to seize instrumentalities such as vehicles and yachts. The authorities have diverse views on seizure of these types of assets. Several representatives of the Police and the Prosecutor's Office suggested that a vehicle or a ship is not a subject to seizure as an instrumentality if it is not modified (has a bunker) to hide the transported goods (e.g. cash or drugs). This approach was not shared by the judges. Overall, the collected information suggests that to some extent the authorities seize instrumentalities, but there is no confirmation that it is done in an effective and consistent manner.

343. The FIU plays an important role in analysing the STRs, CTRs, cross-border reports, and suspending assets, which are in many instances effectively followed up by prosecutors, in terms of applying temporary suspension of transactions upon the court order. Such measures have however not been followed by confiscation so far (See case 3.1 and Table 3.24). The measures against some assets are pending in anticipation of collecting additional evidence, while some assets were released because of not establishing the grounds for confiscation. More details are not available in this respect.

Table 3.22: Number and type of assets seized in ML cases (in EUR)

	2017	2018	2019	2020	2021	2022	Total
Number of cases	2	2	1	2	3	3	**13**
Money on bank accounts (EUR)	0	63,825,888	165,800	0	6,743,648	173,153	**70,908,489**

Cash (EUR)		7,822,007[135]	0	1,095,063	2,685,530[136]	284,242	746,756	**12,633,598**
Cash (EUR), based on FIU initiative		4,761,507[137]	11,167,463[138]	2,639,429	664,724[139]	6,322,013[140]	4,777,264[141]	**30,332,400**
Movable Property (other than cash)								
Vehicles	**Number**	3	0	5	0	11	0	**19**
	Value	N/A	0	N/A	0	N/A	0	N/A
Securities	**Number**	0	0	N/A	0	0	0	N/A
	Value	0	0	1,997,320	0	0	0	**1,997,320**
Immovable Property								
Residential and non-residential premises	**Number**	14	0	23	19	19	11	86
	Value	N/A	0	N/A	N/A	N/A	N/A	

Table 3.23: Number and type of assets seized in other cases (in EUR)

		2017	**2018**	**2019**	**2020**	**2021**	**2022**	**Total**
Number of cases[142]		9	6	1	8	3	6	**33**
Money on bank accounts (EUR)		4,340,000	0	0	0	4,749,849	0	**9,089,849**
Movable Property (other than cash)								
Vehicles/ motor bikes	**Number**	7	0	0	27	9	7	**50**
	Value	N/A	0	0	N/A	N/A	N/A	**N/A**
Securities	**Number**	0	0	0	N/A	0	0	**N/A**
	Value	0	0	0	1,697,320	0	0	**1,697,320**
Immovable Property								
Residential and non-residential premises, land, etc.	**Number**	127	199	88	57	52	107	**630**
	Value	N/A	N/A	N/A	N/A	N/A	N/A	**N/A**

[135] Includes USD 4,517,000 converted to EUR 4,248,526
[136] Includes USD 12,000 converted to EUR 11,286
[137] Includes USD 3 417 000 converted to EUR 3 213 906
[138] Includes USD 1 472 500 converted to EUR 1 384 980
[139] Includes USD 13 800 converted to EUR 12 979
[140] Includes USD 143 847.22 converted to EUR 135 297
[141] Includes USD 1 581 741.22 converted EUR 1 487 728
[142] Includes cases, where movable or/and immovable assets were seized.

Table 3.24: Temporary suspension of transactions by FIU and Prosecutors

Year	Number of Suspension of transactions by FIU	Number of cases	Value of assets involved (in EUR)	Suspension of transactions by prosecutors upon the court order	Temporary security measure (in EUR)	Confiscation
2017	19	10	8,669,440[143]	Full amount		0
2018	22	12	8,299,078[144]	Full amount		0
2019	9	5	7,657,010	Full amount		0
2020	40	8	3,166,019[145]	Full amount		0
2021	12	8	3,737,358[146]	Full amount	2,140,000 200,000 living space	0
2022	16	4	9,174,249[147]	Full amount	4,400,000 – Reply to MLA request is pending. 600,000 MLA information received and funds seized	0
Total	**118**	**47**	**40,703,154**	**Full amount**		**0**

344. The total value of seized property during 2017-2022 is estimated to be around EUR 128,398,976[148]. It is a significant amount, which clearly evidences the commitment of the authorities to seize criminal assets. However, for establishing how effectively the seizure mechanism is applied, the AT also considered other important factors. The first factor is the ratio of cases in which seizure of assets was applied against the selected high-risk crimes conviction cases (see table 3.20 under IO 7). The ratio is 46 against 1,233 cases (i.e 3.7%). This relatively low ratio shows that seizure of assets is not applied in a sufficiently consistent and effective manner.

345. The second and third indicators are that property of an equivalent value and proceeds which have been moved to other countries have never been seized. The AT was informed about one case, which involved a MLA request sent to a foreign country to detect and seize proceeds of crime moved abroad which could not be executed (see Case no. 8.6). As set out under IO2, the authorities are not proactively seeking to detect, and freeze/seize proceeds of crime moved

[143] Securities
[144] EUR 5 818 254 and USD 2 700 640
[145] EUR 3 127 159.41 and USD 42 303
[146] EUR 3 618 668.05 and USD 129 207.22
[147] EUR 7 721 250 EUR and USD 1 581 744
[148] Based on Table 3.22, Table 3.23 as well as Table 3.27, providing the value of confiscated villa, 27 vehicles and 2 yachts.

outside of Montenegro. The fourth factor concerns the impossibility of establishing the exact ratio and instrumentalities of crime in the seized assets, while the fifth factor is the impossibility of determining the extent of proceeds and instrumentalities of crime involving domestic offences as opposed to foreign predicate offences. As noted earlier, it is still understood that most of the seized assets were proceeds derived from domestic crimes. As a sixth factor, the AT also considers that the seizure of VAs has never been carried out in Montenegro.

346. In view of the above, the AT concludes that the authorities used the seizure mechanism to some extent.

Confiscation

347. According to the SPO statistics on confiscated assets during 2016-2022 (see Tables 3.25-3.26), Montenegro confiscated around EUR 33 000 000 (money on bank accounts) in 22 cases, including EUR 20,000 in one ML case, through Criminal Code confiscation mechanism. Other underlying crimes were abuse of office, tax evasion, drug crimes, smuggling, fraud, unlawful possession of weapons and explosive substances and abuse of office in business operations. In addition, the Cadastre and State Property Administration reported the confiscation of EUR 26,000 in cash, 27 vehicles and 2 yachts with the value of EUR 300,000 (Table 3.27).

348. Using the extended confiscation mechanism in seven cases, Montenegro has confiscated EUR 3,335 and five real estate, worth around EUR 2,100,000, in connection with abuse of office, creation of criminal organisation and drug crimes as underlying offences. Out of the total confiscated assets, the authorities were able to recover EUR 33,000 000 (See Table 3.25), EUR 26,000 cash, EUR 1,414,000 worth villa and EUR 300,000 worth of vehicles and yachts (See Table 3.27).

Table 3.25: Confiscated money (in EUR) through Criminal Code confiscation mechanism

Year	Number of Cases	Value of Confiscated proceeds (money)	Underlying Criminal offences
2016	5	23,582,545.2	Abuse of Office, Fraud, Tax Evasion
2017	2	6,097,351.93	Abuse of office
2018	2	1,756,057.59	Creation of a Criminal Organisation, Abuse of Office in Business Operations
2019	4	483,654.52	ML[149], Creation of a Criminal Organisation, Unauthorised Production, Possession and Distribution of Narcotic Drugs, Tax Evasion
2020	3	714,945	Creation of a Criminal Organisation, Unauthorised Production, Possession and Distribution of Narcotic Drugs, Unlawful Possession of Weapons and Explosive Substances, Tax Evasion
2021	6	358,302.38	Creation of a Criminal Organisation, Unlawful Possession of Weapons and Explosive Substances, Smuggling of Persons, Smuggling, Tax Evasion

[149] Confiscation of USD 20,000 in one ML case (Case No. 3.7: F.S Case)

2022	0	0	-
Total	**22**	**32,992,856.62**	

Table 3.26: Confiscated property (in EUR) through extended confiscation mechanism

	2017	2018	2019	2020	2021	2022	Total
Extended confiscation in relation to ML							
Number of cases/Property value (in EUR)	0	0	0	0	0	0	**0**
Extended confiscation in relation to other predicate offences							
Number of cases	2	0	2	1	1	1	**7**
Number of Property	1[150]	0	3[151]	1[152]			**5**
Property value (in EUR)	385,185	0	300,000	1,414,000	2,530[153]	805	**2,102,520**

349. The confiscated EUR 20,000 in the context of a ML case was proceeds of a foreign predicate offence. It was the only case of foreign proceeds of crime being confiscated in the review period. The confiscation (including repatriation, sharing and restitution) of proceeds moved to other countries has not been carried out.

Case No. 3.8: F.S Case

From October 2013 to October 2016, F.S. used EUR 20 000 to renovate a house in Montenegro, particularly for buying building materials, furniture and paying for the renovation works. The SPO started investigating the ML case against F.S. based on the incoming MLA request from a foreign country, which suggested that he could be using proceeds of drug trafficking committed in that country. Through MLA, the SPO also learned about the conviction of F.S. in 2017 for drug trafficking in that country.

Based on the collected evidence, the SPO prosecuted F.S. for ML. Eventually he pleaded guilty, which led to concluding a plea agreement between him and the SPO. By 15 April 2019 judgment of the High court of Podgorica, the court adopted the plea agreement, convicted F.S. for ML and ordered the confiscation of EUR 20 000 proceeds of crime, which he previously deposited on the bank account of the SPO for the purpose of the subsequent confiscation.

350. Montenegro confiscated proceeds of criminal activity from a third party in one case during the assessment period. Based on a 2018 decision of the High Court of Podgorica, a villa in Bečići was confiscated from a third party through the extended confiscation based upon

[150] Immovable Property, land (3,036m^2)
[151] Immovable Property, Apartment (64 m^2), House (259m^2 and land (541m^2)^2
[152] Immovable Property, Villa (193m^2)
[153] Includes USD 1,250 converted to EUR 1,180

establishing that the property originated from the abuse of official position in an organised manner by another person.

351. Complete and accurate information on the confiscation of instrumentalities is not available. Montenegro has not made a confiscation of property of an equivalent value during the assessment period. Throughout the review period, there were no convictions for TF offences and hence no property was subsequently confiscated. Despite the legislative possibility, Montenegro has not applied a non-conviction-based confiscation in practice so far.

352. In total, the value of confiscated assets during 2016-2022 is around EUR 35,400 000. It is a considerable amount that shows the commitment of the authorities to confiscate criminal assets. Nonetheless, for establishing how well the competent authorities were confiscating the proceeds and instrumentalities of crime, and property of an equivalent value, involving domestic and foreign predicate offences and proceeds which have been moved to other countries, the AT takes into account other important factors as well. The ratio of cases where confiscation was applied is 2.4% compared to the selected high-risk crimes conviction cases (see table 3.20 under IO 7). It is a small portion, which points that confiscation mechanism has not been applied in a sufficiently effective and consistent manner. It is also notable in this respect that compared to 2016, when a large sum of money was recovered, the amount of confiscated assets has significantly reduced in the next years. Further important factors considered include the single confiscation of foreign proceeds, single third-party confiscation, no equivalent property confiscation, no confiscation of proceeds which have been moved to other countries and unknown extent of confiscating instrumentalities.

353. In view of the above factors, the AT concludes that the authorities used the overall confiscation mechanism to some extent.

Management of seized and confiscated assets

354. Montenegro has in place a system for managing seized and confiscated assets. The Cadastre and State Property Administration is the responsible authority for that. It owns parking space for the storage of vehicles and warehouse for the storage of consumer goods. If necessary, the Cadastre and State Property Administration can entrust seized and confiscated assets to a natural or legal person for the safekeeping and storage.

355. The Cadastre and State Property Administration submits seized and confiscated assets of historical, artistic and scientific value to museums and institutions specialized in the preservation of such property. The seized and confiscated precious metals, precious stones and other valuable objects are given to the CBM for safekeeping. The seized cash is deposited to the dedicated account at the CBM. The seizure of securities is registered at the Central Depository Agency. It is possible to hire an authorised securities market participant to monitor the value of seized securities. The applicable asset management measures also include the possibility of selling seized movable and immovable assets following their valuation, when the estimated costs of safekeeping, managing and maintaining significantly exceed the value of property or/and the property is under a threat of deterioration. A relatively common mechanism for selling seized assets is a public auction, unless in case of immovable assets, it is otherwise defined by the Government or in case of movable assets, the sale was unsuccessful. In the latter case, movable

assets can be sold through a negotiated deal or if being still unsuccessful, donated for humanitarian purposes. The Cadastre and State Property Administration is also authorized to sell perishable goods without public bidding.

356. Income from the sale of seized assets is kept on a special bank account at the most favourable interest rate until the decision on confiscation. Confiscated money and income from the sale of confiscated property are transferred to the Budget of Montenegro.

357. According to the data submitted by the Cadastre and State Property Administration, over the years 2017-2022, it sold 27 vehicles and 2 yachts for EUR 300 000 through public auction and perishable goods for EUR 14,049.71 through direct negotiation (see table 3.29). It has also evaluated one confiscated real estate but has not managed it yet. The evaluation of other seized and confiscated assets is pending.

358. Overall, the authorities have demonstrated some experience in preserving and managing the value of seized and confiscated assets. However, it does not include the experience in selling confiscated immovable assets and the experience in selling seized movable assets, except for the perishable goods. It can be assumed in this respect that the delays in court proceedings (noted under IO 7) are putting extra pressure on the management of seized assets, e.g., vehicles, because of having to manage them for a long period and bearing the risk of depreciation.

Table 3.27: Seized and confiscated property (in EUR) preserved/managed by the Cadastre and State Property Administration in (2017-2022)

Seized property	Returned seized property	Sold seized property (value in EUR)	Confiscated property		Sold confiscated property	
			Number	Value (in EUR)	Number	Value (in EUR)
EUR 60,000,000 (money on bank accounts)	0	N/A	0		N/A	
EUR 26 000 (cash)			26,000 (cash)[154]			
1456 vehicles	557	0	68	300,000[155]	27	300,000
3 yachts	1	0	2		2	
Perishable goods *(Beverages, fruits, vegetables, meat, fish,cows)*	0	14,049.71	N/A			
Apartments: 570	259	0	4	1,414,000[156]	0	
Business premises: 173	36	0	0	0	0	
Hotels: 6	4	0	0	0	0	
Hospital: 1	0	0	0	0	0	
Garages: 106	62	0	0	0	0	
Lands: 670.034m2	217,983m^2	0	1	N/A	0	
Total		**14,049.71**		**1,740,000[157]**		**300,000**

[154] Confiscated EUR 26 000 cash was paid to the Budget of Montenegro.
[155] Joint value of 27 vehicles and 2 yachts. The value of remaining 41 vehicles is not available.
[156] Price of one real estate (Villa). The value of remaining three is unknown.
[157] It does not include the value of 41 vehicles and 3 real estate.

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNIs

359. Montenegro is vulnerable to cross-border illicit flows. This vulnerability results predominantly from the fact that the country is used as a gateway for international organised crime groups. In addition, Montenegro has a cash-based economy. A large amount of cash that circulates throughout the financial system contributes to a greater risk of employing funds originating from criminal activities. All relevant authorities of Montenegro recognise the risks connected to the cross-border flows of currency. For further information in this respect, reference may be made to Chapter 1 and the analysis under IO 1.

360. Montenegro has implemented a declaration system, where all cash or BNIs equal or exceeding the value of EUR 10,000 being transported at borders have to be declared. The competent authorities for controlling the borders are the RCA and the Border Police. They have adequate powers to undertake their duties although some technical deficiencies were noted (see R. 32).

361. The RCA performs border controls based on targeted or random checks. For the targeted checks, to some extent, it applies risk analysis and identifies individuals representing the risk. The selection of suspicious persons for targeting is made based on indicators, such as travel to/from a sensitive country, ticket paid in cash and bought at the last minute, questionable credibility of traveller and travel reasons, matching with the record of suspicious activities, frequent trips in the region for a short time, criminal records, etc. These indicators are aiming at identifying ML and fraud and they are common for air, land and sea border controls. Also, they are general and do not make explicit reference to transfer of cash or BNIs through mail or cargo. There were no practical cases of using these means for the cross-border movements of cash and BNIs. There are no indicators specifically for identifying TF.

362. As set out under c.32.8 the RCA has a general power to temporarily seize means of payment. While the AT could not establish, through legislation provided, under what circumstances this power may be used, in practice the RCA provided evidence that it has temporarily restrained undeclared cash, including the amount that the passenger is not obliged to declare. Violations of declaration obligations are punishable through misdemeanour fines of up to EUR 16,000 for legal persons, EUR 6 000 for entrepreneurs and EUR 2 000 for natural persons. Confiscation as a sanction is not applicable in Montenegro regarding falsely/not declared cross-border movements of currency and bearer negotiable instruments. Such currency and BNIs can be only confiscated under the CC and the LSC, if they are proceeds of crime or instrumentalities of crime.

363. Table 3.28 hereunder provides information on misdemeanour fines imposed in view of violations of declaration obligations. In line with the legislation, the confiscation as a sanction has never been applied with respect to falsely/not declared currency and BNIs.

Table 3.28: Misdemeanour fines for violations of declaration obligations (2017-2022)

Year	Misdemeanour Orders	Fines (Value in EURO)
2017	6	3,300

2018	6	3,300
2019	11	6,050
2020	10	5,500
2021	35	19,250
2022	46	25,300
Total	**114**	**62,700**

364. Throughout the review period, a total of 114 cases of currencies not being declared were recorded at the border crossings which led to the initiation of misdemeanour proceedings. The number of cases of detected and sanctioned undeclared currency has been on a rising trend during the last two years of the assessment period (2021-2022), which is a notable development. However, it needs to be considered that this happened in parallel to significantly increased volume of incoming and outgoing cash declarations in 2022 compared to 2021. Furthermore, the sanctions applied (average of €550 per case) are not effective and dissuasive, and neither proportionate to the extent of the violation in terms of transported undeclared cash. No false declarations and BNIs were detected during this period. The authorities have not seized cash at the border solely on the basis of ML/FT suspicion.

Table 3.29: Numbers and amounts of cross-border cash declarations (2017-2022)

Year	Incoming		Outgoing		Number of non-declaration (number and amount)
	Currency (in EUR)	Number of declarations	Currency (in EUR)	Number of declarations	
2017	N/A	202	N/A	94	6 – EUR 91,750, CHF 18,000, USD 20 000
2018	CHF 2,000 EUR 3,738,505 GBP 90,100 RUB 3,550 USD 90,700	70	CHF 1,000, EUR 682,203 RUB 49,488 USD 15,000	22	5 – EUR 79,500 USD 9,000, 1 – GBP 30,000
2019	CHF 80,000 EUR 11,983,902 RUB 950,050 USD 1,169,845	385	CHF 1,000 EUR 8,348,181 RUB 78,000 USD 805,730	155	10 – EUR 252,623 1 – GBP 22,800
2020	CHF 50,000 EUR 7,060,327 GBP 73,800 RUB 491,440 USD 740,121	234	EUR 7,865,607 GBP 505 RUB 58,100 USD 128,866	51	10 - EUR 97,245, USD 49 100
2021	CHF 101,308 EUR 13,108,318 GBP 70,834 RUB 200,684 USD 3,124,905	352	EUR 4 258 448, GBP 62 699, RUB 3 460, USD753 525	78	34 – EUR 576,890, USD 99,500, 1- GBP 15,000

2022	CHF 162,360 EUR 26,466,828 GBP 65,765 RUB 2,253,300 USD 10,014,100	701	EUR 10 973 763 RUB 357 300, USD 1 536 978	189	46 – EUR 1,004,220, USD 245,320, TMT 40,000, RUB 95,100, TL 20,000, RSD 5,300

365. In line with the requirements of the LPMLTF, the RCA provides the FIU with information on cross-border movements of cash and BNIs equalling or exceeding EUR 10 000. As from January 2023 the FIU was provided with direct access to the customs database recording information on cross-border cash movements which ensures immediate access to such information (see section 3.2.1). The RCA has submitted six STRs to the FIU on ML suspicions connected with cases of undeclared cash. Out of those, the FIU made three disseminations to the SPO. Two of them were followed by ML preliminary investigations by the SPO (see case no. 3.3). Regarding the third case, the SPO did not establish any signs of crime. None of the disseminations led to a ML investigation.

366. No reports on ML suspicions have been made to the FIU or other authorities in circumstances unrelated to the violation of declaration obligations Before 2023, the information received from the RCA was mainly used by for identification of non-declarations. Starting from January 2023 the FIU is using the information from the declarations it receives electronically for tactical analysis purpose to identify and analyse suspicions. In fact through this practice the FIU has identified and is currently analysing two potential ML cases. This is a very positive development which the AT commends and encourages the FIU and RCA to also make use of this data for strategic analysis purposes to identity trends and typologies that can be used amongst other to enhance the indicators, guidance or internal procedures of the RCA and the Border Police for recognising ML/FT suspicions at the borders. These indicators, guidance and internal procedures are not considered to be sufficiently detailed.

367. In view of the AT, there is no proper co-operation and coordination between the competent agencies on the awareness raising about ML/FT risks and typologies connected to cross-border transportation of cash and BNIs. In light of the foregoing, the authorities did not address and apply confiscation of falsely / not declared cross-border movements of currency and bearer negotiable instruments as an effective, proportionate and dissuasive sanction.

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

368. Montenegro has confiscated a considerable amount of assets with respect to some predicate offences identified by the NRA and other sources as posing a high risk for generating proceeds, such as drug trafficking, tax evasion, abuse of office (corruption) and smuggling. The notable part of the seized and confiscated assets was immovable property, which is consistent with the identified risk of misuse of the real estate sector for laundering the proceeds of crime.

369. The AT would like to note however that none of the confiscations of proceeds concerned the organised criminal groups operating in Montenegro. Considering the level of criminality in Montenegro, including organised crime and high-level corruption, which generates significant

proceeds, the confiscated assets, in terms of their value and number of cases and types of underlying offences, are not sufficiently proportionate to the existing risk in the country.

370. As regards the seizure and confiscation of cash and BNIs during the border controls, the results in terms of seizure are moderate. The confiscation as a sanction is not applicable for false declaration/failure to declare currency and BNIs. Respectively, it has never been applied in practice. The situation in this respect does not correspond to the risk profile of Montenegro. The above-mentioned factors suggest that confiscation results reflect the assessments of ML/TF risks and national AML/CFT policies and priorities to some extent.

Overall conclusions on IO.8

371. The competent authorities of Montenegro have legal powers for tracing, seizing and confiscating criminal assets, and have made it a policy objective to deprive criminals of the crime profits. To some extent, the authorities use financial investigations for tracing and confiscating proceeds of criminal activity. However, their use is not consistent and systematic.

372. To some extent the authorities pursued the confiscation of proceeds of domestic predicate offences. Foreign proceeds of crime have been confiscated to a limited extent. Confiscation of property of equivalent value and confiscation (including repatriation, sharing and restitution) of proceeds moved to other countries have not been carried out. A third-party confiscation took place only once and the exact scope of confiscating instrumentalities is unknown.

373. Montenegro has to some extent confiscated proceeds generated from a number of serious crimes, such as organised crime, drug trafficking and corruption. However, the overall value of confiscated assets derived from the commission of high-risk predicate offences (including drug trafficking involving major OCGs and high-level corruption) is still inconsistent with the risk-profile of the country.

374. The mechanism for managing seized and confiscated assets exists in Montenegro. The authorities have gained some experience in this respect, which does not include selling of confiscated immovable assets and selling of seized movable assets, except for perishable goods. The lengthy court proceedings for processing ML cases put extra pressure on the asset management system.

375. The authorities have sufficient powers to control the cross-border transportation of currency and BNIs. Some results were achieved in seizing undeclared cash. The authorities have only recently started demonstrating efforts for identifying ML and TF suspicions at the border in the circumstances unrelated to the violation of declaration obligations. The administrative sanctions for violation of declaration obligations were not proportionate and dissuasive. Confiscation as a sanction was not applied as it is not available for such violations.

376. **Montenegro is rated as having a Moderate level of effectiveness for IO.8.**

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

a) Montenegro's legal framework to counter TF is broadly in line with the international standards. During the reference period, there were no TF prosecutions/ convictions in Montenegro. This is to some extent in line with the country's risk profile, given some gaps in the TF risk understanding. The authorities demonstrated a generally good understanding of TF-related risks, going beyond the conclusions of the NRA, however, there is scope to enhance the authorities' understanding of the TF vulnerabilities of important sectors such as banks, MVTSs and NPOs. In the latter case the AT notes the absence of adequate monitoring, notwithstanding indications of risks.

b) While demonstrating a good level of cooperation at an operational level on case specific matters, the authorities are less effective in synchronising their high-level operational goals and efforts to combat TF, which could enhance the country's capacity to detect and investigate TF in high-risk areas and in line with evolving typologies.

c) The intelligence-based approach is dominantly applied in Montenegro to detect terrorism and TF suspicions, which represents a strong element, and ensures a sufficient and effective level of detection and immediate coordinated response to potential terrorist acts. The NSA and SPU are following financial transactions, cross-border movement of cash, but actions are not undertaken to trace other assets that can be used for TF purposes (e.g. crypto).

d) The TF component is integrated in a number of National Counterterrorism Strategies. Their action plans foresee a number of measures to be applied in TF suppression and prevention.

e) A number of TF suspicions have been detected and analysed at an intelligence level, with none of them resulting in a criminal investigation. A terrorism conviction was achieved, where the financial investigation conducted did not yield any basis for launching a TF investigation. The high evidentiary threshold applied to initiate TF investigations, the SPU's inability to launch fully-fledged financial investigations upon the receipt of intelligence without the SPO's approval, coupled with the need for more expertise in TF related financial investigations (especially into new TF methods) and limited human resources (and ability to retain and recruit staff), limits the country's capability to investigate and prosecute TF.

f) Given that there have been no prosecutions/convictions for TF, no conclusion could be made on proportionality and dissuasiveness of sanctions applied. The available sanctions envisaged by the CC for the TF offence appear proportionate and dissuasive.

g) A range of measures to disrupt TF are available to competent authorities and some have been applied in lieu of proceedings with TF charges.

Immediate Outcome 10

a) Montenegro's legal framework enables the automatic implementation of TF-related TFS under the relevant UNSCRs, although major technical gaps in relation to the scope of asset freezing obligation (see R.6) impact the ability by Montenegro to implement TF-related TFS.

b) The shortcomings regarding the communication mechanism on new designations or changes to UNSCRs are largely mitigated by the FIU's tool directly linked to the UN consolidated list and private sector's (larger FIs) reliance on various TFS screening databases which are updated automatically.

c) Montenegro has not proposed any UNSCR 1267 designations on its own initiative, nor has received or made a formal request for designation pursuant to UNSCR 1373.

d) Montenegro is exposed to TF risks emanating from NPOs activities and has taken first steps to understand TF risks associated with NPO sector. Whilst the authorities were able to articulate some NPO-related vulnerabilities, the key elements such as the identification of the subset of organisations falling within the FATF definition of NPO, and of the features and types of NPOs which are likely to be at a risk of TF abuse, are still to be developed via the on-going NPO risk assessment. Moreover, the CBM and the CMA issued guidance according to which all NPOs are to be considered high-risk by default which could prove disruptive.

e) The measures implemented in Montenegro do appear to be commensurate with the overall TF risk profile only to a limited extent, not least because of the incomplete nature of the TF risk assessment in the NRA (see IO.1), but also due to limited understanding of NPOs' TF risk exposure and no related oversight measures and TFS implementation gaps (both, from technical and effectiveness perspective).

Immediate Outcome 11

a) The measures in place aimed at the automatic implementation of PF-related TFS are identical to the ones relating to TF-TFS, the identified technical shortcoming in relation to the scope of the freezing obligation and the gaps identified in the communication mechanism being equally applicable. Moreover, additional moderate deficiencies have been noted in relation to R.7.

b) There is no operational PF-related TFS cooperation and coordination mechanism at the country level.

c) At the time of the on-site visit, no PF-related freezing measures had been taken pursuant to UNSCR 1718 (2006) and subsequent resolutions, or to UNSCR 2231 (2015), as no assets belonging to designated individuals or entities had been identified.

d) As for TF-related TFS, the implementation of these obligations varies among sectors. While the larger FIs have automated tools, other smaller FIs and the majority of

DNFBPs perform semi-automatic or manual checks and have encountered some difficulties that may impact the frequency and scope of these checks. Some DNFBPs are not explicitly required to freeze funds/assets associated with designated persons.

e) Efforts have been undertaken to promote awareness of TFS obligations, including through guidance provided by the CBM and the CMA and conducting a series of outreach activities. Nonetheless, these initiatives did not concern sectors demonstrating a lower level of understanding.

f) The CBM's is to be commended for taking initiative to conduct thematic TFS examinations. However, the scrutiny (quality and scope) of the CBM's on-site checks need to be improved. Other sectors (FIs outside CBM's supervision and DNFBPs) are not being monitored for compliance with TFS requirements.

Recommended Actions

Immediate Outcome 9

a) Montenegrin authorities should deepen their TF risk understanding in particular by analysing the vulnerabilities within the banking, MVTS and NPO sectors for TF exploitation, and the TF risks associated with cross-border cash movements and new technologies such as VA and emerging risks, in order to better detect potential TF cases.

b) Montenegro should continue to enhance the human and material resources of the SPU and SPO, and necessary expertise to effectively investigate and prosecute TF. In particular this should also be accompanied by (i) more operational independence for the SPU to initiate TF financial investigations, and (ii) provision of training to develop their TF financial analytical capacities and abilities.

c) Montenegro should consider setting up or utilising an existent permanent interdepartmental body or cooperation platform, to ensure systemic and regular coordination between intelligence, investigatory and prosecutorial agencies to synchronise high-level operational goals in response to identified risks and evolving typologies.

d) Montenegro should develop procedures and guidelines (supplementing the current list of suspicion indicators) for intelligence and investigatory authorities regarding the detection and investigation of TF suspicions. These should include clear guidance on the circumstances and sources of information which should trigger TF investigations, and a re-assessment and introduction of an appropriate evidentiary threshold for initiating TF investigations.

Immediate Outcome 10

a) Montenegro should remedy the technical deficiencies identified with respect to the new TFS implementation mechanism, notably by extending the obligation to freeze to all natural and legal persons (see R.6).

b) Montenegro should improve the understanding of TF risks to which the NPO sector is exposed, including by conducting an in-depth TF sectoral risk assessment. Based on

the results of such risk assessment, Montenegro should review the existing legal and regulatory requirements applicable to NPO sector with a view to establish proportionate and effective risk-based measures aimed at protecting NPOs from the abuse (in line with the level of risk exposure). Montenegro should ensure that no disproportionate measures are being applied to the NPO sector dissuading them from integrating in the financial system.

c) Montenegro should establish an effective communication mechanism regarding freezing, de-listing and unfreezing measures.

d) Montenegro should also provide targeted outreach to NPOs and to the donor community on potential vulnerabilities of NPOs to TF.

e) Montenegro should take actions to develop a proper understanding of the TF-related TFS implementation mechanisms among competent authorities.

f) Montenegro should establish formal mechanisms and develop formal comprehensive procedures for proposing designations to UN 1267/1989 and 1988 Committees, making domestic designations under UNSCRs 1373, de-listing and unfreezing of assets.

Immediate Outcome 11

a) Montenegro should address the technical deficiencies identified under R.7 as well as establish an effective communication mechanism for PF-related TFS.

b) Montenegro should ensure that PF-TFS are embedded in cross-government PF coordination and cooperation policies and exchanges. Additional steps should also be taken in order to enhance the PF related TFS awareness amongst competent authorities.

c) Montenegrin authorities should provide clear written guidance to REs, especially to DNFBPs, on their UN TFS obligations for freezing, unfreezing and reporting (including attempted transactions). Sectors that demonstrate particularly weak understanding as regards TFS implementation techniques should be prioritised for written guidance and outreach.

d) Montenegro should ensure that all supervisors have in place UN TFS compliance monitoring procedures and staff which has adequate knowledge and expertise to conduct checks on TFS implementation.

e) Montenegro should ensure that an appropriate number of good quality examinations are conducted by prioritising those sectors that are more exposed to sanctions evasion risks (be it through weak or non-existing controls or through heightened inherent risk exposure).

377. The relevant IOs considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

378. The TF offence criminalised under the Montenegrin CC largely complies with the FATF Standards (see R.5).

379. By the time of the on-site visit, there were no TF convictions or prosecutions. The AT believes that, in respect to the identified risks backed by the effective intelligence gathering and continuous monitoring, Montenegro's efforts are in line with the TF risk profile. The TF scenarios identified in the 2020 NRA and the two SOCTAs are considered plausible and reasonable. These scenarios are continuously monitored through intelligence and surveillance and inform the risk understanding of the authorities beyond the risk assessment exercises. Nonetheless, given the shortcomings identified in relation to the understanding of TF vulnerabilities within the banking, MVTS and NPO sectors, and risks associated with cross-border cash movements the AT has doubts whether national efforts undertaken are sufficient to address the risks.

380. The TF risk was assessed as low within the 2020 NRA, where a considerable emphasis was put on the absence of identifiable links to terrorism (participation or preparation). While the reasonableness of the NRA conclusions is questionable given the gaps identified (see IO.1), the authorities were able to elaborate, to various degrees, more extensively on Montenegro's exposure to TF risks and demonstrated a good understanding of the local situation through the intelligence-based analysis and preliminary investigations conducted. The authorities were also able to demonstrate an understanding of the changing trends of the potential TF risks.

381. According to the NRA, the potential TF threats in Montenegro are associated with: (i) ideologically and religiously motivated terrorism and emerging trends propagating radicalism of all forms[158]; (ii) participation of some Montenegrin citizens in armed conflicts abroad, including in Syria, and their return to the country[159]; (iii) terrorist infiltration linked to a massive influx of migrants and refugees[160]; (iv) use of modern technological achievements and social networks to propagate ideas and raise funds, including through the use of VAs[161].

382. It is recognised that Montenegro is facing a long-term increasing trend of propaganda activities of radical religious preachers, groups and individuals from the region associated with Salafi and Wahhabis movements. The radicalisation of members of the Roma population was also identified as a threat. In Montenegro, there are several so-called "parajamats"[162] of these groups within which religious indoctrination is carried out. There are, however, no indications that these structures provide facilities for the recruitment and training for the planning and execution of terrorist activity[163]. The authorities also showed awareness about the potential threat posed by members of radical groups from the region which might support or be linked to terrorism. The

[158] NRA 2020, p,275; Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24; SOCTA 2021, p.77
[159] NRA 2020, p.275, 277; Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24; SOCTA 2021, p.77
[160] Strategy for Combating Terrorism, TF and ML for 2022-2025, p.24
[161] NRA 2020, p.293
[162] Groups
[163] 2021 SOCTA, p. 77.

2021 SOCTA notes that although there have been no identified departures or returns from foreign battlefields of Montenegrin citizens during the data collection period (2017 to 2021), the possible return of the remaining number of Montenegrin citizens to their home country remains relevant[164]. The AT was presented with information demonstrating that these Montenegrin citizens are known to the authorities and closely monitored, especially when it comes to their potential return to the country.

383. The NSA advised that together with the SPU, the FIU, and through a regular communication with foreign counterparts they closely monitor the activities of those groups. Some of those groups formed NGOs and cooperate with similar organisations in the region. The propaganda activities are financed from abroad, covering primarily the region. The authorities explained that so far, the analysis of the funds provided for the support of radical groups and propaganda activities demonstrated that those do not serve for terrorism purposes.

384. The CBM and other authorities have not assessed the risk of misuse of banks and MVTS for TF purposes, notably by analysing the outward flows taking place through these entities to identify the destination jurisdictions that could be high risk in terms of terrorism and TF. While the volume of TF-related STRs submitted by the MVTS sector and also their reference to particular TF-related typologies (see IO.4) indicate potential risks of misuse of the sector for TF purposes, it is worth noting that these cases have been not confirmed and disseminated by the FIU.

385. Regarding cross-border cash movements, the authorities are monitoring all persons (see section 4.2.5) at border-crossings against a database of persons with links to terrorism or TF, while the FIU and RCA (see section 3.2.2 "cross-border cash movements", have very recently (i.e. January 2023) started carrying out tactical analysis of cross-border cash movements, to detect potential ML/TF cases. These actions are commended however the AT is of the view that further actions are required (e.g. through the carrying out of strategic types of analysis) to assess the TF risks associated with cross-border cash movements.

386. With regard to the NPO sector, which is at risk of being misused to raise funds, in particular by radical movements as previously mentioned, no proper TF risk assessment has been undertaken while there is also no effective monitoring of the sector.

387. Overall, it can be concluded that the authorities recognise the predisposition of individuals to "move" funds, while "raising" and "using" funds for TF purposes are considered to be limited or less likely activities to happen in the country. The AT deems this conclusion to be reasonable.

4.2.2. TF identification and investigation

388. The SPO is the main authority responsible for investigating TF and terrorism-related offences. In terms of TF identification, the FIU and the NSA play an important role in the detection of TF cases through their intelligence-based functions. The SPU conducts pre-investigations of TF and terrorist-related offences. Through the discussions of the cases, the authorities demonstrated a good level of knowledge and cooperation on the matter.

[164] SOCTA 2021, p.77

389. The SPU, in charge of detection and investigation of a wide range of serious crimes, including the ones committed by OCGs, highlighted that they have not come across any information or evidence linking OCG activities to terrorism or TF. More precisely operational investigative data and intelligence collected indicate that the dominant criminal activity of Montenegrin OCGs is drug smuggling, the proceeds of which are then invested in construction activities, real estate, tourist complexes, catering, and organization of games of chance, both domestically and abroad. Private companies that have existed for many years and are engaged in the previously mentioned activities are often used for the aforementioned activities[165]. The absence of such links is also justified given the lack of connection of OCG members with religious extremism.

390. The NSA is focused and dedicates considerable resources to intelligence gathering and monitoring of individuals and organisations with potential links to terrorism, including their financial flows, with the purpose of preventing terrorism. The NSA conducts its work through surveillance and closely cooperates with the SPU and the FIU on a regular basis. The main streams of focus for the NSA are returnees from Syria and ideological, religious and radical movements and their members. The NSA explained how it kept under monitoring Montenegrin citizens who previously left and returned from Syria, including their family members' activities and financial transactions[166]. As at the on-site mission, no activities related to terrorism or TF were detected with respect to those returnees. This conclusion is further elaborated and confirmed by the SOCTA report[167].

391. In the period under review (2017-2022), three preliminary investigations in regards of TF suspicions were initiated by the SPU. On those occasions, the authorities used a variety of sources and investigative techniques to detect and investigate TF offences. In most cases the SPU and SPO demonstrated an ability to pursue financial investigations to detect transactions that are suspected to be related to TF, including by analysing incoming and outgoing transactions to and from the suspect's bank and payment accounts. As shown through case studies (e.g. Case 4.1) the authorities examined the financial aspects of the case, without finding grounds for TF charges.

Case No. 4.1: Syria FTF 2016

In 2017, H.B. was prosecuted and convicted to six months of imprisonment for joining and participating in a foreign armed formation of ISIL. H.B. traveled to Syria, together with his wife K.E. and their child, and joined ISIL between the period April 2015 to May 2016. The NSA established through its intelligence gathering that H.B.'s and his family's travels were financed by another individual (i.e. M.H who died in Syria before H.B.'s arrival) providing them EUR 600 in cash. During his stay in Syria, H.B. was also occasionally financed by other FTFs (USD 20-100), twice by ISIL (USD 100) and once by a relative from Germany (EUR 400). H.B. and his family were deported from Türkiye to Montenegro in September 2016. H.B. was subsequently prosecuted and convicted for terrorism offences. H.B. served his prison term and underwent a de-radicalisation program in prison. H.B. and his family are under regular monitoring by the NSA. The NSA detected no information on any further links with the terrorism-related activity and no indications of suspicious movement of funds.

[165]SOCTA page 20
[166] Up until 2015, out of 26 departures, 10 returns
[167] SOCTA 2021, p.77

In conjunction with the criminal investigation, the SPO also carried out a financial investigation, which included an analysis of the financial assets, transfers and withdrawals carried out over the period of 2007 to 2015. Data was collected from banks and payment institutions. It was considered that the turnover of funds in total was approximately EUR 21,000, which were deemed to be related to legitimate incomes and living expenditures. As part of the continuous monitoring another two financial investigations were conducted, covering subsequent years up until 2022, which identified no movement of funds linked to terrorism or terrorist activities.

392. As evidenced by case no 4.1. the authorities demonstrated their capability to conduct financial investigations to detect potential TF. However, in this case the provision of resources to ensure travel, or cover the daily needs of a convicted foreign terrorist fighter was not considered as a form of TF, due to the very small amounts of money provided, and contextual circumstances (e.g. the potential subsistence requirements of children and family members). While in this case, the AT has identified a narrow interpretation of the TF offence regarding more precisely the meaning of "financial support", through extensive discussions held with the SPU, SPO and the judiciary, the AT came to the conclusion that the consistent interpretation of the authorities was that the financial support of the basic needs of a terrorist would also constitute TF.

393. FIU disseminations serve as an important source for the NSA, SPU and SPO to detect TF suspicions and initiate preliminary investigations. The FIU takes the approach of sharing any intelligence with potential TF connections to the NSA and SPU, while it shares analytical reports where TF suspicions are confirmed with the SPO. The majority of FIU disseminations are based on STRs which predominantly come from the MVTS sector. Case examples presented show how some of these STRs were reported in view of incoming and outgoing transactions from and to individuals located in different EU Member States, which are linked to movements that propagate radical religious ideologies and some also having links with terrorist attacks in EU, and for which transactions no plausible rationale was given. None of the STRs reported by MVTSs resulted in the confirmation of TF suspicions by the FIU and hence the submission of analytical reports to the SPO. However, in some of these cases the FIU established suspicions of ML emanating from other predicate offences such as exploitation of asylum seekers and migrant smuggling.

394. Case No.2 hereunder provides a case example of a TF related preliminary investigation initiated by the SPU on the basis of FIU intelligence. This case was initiated following the receipt of foreign FIU spontaneous information and requests aimed at detecting potential links with the terrorist attacks in Brussels and Paris. A special investigation team consisting of the Chief Special State Prosecutor, the Special State Prosecutor and the three police inspectors from the Special Police Unit (SPU) was formed to deal with the case.

Case No. 4.2: Brussels and Paris Terrorist Attacks

Throughout 2016 and 2017 the Montenegrin FIU received spontaneous intelligence from foreign FIUs aimed at verifying whether a large number of non-resident natural persons and their transactions (suspected to be linked to the Brussels and Paris terrorist attacks) had any connections with or financial footprint in Montenegro. Checks were carried out upon the receipt of this intelligence, while all intelligence data was retained in a pool also accessible to the SPU and SPO to identify hits also on a continuous basis. Hits with three individuals that had connections with Montenegro (i.e. L.A., G.A. and a Montenegrin citizen),

in regards to whom preliminary investigations were opened. A number of notifications were sent by the FIU to the SPU and which led to the formation of a special investigation team to deal with these suspicions.

Investigations on L.A: L.A. is a Serbian national which owned a bank account in Montenegro. In May 2017, L.A. received around €9,000 from an Iraqi natural person. The name of the sender had partially matched with a person designated under UNSCR 1518 (later confirmed to be a false positive match). Subsequently in the same month L.A. attempted to execute a transaction in the amount of €28,520 to her sister in Türkiye. A STR was filed by the Montenegrin bank and the transaction was suspended, which was then extended by the SPO. The FIU conducted checks with foreign counterparts through the ESW on L.A., her sister and the remitter of the funds which confirmed that neither of them was known to these FIUs or had previous criminal history in their home countries or countries where they reside, and neither that they related to TF. Based on this, the SPO concluded that there is no reason to suspect that any criminal offence was committed and the funds in question were unblocked. The file was closed.

Investigations on Montenegrin Citizen: This citizen received funds from Germany via a MVTS. The SPO/SPU initiated verifications on this citizen in 2020 upon the receipt of requested MLA. The verification was initiated due to an FIU notification concerning potential TF in view of the fact that the transaction in question was was carried out at a period when large number of transfers were made through a particular MVTS in Germany some of which to third country nationals connected to T/TF.). Through MLA requests and information received it was established that the funds received by the Montenegrin citizen originated from legal sources and that the senders of these funds cannot be linked to persons who are members of terrorist organizations. Also, it was determined that the citizen of Montenegro, was not connected with persons that are members of terrorist organizations, and that he used the funds for the construction of a family facility - a house. This case was closed. The investigation was conducted in 2020 for Terrorism (CC, Article 447).

Investigation on G.A.: G.A. is a Pakistani citizen who registered a company in Montenegro which operated in the restaurant industry. In 2016, G.A received 22 transactions from Germany amounting to a total of €11,850. The MVTS in Montenegro had reported an STR to the FIU. Following the collection of statements from the person, and also the receipt of MLA from the German authorities in 2020 it was established that the mentioned person was not connected with any terrorist activities. Instead, the person ran a legitimate private business in the restaurant industry which is the same type of industry for which G.A. registered a company in Montenegro. The file was closed.

395. As demonstrated through the case examples, the FIU conducts an in-depth analysis of cases, gathering solid information in TF cases, which were shared with the SPU with a view to initiate the preliminary investigation. The AT was however not provided with information to establish what were the actions taken by the SPU with respect to those cases, and to establish whether the SPU is appropriately analysing FIU intelligence to detect and open TF investigations. The authorities however highlighted that they face challenges in proving the link with terrorists or terrorist organisations and the cross-border movement of funds, especially when small amount of funds are involved.

396. While the prioritization of TF cases is ensured as every terrorism and TF case is considered urgent the AT has concerns that valuable intelligence in the form of FIU disseminations is not fully exploited by the SPU for the purposes of detection of potential TF cases. The difficulties come with the understanding of all TF elements by the SPU in the context of fast-pacing evolving threats, and its limiting capability to start a fully-fledged financial investigations proactively on its own from

the earliest stages of suspicions, before having to wait for official "permission" from the SPO. Moreover, the SPU's staff could benefit from further enhancement, and specialisation.

397. Upon the receipt of information from foreign counterparts, the SPU demonstrated taking action to determine whether the TF offence is committed.

Case No. 4.3: Suspected Recruitment and training for committing terrorist acts (2021)

In 2021, the SPU conducted a preliminary investigation on suspicion of recruitment and training for committing terrorist acts (Article 447b CC). It was triggered by the fact that the suspect was the subject of an Interpol Blue Notice on the basis of suspicion of being connected with terrorist organisations, recruitment and training to carry out the terrorist acts. From the moment of his entrance into Montenegro, the person was under the monitoring of the competent services, and simultaneously the subject person has been checked through international cooperation as well as his financial transactions.

The preliminary investigation established that the person was temporarily staying in Montenegro, in accordance with the Law on Foreigners (for up to 90 days) and that during his stay he was predominantly in accommodation facilities and that he traded online and visited gaming sites. Through information exchanges with international partners, it was established that in the previous period, the subject person served a prison sentence in Egypt for committing a criminal offense related to terrorism, as well as that he was prohibited to enter in Türkiye.

Furthermore, it was established that the person did not make transactions of receiving and sending funds during his stay in Montenegro, as well as that this person acquired funds in the amount of around EUR 100,000 from inheritance. He used part of the funds from his inheritance to stay in Montenegro. The subject person was interviewed by the police, and certain information were collected.

On the expiration of the 90-day stay, the subject person left Montenegro. In accordance with all the facts outlined above it was not possible to identify any grounds for suspicion of terrorist activities or other criminal activities conducted by this person, and the case was closed.

398. In terms of the adequacy of human resources, within the SPU 23 out of 50 available positions are filled, while in the SPO 14 out of 15 available positions are filled, of which 2 prosecutors are specialized in terrorism-related cases, including TF. Overall, unlike the NSA, the SPO and SPU are facing situations of human resource shortages and also challenges to recruit new staff. This impacts the capability of these two authorities to perform their roles effectively and efficiently, including in relation to detecting and subsequently investigate TF which might result in some missed opportunities to appropriately tackle TF.

399. Overall, the examples provided positively illustrate, the authorities' capacity to identify and investigate TF, as well as to understand the different TF risk scenarios. However, it is also necessary to state that the system would be much more efficient if both powers and capacities of the SPU were strengthened (in terms of numbers as well as specialization in T and TF issues) to enable financial investigations from the earliest stages of suspicions, or immediately after obtaining qualified intelligence information.

4.2.3. TF investigation integrated with – and supportive of – national strategies

400. Montenegro follows a two-tier approach in setting its counter-terrorism strategies at the national and regional[168] levels.

401. At the national level, Montenegro has developed a number of strategic documents dealing with counterterrorism, with integrated measures directed to combating terrorism financing. All of those strategies are seeking to develop and further strengthen the national security and resilience towards the risks related to radicalisation, FTFs and protection of the country from the external, including regional threats.

402. The two Strategies for the Prevention and Suppression of Terrorism, ML and TF, for the period of 2015-2018, and 2022-2025 are the main documents dealing with terrorism and terrorism financing. These documents include a number of strategic goals directed to the prevention and suppression of terrorism and TF, *inter alia* through improvement of mechanisms for early detection and targeting the individuals and groups promoting radical ideologies who assist in the financing of terrorism, recruitment and training of foreign fighters and efficient enforcement of criminal proceedings against perpetrators, accomplices and other persons who are in any way linked to terrorist activities.

403. In addition to this, the two Strategies on Countering Violent Extremism, for the period of 2016-2018 and 2020-2024[169] also contain strategic goals which mirror the ones set in the Strategies discussed above.

404. Despite the fact that there were TF preliminary investigations, there has been no formal consideration made for the designation of persons under the 1373 UN mechanism, which is also impacted by the deficiencies identified under IO.10, namely a higher evidentiary threshold.

405. It can be concluded that TF intelligence-based analysis and preliminary investigations are integrated into and support Montenegro's national counter-terrorism strategies to some extent. Nevertheless, as analysed above, there is a room for major improvements to enhance the authorities' (especially the SPU) capacities to detect and investigate TF strengthening the capacities and the resources of the competent authorities by means of providing guidance, training and human resources, re-consideration of the applied high threshold for initiation of formal investigations into terrorism and TF.

406. There are appropriate coordination mechanisms for strategic issues and also in the case of specific T/TF suspicions. Taking into account the specifics and possibilities of the country, the overall CT/TF mechanism would benefit if it were supplemented with a structure that would respond more flexibly to evolving TF risks, vulnerabilities and typologies through operational focus of the activities of the relevant entities.

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[168] Most notably, the Joint Action Plan for Fight against terrorism for the Western Balkans signed on 5 October 2018. The document includes five Counter-Terrorism objectives that should provide a common focus and lead to concrete deliverables in order to tackle the existing security challenges.

[169] This Strategy is aligned with the Joint Action Plan and Violent Extremism

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

407. The available range of sanctions as foreseen by the CC for TF offences appear to be proportionate and dissuasive (see c.5.6). Nevertheless, in the absence of any TF convictions, it is not possible to assess whether the criminal sanctions applied in practice, are effective. Nonetheless, the Supreme Court undertook a review of the sanctions applied in relation to the most severe crimes (which exclude TF in the absence of convictions) and concluded that the criminal sanctions being applied were not sufficiently dissuasive (see also IO.7). More precisely, in relation to convictions achieved in relation to terrorism-related offences, a sentence of six months of imprisonment was imposed, which is not considered dissuasive.

4.2.5. Alternative measures used where TF conviction is not possible (e.g. disruption)

408. There is a range of alternative measures that can be applied in case a TF conviction cannot be secured. The Montenegrin authorities advised that, in the context of disrupting terrorism and TF, the Police Directorate maintains a database of persons potentially linked to terrorism and TF. The list of persons is available electronically to all border crossing points. Every individual is automatically screened against this list, which is regularly updated. In the period under review, the authorities refused the entry into Montenegro to five individuals due to suspicions of participation in foreign battlefields or aiding persons participating in the war in Syria and Iraq and potential TF activity.

409. The implementation of the abovementioned alternative measures is based on the Law on Foreigners. Montenegrin citizens cannot be prevented from re-entering the country, however in case of connections with TF activities or returning FTFs these are closely monitored (see core issue 9.1). It is worth mentioning that all border crossing in Montenegro are directly connected to the Interpol database. No other alternative measures have been reported in practice.

Overall conclusions on IO.9

410. Montenegro demonstrated a reasonably good understanding of its TF risks, including in relation to changing trends of potential TF risks. The TF risk understanding goes beyond the conclusions of the NRA, and mainly derives from the intelligence-based analysis and preliminary investigations conducted. Nonetheless, limitations were identified in relation to the understanding of TF vulnerabilities of certain sectors (i.e. banks, MVTS, NPOs), and risks associated with cross-border cash movements.

411. There have been no convictions, nor prosecutions for TF, which only seems to be in line with the country's risk profile to a certain extent. Overall, the examples provided positively illustrate the authorities' capacity to identify and investigate TF as well as to understand the different TF risk scenarios. Nevertheless, there is a need for enhancement within the SPU in terms of powers and capacity. In the absence of convictions, no conclusion on the effectiveness, dissuasiveness and proportionality of sanctions can be drawn.

412. **Montenegro is rated as having a Moderate level of effectiveness for IO.9.**

4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

413. Montenegro's financial sector is bank-centric and mainly geared at servicing resident clients. It does not present the characteristics of an international or regional financial centre. Montenegro's geographical location on the Balkan route however increases its exposure to TF and TF-related TFS evasion risks. There is no oversight of NPO activities to prevent TF, although intelligence-gathering activities showed risks of misuse of NPOs for TF purposes.

4.3.1. Implementation of targeted financial sanctions for TF without delay

Implementation of TFS "without delay"

414. Montenegro has in place a legal framework enabling the implementation of targeted financial sanctions (TFS) under UNSCR 1267/1989 and 1988. Since 2018, and pursuant to amendments to the LIRM, TFS under UNSCRs 1267 are automatically binding in their entirety in Montenegro and constitute a part of the domestic law thereof (Art.7 of the IRM Law). Under the previous regime, UN TFS were implemented based on Governmental decisions.

415. Since 2017, Montenegro is able to implement UNSCR 1373 at a national level in accordance with the criteria set by UNSCR 1373. The National Security Council is tasked with considering proposals for designations submitted by the competent authorities and advising the Government on national listing decisions. Nonetheless, the mechanism to propose designations on the national list is conditioned by the evidentiary threshold requirement of "reasonable doubt", which, according to the Montenegrin law, is a higher threshold than required by the FATF Standards. This has a major impact on the effectiveness of the regime, as described further on.

416. Moreover, the technical deficiencies identified under R.6 impact the implementation of TFS in relation to the application of freezing measures. Most notably, the scope of entities required to implement freezing measures does not extend to all natural and legal persons but is limited to: (i) state bodies, state administration bodies, local self-government bodies and local government bodies, (ii) banks and other financial organizations, (iii) other legal and natural persons exercising public authority or public service. This provision does not explicitly cover DNFBPs which are not exercising public authority or provide public service. Moreover, the obligation to freeze is not required to be implemented without prior notice.

417. There is no central designated authority responsible for overseeing the implementation of the UN sanctions regimes. The oversight thereof falls under the responsibility of the various supervisory authorities responsible for supervising FIs and DNFBPs for AML/CFT purposes. In terms of coordination, since 2022, an operational team was set up[170] by the MFA with the aim to exchange information on the implementation of restrictive measures, that includes members from all relevant institutions (points of contact from relevant Ministries and the MFA). However, the AT was informed that the priority of this cooperation is the implementation of EU Sanctions.

[170] Governmental decision of 31 March 2022 on establishing the coordination body for monitoring of the introduction and implementation of international measures due to the crisis in Ukraine ("Official Gazette of Montenegro", No. 40/2022)

The AT considers the lack of coordination to be a major vulnerability of the Montenegrin TFS implementation mechanism. The authorities acknowledged this gap and efforts are currently being undertaken to address it.

418. Montenegro has neither identified nor proposed or made any designations to the UN Security Council Committees pursuant to resolutions 1267/1989 and 1988. There is no formal procedure in place establishing the process for detection and identification of targets based on the criteria set out in UNSCRs 1267/1989 and 1988. There are no publicly known procedures to submit delisting requests to the UN committees 1267/1989 and 1988 and in the case of persons and entities designated pursuant to the UN sanctions regimes, who in the view of Montenegro do not or no longer meet the criteria for designation.

419. To date, Montenegro has not applied the UNSCR 1373 mechanism in practice, nor received any request from a foreign jurisdiction for designation pursuant to UNSCR 1373 or made a request to another country to give effect to the actions initiated under the freezing mechanisms.

Communication of designations

420. Montenegro has in place mechanisms for communicating designations to FIs and DNFBPs. The MFA website is the main platform for communication related to TFS implementation. Before publishing the information related to designations on its website, the MFA is required to communicate it to the other relevant national authorities. The AT was advised that the MFA does so via e-mail but also in written form by official letters. At the time of the onsite visit, given the occurrence of a cyberattack in 2022, the website did not contain all the relevant UNSCRs, and the authorities did not make available sample copies of emails sent by the MFA to various competent authorities regarding amendments to the relevant UN lists to evidence this practice.

421. The shortcoming identified in relation to the MFA website is mitigated to some extent by measures undertaken by the FIU on its own motion. The FIU supplemented the national efforts in communicating information relating to TF-TFS implementation through developing an automated solution for directly retrieving information on amendments or changes of the UN lists directly from the consolidated UN lists. The automated solution is also publicly available on the webpage of the MFA, although there is no notification mechanism.

422. Moreover, the gaps identified in the communication mechanism by the MFA have a lesser impact on some sectors. All MVTSs, almost all banks (10 out of 11), and half of the MFIs make use of IT tools that are populated with the most up-to-date information on UN designated persons and entities. Nonetheless, the prevalent notification-related issues have a significant impact on the DNFBP sector, which mainly relies on manual screening (except for larger accountancy firms).

423. Overall, the concerns in relation to the communication of UN TFS are mitigated to some extent by the FIU's action and the financial sector's responsiveness in terms of getting information on the new designations through automated screening solutions.

Understanding of TF-related TFS

424. FIs, especially banks and MVTSs, demonstrated a good understanding of the actions needed to implement their TFS obligations. Some banks confirmed the existence of instances where the checks at the on-boarding stage and further customer monitoring revealed partial matches.

Further detailed analysis determined these cases to be false positive matches. DNFBPs had a limited understanding of their TFS obligations (particularly the lawyers, real estate agents and accountants, with the exception of one large accountancy firm), and advised relying on other institutions, namely banks, for the implementation of TF-related TFS obligations (refer to IO4).

Outreach Initiatives

425. The CBM is the most active in conducting outreach to its obliged entities on their TFS obligations (both related to TF and PF), with various training held in December 2020 (covering all banks) and January 2021 (covering all FIs) and September 2022 (covering all FIs). Since February 2023, the CBM started conducting specific outreach activities covering the implementation of IRM ("challenges and obstacles, presentations of vulnerabilities established for each RE"), with an attendance of a total of 11 AML Officers from the 11 banks (100% of the sector) and 16 AML officers from other FIs. Previously, only general outreach activity was conducted once a year by the CBM and only on risk management of ML/TF in banks. However, for other REs, no training was provided on UN TFS.

426. The CBM issued guidance both in 2017 and May 2022 (Guidelines on the implementation of international restrictive measures by credit and financial institutions and supervision of the implementation of these measures). The guidance reflects on the following obligations: (i) having a person in charge of monitoring the Governmental decisions on the introduction or revocation of restrictive measures as well as the monitoring of decisions with regards to the implementation of restrictive measures for designated person on the national list; (ii) the obligation to implement restrictive measures and to have adequate internal procedures for compliance therewith, including appropriate information and technical support for ensuring the implementation of these measures, (iii) define the manner of reporting on the implementation of restrictive measures to the MFA or another body set out in the Governmental decisions on the introduction of restrictive measures, (iv) the implementation of the freezing obligation. However, the guidelines only serve the purpose of reproducing the legal obligations, without providing practical guidance as to how reporting entities are expected to adhere to the various TFS obligations.

427. The CMA issued in February 2023 Guidelines for the application of international restrictive measures and on the supervision of those measures which cover the same aspects as the CBM Guidelines as analysed above.

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations

428. At the end of 2022, Montenegro's universe of NPOs consisted of 6679 organisations comprised of associations (6303), foundations (261) and representatives offices of foreign NPOs (115). Over the last year, an important increase in the number of registered NPOs has been noted. The reasons thereof were not provided neither by authorities, nor by NPOs met on-site. Moreover, the AT was informed of the existence of a large number of inactive NPOs, with only around 2000 estimated to be active. This estimate is based on the annual reports submitted by NPOs which however are not legally obliged to submit.

429. Religious communities are governed by the Law on Freedom of Religion, which foresees that legal personality is acquired upon registration with the Unique Records of Religious Communities. According to the data accessible in this register, there are 22 religious communities registered[171].

430. NPOs acquire the status of legal entity by registering in the Register of the Ministry of Public Administration. Given the occurrence of a cyberattack in 2022, the Ministry of Public Administration has lost data on NPOs[172] which prevented the AT from concluding on the level of accuracy of information held on registered NPOs. This impacts the Ministry's visibility over the sector and its prospective efforts to assess the risks attached to the sector and apply appropriate control measures.

431. NPOs are allowed to perform a limited economic activity (up to EUR 4,000 a year incrementable by 20% yearly). These NPOs are required to register with the CRBE. At the end of 2022, there were 356 associations and 19 foundations registered at the CRBE – see Table 1.2).

Table 4.1 Total number of registered in the NPO register (2017-2022)

Type	2017	2018	2019	2020	2021	2022
Association	4555	4594	5356	5659	6019	6303
Foundation	167	188	206	218	242	261
Representative offices of foreign NPOs	109	110	112	113	114	115
Total	4831	4892	5674	5990	6375	6679

432. Montenegrin authorities aimed to detect the threats and vulnerabilities in the sector through the NRA. A gap analysis was also conducted on the compliance of regulatory, institutional, and operational framework with the FATF standards.

433. The 2020 NRA has noted that associations and foundations may be more vulnerable to TF risks due to the lack of an effective system for the control of NPO financing, notably through monetary donations, especially from abroad[173]. The analysis concluded on a low level of TF risk in the NPO sector without exhaustive substantiation[174]. Operational information provided during the on-site visit suggests that religious and/or charitable NPOs are at risk of being used for financing radical and terrorist activities in the region which demonstrates investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations (see section 4.2.1).

434. At the time of the on-site visit, Montenegro was in the process of conducting its first sectoral risk assessment, with a dedicated Working Group having been established in February 2023.

[171] https://www.gov.me/clanak/vjerske-zajednice-koje-su-upisane-u-jedinstvenu-evidenciju-vjerskih-zajednica.
[172] The data was in the process of being retrieved at the time of the on-site visit.
[173] NRA, page 291
[174] NRA, page 292

435. More precisely, the preliminary vulnerabilities identified related mainly to: (i) the lack of an adequate legal definition of NPOs (which does not cover, for instance, religious communities), (ii) the absence of an obligation to indicate their main activity while registering (around 94% NPOs registered with the RCA are registered under the same activity code, which is very wide) (ii) the insufficient verification and control of founders/controllers during the application for NPO registration, (iii) the lack of an adequate monitoring framework and designated supervisor, and (iv) the lack of an adequate sanction framework for NPOs. NPOs were required to participate to this risk assessment via the provision of data and information requested through a questionnaire. Although the response rate to the questionnaires was not provided, it was determined that 47% of the respondents receive donations from abroad. The respondent NPOs also advised that all payments are made through bank accounts, with no monetary donations.

436. Overall, the aforementioned steps taken by Montenegro are positive, although the country has yet to identify the subset of NPOs falling under the FATF definition and those which are likely to be at TF risk by virtue of their activities or characteristics. Thus, Montenegro is not yet in a position to review the adequacy of measures that apply to NPOs.

437. While registration requirements apply to NPOs, there are no requirements in relation to integrity (i.e. fitness and propriety of the owners, controllers, senior managers and trustees); and there are also no requirements for the publication of annual reports on their activity. There are requirements to issue annual financial statements with income/expenditures breakdown, however there are no controls to ensure that all funds are accounted for and spent in a manner consistent with the purpose and objectives of NPOs. In addition, NPOs are not explicitly required to maintain information on their activities and objectives, as well as any supporting information on accompanying transfers.

438. There is no oversight over NPO activities aimed at preventing them from the TF abuse. The only form of supervision is for tax purposes carried out by the Tax Authority. In these regards, between January 2018 and December 2022, 102 inspections were carried out on NPOs.

439. Given that all legal entities are legally required to have a bank account (including all NPOs, whether registered with the CRBE and with the NPO registers), the lack of oversight over the NPO sector with a view to detect TF abuse is mitigated to some extent by the reliance on FIs, namely banks, that perform screening of NPOs transactions.

440. Since 2021, the CBM revised its risk-based approach regarding examinations. It is common practice for supervisory examinations on REs, to include and assess the application of AML/CFT preventive measures on a selection of NPO clients (part of the selected client sample), precisely with the aim of preventing TF. Since 2020, the CBM has also started making recommendations to its supervised entities in connection with the inadequate implementation of business monitoring and transaction control measures – regarding the clients from the NPO sector, which represents a form of indirect analysis of the financial activity of the NPO sector.

441. During the sample selection and conduct of supervisory examinations focusing on relationships with clients from the NPO sector, the CBM procedures require the examination of compliance with the following aspects: (i) checking possible matching with the sanctions lists, (ii) identification of all managers, members, donor and beneficial owners, as well as other persons

and associations with which the NPO is connected and checking their business, (iii) checking the reasons for opening an account in relation to the place of residence of the association and its manager, (iv) identifying the nature and volume of expected projects, donations, logistics, and the intended beneficiaries, (v) monitoring the account activity, which should be expected on monthly and quarterly basis, semi-annual and annual level, (vi) assessment of payment methods used and of the alignment of performed activities with the nature of expected activities and announced expenditures and the registered activity of the NPO client, (vii) review of payments and cash withdrawals for detection of activities possibly related to combat zones, and identification of transactions with the natural/legal persons whose business does not have a clear link with the NPO business.

442. Moreover, the CBM Rulebook for identifying suspicious customers and transactions contains a list of indicators which also cover the misuse of NPOs for TF purposes.

443. It is worth mentioning that all banks interviewed on-site follow the CBM Guidelines according to which NPOs are classified as high-risk by default, while one bank suggested not having appetite for on-boarding NPOs. This is resulting in excessive measures being applied to NPOs, irrespective of their scope of activities and level of risk, which impacts the access of legitimate NPOs to conducting transactions via regulated financial channels.

444. The NPOs showed a general awareness of ways in which they could be misused by criminals, although less specifically for TF purposes. NPOs indicated that they refrain from initiatives dealing with high-risk jurisdictions. NPOs were of the view that the TF risk level is low, with the only NPOs at risk of abuse being the small ones, given their low level of awareness. The NPOs met on-site criticised the lack of outreach and advised that such initiatives are only being undertaken by NPOs themselves, with support from their donors. Nonetheless, it is worth mentioning that the FIU organised two workshops in 2022 where NPOs representatives participated. The first training was organised within the Project CRAAFT – Managing TF Risks in the NPO sector, where representatives from the biggest NPOs were present and a second one in September 2022 on the CoE Methodology for the Assessment of the risks of TF through the NPO sector.

4.3.3. Deprivation of TF assets and instrumentalities

445. According to the information provided by the Montenegrin authorities, there have been no funds or assets frozen under UNSCRs 1267/1989 and 1988 or 1373 as there were no such cases. Hence, there was no application of measures with respect to unfreezing funds.

446. Statistics related to the number of false positives were provided, including case examples. This demonstrates that FIs and competent authorities have, in practice, mechanisms for detecting designated persons and entities and give attention to possible actions that may be undertaken. Hence, despite the technical gaps in relation to freezing of assets identified (see R.6) the actions in practice are indicative of a certain level of effectiveness of the TFS regime with regards to the detection of funds possibly connected with a listed person.

447. There is confusion amongst FIs' and DNFBPs' on which authority should matches with the UNSCR lists and asset freezing be reported to. Some REs mentioned that they would report to the FIU (by way of an STR) and/or to the MFA and/or to their supervisor. The IRM Law foresees "the

state administration authority responsible for police affairs" as the recipient authority for the aforementioned information. Furthermore, the authorities met during the on-site visit were not able to identify precisely the designated authority within "the state administration authority responsible for police affairs", to which sanction hit should be reported to.

448. In the absence of prosecutions/convictions, restraint orders or confiscations for TF in Montenegro (see IO.9), no other measures to deprive terrorists of assets have been applied.

4.3.4. Consistency of measures with overall TF risk profile

449. The overall TF risk in Montenegro has been identified as low in the 2020 NRA. Some doubts however remain with the comprehensiveness of the TF risk assessment under the NRA (see IO.1 & IO. 9) and the reasonableness of the conclusion on the TF risk rating.

450. Nonetheless as highlighted under IO.9 the competent authorities' understanding goes beyond the 2020 NRA conclusions and were able to demonstrate through their intelligence gathering efforts that they are cognisant of the main TF risks impacting the country. In view of this, the absence of designations and of restrictive measures taken in relation to UNSCRs is to some extent consistent with the Montenegro's overall risk profile.

451. Nevertheless, it appears clearly, including from intelligence work undertaken, that NPOs are at risk of being misused for TF purposes and this irrespective of the overall low TF risk rating concluded upon. Overall, it is apparent that the measures to reduce the NPO sector vulnerability to TF misuse are limited. As mentioned above, the authorities have only recently started to assess the risks linked to the NPO sector. The NPO sector is not subject to targeted and proportionate monitoring, in line with a risk-based approach, mainly due to a lack of: (i) comprehensive understanding of the TF risks pertaining to the NPO sector and (ii) identification of the NPO subset that may be vulnerable to TF abuse. Montenegro also did not demonstrate conducting outreach to the NPO sector and the donor community.

452. Consequently, the risk of abuse of NPOs is not holistically addressed, with mitigating measures being mainly those applied by banks which only cover transactions occurring through the financial system.

453. On a positive note, the country has made it a policy objective to address these deficiencies and enhance the level of scrutiny of the sector. More precisely, the NRA Action Plan sets a number of priority actions aimed to mitigate TF risks in relation to NPOs. There is no information as to the status of their implementation. Moreover, enhanced due diligence applied to all NPOs by the FIs might result in limited ability of NPOs to gain access to formal financial system.

Overall conclusions on IO.10

454. Montenegro has in place a legal framework for the implementation of TF-related UNSCRs without delay. Technical deficiencies identified impact the effectiveness of the system (i.e. the gaps related to the scope of the freezing obligation, and the high evidentiary threshold for designations under the 1373 mechanism).

455. The risk of abuse of NPOs for TF has not been sufficiently addressed by the Montenegrin authorities, hence no risk-based measures to NPOs have been introduced. In addition, there is a lack of visibility on the entire population of operating NPOs and no oversight over the NPO sector.

456. The FIs demonstrated a generally good awareness of the TF-related TFS obligations, however, concerns remain in relation to DNFBPs. Adequate coordination and cooperation mechanisms are not yet in place for TFS, nor processes to freeze and unfreeze assets and provide access to the frozen funds.

457. **Therefore, Montenegro is rated as having a moderate effectiveness level for I0.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

458. Montenegro is neither a major weapons manufacturing country nor an international trade centre or a large market for proliferation goods. There are no embassies of Iran and North Korea in Montenegro. Montenegro does not have trade relationships with DPRK. Although Montenegro has trade relations with Iran, the volume is negligeable (€1.6 million, i.e. 0.04% of the total trade volume of Montenegro)[175], thus not entailing exposure to evasion of PF-related TFS. Montenegro has no correspondent banking relationships established with Iran and/or DPRK.

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

459. The framework for PF TFS implementation is the same as the one for TF PFS. Although all UNSCRs including changes thereto are automatically applicable in Montenegro, the same communication shortcomings outlined under IO.10 apply.

460. Montenegro has not proposed any listing to the UN pursuant to UNSCR 1718 and UNSCR 2231 and it has not frozen any funds or assets in relation to these Resolutions.

461. In practice, the technical deficiencies noted in relation to the implementation of TFS have a major impact, especially in relation to (i) the lack of an explicit provision requiring all natural and legal persons to freeze funds or assets of designated persons and entities, (ii) the lack of publicly known procedures to submit de-listing requests to the Security Council for designated persons and entities that, in the view of Montenegro, do not or no longer meet the criteria for designation and (iii) the lack of procedures for the proper implementation of c.7.5 (on contracts, agreements or obligations that arose prior to the date on which accounts became subject to TFS).

4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions

462. Montenegro has not identified any assets of persons linked to relevant DPRK or Iran UNSCRs. Consequently, no freezing measures have been applied in practice under UNSCRs 1718 and 2231 in Montenegro. In the period under review, no STRs have been filed in relation to proliferation or

[175] Montenegro, Iran stress promoting economic cooperation (iranpress.com) Iran - Embassies and consulates of Montenegro and visa regimes for foreign citizens (www.gov.me)

PF-related TFS. There have been no investigations and prosecutions on PF, including in relation to border control. During the on-site visit, the authorities described an identified case of smuggling of radioactive substances, none of which were confirmed as PF positive.

463. Between 2016 and 2020 Montenegro had in place a National Strategy for non-proliferation of weapons of mass destruction aimed at improving the coordination for suppression of WMD, strengthening the capacities for gathering and exchanging intelligence necessary to detect, identify and monitor threats caused by WMD and dual use items. It resulted, inter alia, in the creation of a coordination body on counter-proliferation. Since 2017, a National Coordination Body on Counter-Proliferation has been in place, however its role does not extend to PF.

464. With regard to licensing of dual-use goods, permits are issued for foreign trade of weapons and dual-use goods by the Ministry of Economic Development, after the approval of the MFA, Ministry of Defence, MoI and, more recently, the NSA. The issuance of a permit is conditioned upon verification of the applicant and the end user, including screening them against UN, EU lists and a database containing a consolidated version for various other sanction lists.

465. Despite a small number of dual-goods licenses requested, the Ministry of Economy issued two refusals in 2022: one to a foreign natural person who wanted to import arms from another country and one to a domestic company willing to export military equipment and arms. Hence, the authorities demonstrated vigilance in relation to potential sanctions evasions activities through tracking dual-use goods via interagency coordination, as well as analysis and control of importers and exporters activities. There was no detected case of smuggling dual-use goods.

466. The RCA received training in 2023 on port security management and sanctions compliance, organized by the Ministry of Economic Development with the assistance of border security authorities of a foreign jurisdiction. The RCA is also participating in the EU P2P - Export Control Program for Dual-use goods, which is intended to raise awareness on the risks related to dual-use goods, enhance the ability to stop shipment of listed/unlisted goods, ensure countries are proactive to control dual-use items through effective licensing processes and bolster the capacity of countries to investigate, prosecute and take enforcement actions for violation of export controls related to dual-use goods. There were no preventive or awareness-raising activities for other public authorities and private sectors, exporters, and the research community in relation to PF or the control of dual-use goods.

4.4.3. FIs, DNFBPs and VASPs' understanding of and compliance with obligations

467. Fis, especially banks and MVTSs, demonstrated a good understanding of the action they had to undertake in implementing their TFS obligations. Some banks confirmed the existence of instances where the checks at the on-boarding stage and further customer monitoring revealed partial matches. Further detailed analysis determined these cases to be false positive matches.

468. DNFBPs had a limited understanding of their TFS obligations (particularly lawyers, real estate agents and accountants, with the exception of one large accountancy firm), and advised relying on other institutions, namely banks, for the implementation of their obligations arising from PF-related TFS. Some DNFBPs also mentioned that in case of positive hits, they would exit or not establish a business relationship, without reporting it.

469. There is also confusion amongst Fis' and DNFBPs' on which authority should matches with the UNSCR lists and asset freezing be reported to. Some REs mentioned that they would report to the FIU (by way of an STR) and/or to the MFA and/or to their supervisor. The IRM Law foresees "the state administration authority responsible for police affairs" as the recipient authority for the aforementioned information. Furthermore, the authorities met during the on-site visit were not able to identify precisely the designated authority within "the state administration authority responsible for police affairs", to which sanction hit should be reported to.

470. As analysed under IO.10, most Fis mentioned that they rely primarily on automated and screening mechanisms or group-level analytical systems as a source for designations in practice regarding the implementation of PF-related TFS. Fis other than banks and MVTSs, such as some MFIs and insurance companies, and DNFBPs indicated to apply manual screening as part of their procedures in place for the implementation of UN related TFS. The REs met during the on-site visit that did not have automated solutions mentioned that the screening frequency of an on-boarded customer depends on its risk level, and the screening does not take place regularly. Hence, some Fis and DNFBPs might not identify a potential match with the UNSCR lists of existing customers in a timely manner.

471. Some Fis (including some banks but excluding the most material one serving the bulk of legal persons in Montenegro) and DNFBPs (other than accountants), demonstrated issues relating to the identification and verification of BO information. These deficiencies impact the proper implementation of TF-TFS obligations (see the analysis under IO.5 and IO.4).

4.4.4. Competent authorities ensuring and monitoring compliance

472. The CBM is to be commended for taking initiative to conduct TFS related examinations. The CBM confirmed that almost all on-site examinations conducted on banks, MVTSs, MFIs and financial leasing companies since 2019 included elements of TFS compliance. The CBM's on-site checks focus on: (i) confirming the availability of automated solutions for sanctions screening, however without checking their suitability and ii) hard evidence on the TFS checks performed (namely, whether the client was screened against sanctions lists) in each individual client's file that is subject to KYC sample testing during onsite examinations. Several on-site examination findings presented to the AT were mainly limited to the absence of automated solutions and no further elaboration on compliance with TFS obligations, which evidences the limitations of these examinations. Deficiencies identified were followed-up by the CBM which confirmed their remediation.

473. With the exception of the CBM and the MoI, other supervisors have not undertaken an effort to conduct inspections and do not have specific procedures in place for monitoring compliance with PF-related UNSCRs. Human resource and expertise limitations coupled with issues concerning the quality of examinations for authorities other than the CBM impact also the supervision or the monitoring of compliance with PF-related TFS compliance (see also IO.3).

474. The same outreach activities as described under IO.10 are also relevant here.

Overall conclusions on IO.11

475. Montenegro has in place a legal framework allowing for the automatic implementation of PF-related UNSCRs. The gaps identified in relation to the communication mechanism are mitigated for larger FIs using automated tools for ensuring compliance with obligations arising from PF-related TFS. Larger FIs have demonstrated a better knowledge and understanding of their PF-related TFS obligations. While no funds were frozen, some REs advised detecting false-positive matches.

476. The CBM demonstrated targeting the implementation of TFS within the scope of its inspections (which require improvements in terms of quality) and providing guidance and outreach. For other sectors, supervisory efforts are not dedicated to TFS aspects, notably given limited resources of varied significance for conducting AML/CFT supervision.

477. To some extent, the authorities demonstrated supporting PF efforts through the capacity to detect sanctions evasion activities by tracking dual-use goods, despite the lack of interagency coordination on PF.

478. **Montenegro is rated as having a Moderate level of effectiveness for IO.11.**

5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 4

a) Banks have a good understanding of ML risks and effective risk assessment procedures. Among most other FIs, the understanding of general ML risks is adequate, however the understanding of business or sectoral specific risks is at times lacking. Organisers of games of chance's and real estate agents' understanding of ML risks to which they are exposed is negligible. Understanding of TF risk is generally lower across all sectors. Banks and other FIs have a solid understanding of their AML/CFT obligations. Except for accountants, auditors and other sporadic cases this awareness is not replicated in the DNFBP sector.

b) Banks and MVTSs generally have effective risk mitigating systems and controls. Investment sector firms' risk mitigating measures, including onboarding and transaction monitoring processes are less developed. Mitigating measures adopted by DNFBPs are generally insufficient to mitigate the specific risks to which they are exposed. Except for accountants and auditors, the measures are mainly confined to identifying the customer and do not always extend to understanding the nature of the business relationship or customer's activity and appropriately monitoring the customer's activity/transactions and source of funds.

c) The level and quality of CDD measures applied by Banks and MVTSs is good, sufficient in the case of other non-bank FIs and accountants/auditors, and inadequate in the case of other DNFBPs. Banks that are part of international groups vary the level of CDD according to the degree of client risk. A limited number of banks (including the most material bank) verify the BOs of domestic legal entities through multiple sources without relying exclusively on the CRBE. Other FIs and DNFBPs (except for some accountancy firms, accountants and half of the lawyers met on-site) rely exclusively on the CRBE to identify and verify the BOs of legal entities. The majority of REs interpret the concept of beneficial ownership as exclusively limited to the ownership of shares and voting rights.

d) Banks and MVTSs have systems in place for the application of EDD measures on customers from high-risk countries and PEPs. Some banks and FIs (other than MVTSs, insurance and financial leasing companies) rely exclusively on PEP declarations to identify PEPs at onboarding stage and on an ongoing basis. MFIs and insurance companies did not demonstrate an adequate understanding and application of PEP-related EDD obligations. Within the DNFBP sector the awareness and application of PEP EDD measures is limited and applied only by accountants and some notaries. Most DNFBPs do not undertake appropriate actions to identify PEPs. Some FIs (other than banks, MVTSs and insurance companies) and DNFBPs (other than accountants,

auditors and firms) demonstrated a lack of awareness of EDD obligations in respect of clients from high-risk jurisdictions.

e) The volume of STR reports is generally low particularly amongst REs other than Banks and MVTSs. Banks and MVTSs demonstrate a strong awareness of their reporting obligations. Some smaller banks are unaware of the obligation to report attempted suspicious transactions. Investment sector and life insurance firms are aware of the reporting obligations however in some instances the monitoring of activity and identification of suspicious transactions is not sufficient. Except for some accountants there is lack of awareness of reporting obligations by DNFBPs and are not equipped to recognise suspicious transactions. Notaries and lawyers view the obligation to report suspicious activity as conflicting with client confidentiality obligations. This is directly impeding the ability of notaries and lawyers to report suspicious transactions.

Recommended Actions

Immediate Outcome 4

a) Montenegro should take steps to improve the awareness of ML/TF risks among and across FIs and DNFBPs (other than banks and MVTSs) focusing on those DNFBPs exposed to higher ML/TF risks (i.e. notaries, company formation agents and casinos). Steps should also be taken to improve the understanding of TF risks across the banking and MVTS sectors.

b) Supervisory authorities should take further action (through sectoral guidance and supervisory actions) to improve the application of AML/CFT obligations, particularly (i) the monitoring of customer activity and scrutiny of transactions, and (ii) the application of EDD on PEPs and high-risk countries. Specific focus should be made on banks (for the scrutiny of transactions), MFIs and high-risk DNFBPs (other than large accountancy firms).

c) AML/CFT supervisors should improve the REs' understanding of the concept of beneficial ownership and the requirement to verify the identity of BOs from numerous independent sources based on risk.

d) Authorities should promote a better understanding of risks, red flags and typologies associated with tax evasion related ML, amongst the most exposed sectors (i.e. banks, lawyers, accountants, auditors, and company formation agents) and ensure the application of appropriate preventive measures.

479. The relevant IO considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

5.2. Immediate Outcome 4 (Preventive Measures)

480. Considering the materiality and risk in Montenegro (see section 1.4.3), the effectiveness of preventive measures applied by the relevant sectors is weighted as follows:

Most Important: (i) Banks
Important: (i) Casinos, (ii) Company Service Providers[176], (iii) Lawyers and (iv) Notaries
Moderately Important: (i) Investment Sector (ii) Micro-Financing Institutions (MFIs), (iii) MVTSs, (iv) Real Estate Agents and (v) VASPs.
Less Important: (i) DPMSs, (ii) Insurance and (iii) Other FIs

481. The assessment of this IO is based on documentation supplied by the authorities and private sector entities (such as statistics, internal AML/CFT policies, supervisory examination procedures and reports, and lists of indicators of ML/TF suspicion among others), and meetings held with supervisory authorities and private sector entities. The AT met a total of 37 private sector entities, which included a sample of the largest firms and professions in a combination of ML/TF risk exposure as was presented by the supervisory authorities. These in total represent a significant share of the market in terms of volume of assets held or transactions processed.

5.2.1. Understanding of ML/TF risks and AML/CFT obligations

Financial Institutions

482. The level of understanding of ML risks, while largely in line with the NRA findings, varies across sectors. Banks and MVTSs that are part of international groups and some of the domestic banks demonstrated a sophisticated understanding of ML risks, and their entity specific ML risks. The other non-bank FIs' understanding of ML risks is adequate but mainly confined to the NRA conclusions and at times does not involve a proper understanding of business and sector specific risks. The understanding and awareness of TF risks and vulnerabilities (except for one MVTS who could articulate its exposure to TF risks mentioning a specific typology involving the remittance of funds to countries associated with terrorism activities) was superficial across all sectors. The predominant view among non-bank FIs appears to be that there was almost no TF risk exposure.

483. Banks generally agree with the risks identified in the NRA, although one Bank perceived corruption as a more prevalent risk than portrayed in the NRA. Banks can articulate their own views on their exposure to ML risks and vulnerabilities, beyond the NRA. They observe risks related to the use of cash, OCGs, tax evasion, real estate, non–residents, new technologies and the misuse of legal entities. Banks were also aware of the ML risks associated with VASPs and VAs Generally, Banks that are part of international groups and some smaller domestic banks have a broader understanding of ML risks. The banks' understanding of TF risks is generally inadequate and less developed compared to their knowledge of ML risks. One Bank could articulate specific TF risks to which it is exposed (naming the misuse of NPOs by religious fundamentalists).

484. Banks conduct business wide risk assessments, covering customer risk, product, distribution channel and geographical risk. The majority of banks make use of business risk assessment software adapted to fit their own particular context and continuously refined. Others were in the process of developing or enhancing current tools. The internal risk assessments are for the most

[176] Company services in Montenegro are typically provided by accountants, and lawyers. Notaries are also involved in notarising statutory documents required for incorporation. It also transpired that company services are also offered by other third parties and entities that do not belong to these professions, which are unknown to the supervisors.

part updated annually. Where the bank is part of a larger group, risk assessments generally also take into account the group's assessment of risks.

485. All banks assess customer risk prior to establishing a business relationship, with some banks demonstrating a more nuanced approach to customer risk assessments. This is done via the use of software, matrixes or methodologies that help calculate risks or is done manually following the completion of a "KYC Questionnaire". Almost all banks refer to the CBM's Guidance on Risk Assessments to enhance their customer risk assessment methodology.

486. Banks showed a clear understanding of AML/CFT obligations and could articulate these obligations and their implementation in detail. In most cases this level of understanding was demonstrated across the various bank strata including front office and client facing staff. Some concerns with the understanding of the BO concept and reporting of attempted suspicious transactions were identified (see sections 5.2.3 and 5.2.5). Some banks established restrictions on specific customers and activities (e.g. Montenegrin legal entities having no meaningful connection to the country, offshore legal entities, providers of games of chance and VASPs). These restrictions result from policies established by financial groups or correspondent banks and are linked to high-risk areas set out in the CBM's Guidance on Risk Assessments.

487. All MVTSs established in Montenegro are agents of large EU payment institutions and generally demonstrated a good understanding of the ML risks to which they are exposed. Half of the MVTSs could elaborate in more detail on specific ML risks referring to risks relating to fraud, tax evasion, users from high risk third countries and money mules. Others had a more basic and generic understanding of ML risks. The understanding and awareness of TF risks and vulnerabilities was superficial except for one MVTS where it was more nuanced.

488. MVTSs had a good understanding of their AML/CFT obligations and were able to explain them in detail. The processes for the application of these requirements are integrated into the systems and databases used by the EU payment institutions they are agents of.

489. MFIs' understanding of the specific ML risks they are exposed to was adequate, with some MFIs able to mention particular ML practices (e.g. early repayments of loans, repayments by third parties and loans to legal entities). MFIs could not demonstrate a documented assessment of ML or TF risks. They were also knowledgeable of the NRA and in agreement with its conclusions. MFIs demonstrated an adequate understanding of their AML/CFT obligations and were able to articulate what is expected of them to implement the same.

490. To the exception of one investment firm, all other firms and fund managers demonstrated a very limited understanding of the ML risks, including the national risks set out in the NRA. In most cases it appeared that they do not consider any risks apart from customer risks. Investment services entities have a good understanding of their AML/CFT obligations and were able to specifically explain how these obligations are to be implemented.

491. Insurance Companies have a clear view of their ML risk exposure and mentioned risks associated with lump-sum payments and early redemption of life insurance premia. They share the NRA outcomes and low risk assigned to the life insurance sector. Insurance intermediaries have a weaker understanding of ML risks, which is understandable given that they intermediate the selling of life insurance policies for local insurance companies and depend heavily on them

for the formulation of AML/CFT policies and controls. Insurance companies demonstrated an adequate understanding of AML/CFT obligations. Insurance intermediaries had a very limited understanding and approach the implementation as a mere process of adhering to procedures and checklists established by the insurance companies. Financial leasing firms demonstrated a sound understanding of their ML risks and were able to articulate in detail how their assessment was conducted. Their understanding of AML/CFT obligations was good.

492. Similarly to most banks, non-Bank FIs had issues with the understanding of the BO concept (see section core issue 5.2.3).

DNFBPs

493. The majority of the DNFBPs did not display appropriate knowledge of ML risks, including of the NRA outcomes, and could not identify and articulate the individual ML risks to which they are exposed. DNFBPs had very limited knowledge of the TF risks.

494. Lawyers and notaries have a basic understanding of ML risks mostly confined to risks associated with clients from high risk third countries, the use of cash to purchase property, and in some cases, risks associated with use of companies. The understanding of AML/CFT obligations was mainly confined to client identification and verification processes and client background checks, with no appreciation and understanding of crucial obligations such as the scrutiny of transactions and obtainment of source of funds information.

495. Accountants (which also provide company services[177]) and auditors, demonstrated the most developed knowledge of ML risks among DNFBPs, however the smaller accountants focus almost exclusively on the ML risk posed by legal and natural persons from high risk third countries. The auditors and larger accountants were aware of the necessity to conduct and regularly update ML/TF risk assessments. Accountancy and audit firms were aware of the findings of the NRA, particularly the conclusions on the abuse of legal entities for ML purposes. They were also able to articulate specific ways in which legal entities could be abused for ML purposes (e.g. by hiding ownership and funnelling proceeds of crime through fictitious documentation and misuse of shareholders' loans) and respective mitigating measures. Accountants demonstrated a good understanding of their AML/CFT obligations beyond identification and verification requirements. They could articulate obligations in detail, including the obligation to formulate and understand customers' profiles and monitoring of transactions.

496. Casinos and other organisers of games of chance (including online service providers) demonstrated a very limited knowledge of the risks outlined in the NRA. Their ML risk understanding was confined to the use of cash, and in some cases high risk jurisdictions. The sector is not accustomed to perform any meaningful ML/TF assessments. The understanding of AML/CFT obligations within this sector is poor and mainly confined to identification and verification of clients, with lack of awareness regarding on-going monitoring of transactions and understanding the source of funds that are important mitigating measures in this sector.

[177] According to the authorities, company services are mostly provided by accountants followed by lawyers. However other DNFBPs also mentioned that there are other entities that provide CSP services. These are unknown to the supervisors and hence not part of the supervised population.

497. Real estate agents recognise the ML exposure of the real estate sector in Montenegro particularly in light of the recent property boom, however almost all could not articulate specific risks to which they are exposed beyond the use of cash. Real estate operators are of the view that the ML risks do not crystallise since their role is mainly to broker or facilitate the deed and do not play a central role in the conclusion of deeds. They take comfort from the fact that notaries and banks are involved in real estate transactions and ensure that all AML/CFT requirements are met. Real estate agents were not cognisant of the NRA and its conclusions. Their understanding of AML/CFT obligations was mostly confined to the identification and verification of clients, and the identification of clients hailing from high-risk jurisdictions. While having a vague understanding they were not able to articulate the specific expectations when it comes to obtaining source of wealth and funds information, and they had issues with the proper understanding of the BO concept (see section 5.2.3).

498. DNFBPs had issues with the understanding of the BO concept (see section 5.2.3).

5.2.2. Application of risk mitigating measures

499. Generally, banks have put in place AML/CFT policies and procedures which include risk mitigating measures aligned to identified risks. All of Montenegro's MVTSs act as agents for international payment institutions and have well developed AML/CFT frameworks. While less developed and sophisticated, the risk mitigating measures applied by insurance entities, investment sector and financial leasing firms are sufficient to mitigate ML and TF risks. The risk mitigating measures in place at MFIs require further development. Except for accountancy/audit firms DNFBPs do not have appropriate risk mitigating measures.

Financial Institutions

500. Banks forming part of international groups and one of the smaller domestic banks adopted a systematic risk-based approach to implement AML/CFT measures and displayed a detailed knowledge of suspicious transaction indicators. These banks were able to adjust the regularity and extent of their CDD according to their specific ML risks. By way of example the front office team is by way of procedure barred from onboarding clients that are categorised as high risk without the approval of the AML/CFT authorised officer. Most banks interviewed also explained how their transaction monitoring systems assist in identifying transactions that are not in line with normal customer behaviour in real time enabling these transactions to be temporarily blocked to analyse and substantiate their purpose and the source of funds. One smaller domestic bank however did not show the same capability of adopting risk-based mitigating measures, apart from adjusting the regularity of on-going monitoring according to risk.

501. Banks have also taken steps to mitigate risks associated with VAs. Some Banks stated that they refuse to onboard foreign VASPs, while all Montenegrin Banks indicated that they either apply EDD on customers who use their accounts to purchase VAs from foreign VASPs, or else prohibit the use of accounts for such purpose.

502. Banks were interviewed on the level of controls to curb their exposure to the most significant ML threats in Montenegro i.e. drug trafficking, loan sharking, tax evasion and high-level corruption. Banks demonstrated effective controls to curb the misuse for drug trafficking, loan

sharking and corruption purposes, however, were less equipped and knowledgeable when it came to handling tax evasion related risks. Banks mainly focus on ascertaining the legitimate origin of the funds (even in cases of use of cash or property deals involving substantial amounts) which while effective to mitigate the laundering of proceeds of other crimes is not enough to prevent undeclared income from being introduced in the banking system.

503. All MVTSs that are part of the agency networks of international payment institutions have put in place robust internal systems and controls to mitigate ML/TF risks. By way of example one MVTSs carries out background checks on NPOs, who are beneficiaries of money remittances, to detect any potential links to criminal or terrorist organisations. This control is carried out since they acknowledge the elevated TF risks associated with NPOs and is line with the guidance provided by the CBM to REs dealing with NPOs. Furthermore, another MVTS operating a stand-alone money remittance business put in place comprehensive risk sensitive measures to mitigate ML/TF risks. These measures are multifaceted and comprise limits on transfer amounts, screening of the payor and payee and monitoring of linked transactions.

504. The level of risk-based controls within MFIs varies. Some MFIs do not have well developed controls, mainly focusing on avoiding certain types of clients (i.e. they have a low appetite to provide loans to foreign persons). One MFI however monitors and scrutinises loan re-payments by third parties and early repayments which it considers as high risk.

505. Except for one firm the risk mitigating measures put in place by investment firms and moreso fund managers are not developed and are impacted by their limited understanding of ML/TF risks. The risk mitigating measures adopted by life insurance firms are adequate, in particular the controls in place to ensure that the risk of clients referred by brokers has been adequately assessed before commencing a policy. Financial leasing entities demonstrated strong risk–mitigating measures tailored to the ML risks identified.

DNFBPs

506. Except in the case of accountancy firms and auditors, the DNFBPs' risk–mitigating measures are not systematic in nature and in many cases not commensurate to ML/TF risks.

507. Lawyers displayed little knowledge of the required risk mitigating measures, which is influenced by the lack of understanding of the ML/TF risks. Lawyers held that as a result of the reduced role of lawyers in real estate transactions (taken over by notaries) and company formations, the ML/TF focus should be on notaries and not lawyers. This view may explain the general lack of appropriate controls described by the lawyers. Comparatively notaries displayed a better understanding, but mitigating measures focus primarily on the reporting of real estate contracts to the FIU and identifying clients from high-risk jurisdictions. There was no awareness of the appropriate mitigating measures to counteract ML/TF risks associated with use of cash and misuse of companies in property deals.

508. Organisers of games of chance have implemented basic risk mitigating measures such as customer identification, although in some cases this only applies above a certain monetary threshold. Organisers of games of chance do not conduct any checks on the source of funds even where online gambling accounts are topped up via cash payments at high street kiosks. There are examples of land-based casinos monitoring linked transactions, but it is not clear that this

information is analysed with a view to identifying cash transactions over €15,000. In the case of one casino, it also transpired that customers may request winnings to be transferred from their gaming to their bank account, and this amidst very lax CDD measures exclusively oriented at identifying and verifying clients.

509. Real estate agents have a limited understanding of the ML/TF risks posed by the sale and purchase of real estate and consequently did not demonstrate the application of appropriate risk mitigating measures. Real estate agents rely heavily on the fact that they are not responsible for holding funds and executing financial transactions relating to the sale or purchase of properties.

5.2.3. Application of CDD and record-keeping requirements

510. The effective application of CDD measures varied extensively across sectors. FIs across all sectors demonstrated a sufficiently effective application of CDD obligations. This was most evolved in the banking and MVTS sectors with room for improvement when it comes to the application of BO obligations and on-going monitoring.

511. A common trend noted across all sectors concerned the understanding of the BO concept for legal entities. In most cases beneficial ownership is interpreted by REs exclusively as the ownership of 25% or more of shares or voting rights with no consideration being given to detecting individuals who may control the legal entity by other means. Moreover, most REs confirmed that they rely exclusively on the CRBE or similar foreign registers' excerpts to determine beneficial ownership.

512. It was clear across the financial sector that all REs would not be prepared to enter into a business relationship unless CDD is completed.

513. Statistics on the type of AML/CFT breaches identified were provided by the CBM and the Authority for Inspection Affairs (Games of Chance). Such statistics indicate that the most common CDD failure in the case of Banks relates to on-going monitoring of transactions, while record-keeping has been identified as an issue within the gaming sector.

Financial Institutions

514. All banks could articulate the CDD measures which apply to them, with some of the smaller domestic banks and banks that are part of international groups demonstrating the most comprehensive approach to their application. Statistics on identified AML/CFT breaches suggest that CDD failures such as (i) obtaining information on the purpose of a business relationships and (ii) identification and verification of clients and BOs were prominent in 2017 – 2018 but are no longer so. This suggests that the sector has matured in the application of CDD measures at onboarding stage and is more prone to shortcomings in applying more complex type of obligations such as on-going monitoring and risk assessments. This was confirmed throughout the discussions with banks with almost all explaining robust measures to gather and verify information on the clients' profiles such as information relating to the customers employment and/or business activity. Some banks also referred to measures they take to understand the rationale for non-resident persons and legal persons to open accounts in Montenegro.

Table 5.1: Data on common AML/CFT breaches - Banks 2017- 2022

2017	Art 7 (Risk Analysis) Art 8 (CDD for business relationships) Art 14 (Verifying client's identity)
2018	Art 21 (Identifying UBO) Art 26 (Obtaining data on purpose and presumed nature of a business relationship) Article 27 (On-going Monitoring)
2019	Art 7 (Risk Analysis) Art 41 (Reporting STRs) Art 53 (Applying the list of indicators to identify suspicions)
2020	Art 27 (On-going Monitoring) Art 7 (Risk Analysis), Art 35 (Scrutiny of complex and unusual transactions)
2021	Art 7 (Risk Analysis), Art 27 (On-going Monitoring), Art 35 (Scrutiny of complex and unusual transactions)
2022	Art 35 (Scrutiny of complex and unusual transactions) Art 41 (Reporting STRs) Art 53 (Applying the list of indicators to identify suspicions)

515. Banks are not allowed to onboard clients remotely. Clients that are natural persons and representatives of legal persons are required to be physically present for identification purposes. This practice was confirmed by reference to a number of internal AML/CFT procedures provided by Banks.

516. Concerns however remain with the proper application of BO obligations by banks. While all banks were able to explain the concept of beneficial ownership and mentioned that they keep scrutinising corporate structures until they identify the ultimate natural person/s owning the entity, it appeared clearly that they interpret beneficial ownership to exclusively mean the ownership of a significant percentage of shareholding or voting rights within an entity. None of the banks defined beneficial ownership as including the notion of control of an entity through means other than shares. Moreover, some banks indicated that they rely exclusively on the CRBE to verify beneficial ownership of Montenegrin entities. While this is somewhat concerning due to the doubts about the accuracy of BO data held in the CRBE or CRBO given the lack of effective verification measures (see IO5). On the positive side it however transpires that the largest bank in Montenegro (serving most Montenegrin legal persons) and another bank are not relying exclusively on the CRBE, while the CBM's supervisory findings did not identify serious BO related deficiencies (see IO5). In respect of foreign legal persons, Montenegrin banks are more cautious with the majority requiring additional supporting documentation such as memoranda & articles of associations, apart from excerpts of foreign company or beneficial ownership registers.

517. Furthermore, the CBM statistics on AML/CFT breaches indicate that banks need to improve the application of on-going CDD. The NRA also highlights that some banks still lack software solutions to monitor transactions (particularly in relation to electronic banking).

518. All Banks also explained that they do not rely on other REs, nor do they outsource the application of any CDD or other AML/CFT obligations, and that they would not enter into business relationships unless CDD is conducted.

519. MVTSs, all of which are agents of international payment institutions, use sophisticated systems to obtain and record customer identification and verification documents and information on the specific purpose of the transaction. With regards to source of funds information MVTSs obtain and verify such information when pre-defined thresholds are met. These thresholds varied marginally between MVTSs but were all considered sensible and appropriately risk based.

520. The general understanding and application of CDD obligations by MFIs was adequate. The effective implementation of on-going monitoring is however questionable, with some MFIs indicating that they monitor transactions randomly and were not able to detect third party or early repayments of loans. Given that they only accepted payments through banks, there appeared to be heavy reliance on transaction monitoring carried out by banks. Some MFIs however did not appropriately understand the concept of beneficial ownership of legal entities and focus more on identifying the administrators of the entity rather than the BOs. The impact of this limited understanding is minimal considering that a very small minority of MFI clients (i.e. only 0.3% in 2022) are legal persons.

521. Investment sector entities are aware of their CDD obligations. Firms providing remote services and onboarding clients online make use of software to verify client identity. Such software has inbuilt pre-sets of various identification documents and implement facial feature recognition techniques to verify the authenticity of documents and the identity of the client uploading the identification document. Firms showed good ability to monitor transactions based on risk and divergences from the client profile. There is evidence that the CMA identified some very minor deficiencies in the CDD documentation obtained by investment sector entities however these deficiencies were confined to dating and signing copies of ID documents and not about the quality of the documents themselves.

522. Life insurance firms demonstrated adequate knowledge and application of CDD requirements for both legal and natural persons and provided examples of cases where the CDD obtained by a broker was insufficient and was supplemented. Leasing companies also demonstrated adequate knowledge and application of CDD obligations, including effective client profiling measures and risk-based application of on-going monitoring of transactions.

DNFBPs

523. Generally, all DNFBPs showed good awareness and application of client identification and verification requirements, with the extent of documentation and information gathered varying across sectors. With the exception of accountants and auditors there is however weak application of other CDD measures and most importantly (given Montenegro's risk profile) the implementation of BO obligations, transaction scrutiny and scrutiny of source of funds.

524. Regarding BO obligations most lawyers and all real estate agents met on-site did not grasp the concept of beneficial ownership, while those that do exclusively interpret beneficial ownership as the ownership of 25% of the shareholding/voting rights, without considering individuals who may control the legal entity by other means. Half of the lawyers stated that when dealing with legal entities they are focused on verifying the existence of the entity and ensuring that who is representing it is duly authorised to do so, with no concern or awareness about the need to identify the real owners behind the entity.

525. Most DNFBPs (except for some accountancy firms, accountants, and some of the lawyers) rely exclusively on excerpts from the CRBE or other registers to identify and verify the BOs of legal entities. These sources will not necessarily provide information on beneficial ownership, and information which is reliable and up-to date (especially considering the IO5 findings on the accuracy of BO data). It was also concerning that notaries tend to rely on client declarations to identify the BOs of legal entities. Some accountancy firms, accountants, and half of the lawyers on the other hand stated that they would not rely on excerpts from registers but ask for additional information such as company documents, or declarations by other independent professionals.

526. The AT also considered the DNFBP's awareness of and approach to understand the purpose of business relationships, and scrutinising transactions including occasional transactions. Within the context of DNFBPs this would include measures to understand: (i) the rationale for the setting up of companies in Montenegro, (ii) the funding of such companies, (iii) the business activities such companies undertake and the alignment of transactions with that activity, (iv) the origin of funds to acquire immovable property especially where this is self-funded (i.e. not through a bank loan) and moreso, when financed in cash, and (v) the source of funding for gaming activity especially when this is considerable in value and funded in cash.

527. Accountants remarked that they obtain information confirming the nature of the employment and/or business activity of the customer, and when providing ongoing services monitor transactions to ensure that they fit the activities of the client including by requesting supporting documentation (e.g. contracts or invoices) to verify this. Lawyers on the other hand do not scrutinise transactions or understand the source of funding when this is necessary, on the premise that company formations and real estate transactions are scrutinised by notaries. Notaries do not do any meaningful checks apart at times resorting to client declarations attesting that the funds used to purchase property are legitimate. In the case of company formations, notaries consider their involvement to be a mere formality (i.e. notarising statutory documents) and hence do not carry out any such checks. Real estate agents as well as casinos do not carry out any transaction scrutiny.

528. One of the factors that contributes to the unsatisfactory application of CDD obligations by notaries and lawyers are the technical deficiencies within the CDD requirements (see R.22/23), and the fact that notaries and lawyers are not considered to be REs subject to the same AML/CFT regime, but to specific AML/CFT obligations presenting a number of deficiencies (see R.22/23).

529. Moreover, while not all providers of company services are designated as REs and subject to AML/CFT obligations (i.e. only those providing company formation services and fiduciary services to companies), it was clear from the discussions held that this technical deficiency is not impacting the implementation of AML/CFT obligations by accountants providing company services. Nonetheless, there are persons (not belonging to the professional categories) providing company services which are unregulated and unknown to the authorities. The AT could not assess their level of adherence to AML/CFT obligations.

530. The identity verification requirements conducted by online organisers of games of chance are not robust enough. Checks to verify that the person submitting identification documentation is who he says he is (i.e. upload of selfie with identification document showing) are carried out

only when account opening information details do not match with the identification document or when payment will be made through a particular online payment platform.

531. The DNFBP sector also displayed less awareness of the need to review and update CDD documentation at regular intervals.

Record keeping (all sectors)

532. Record keeping appears to be consistent across all entities interviewed. All REs agreed that CDD records and records of transactions amongst others are retained for ten years, in line with the requirements envisaged under the LPMLTF.

5.2.4. Application of EDD measures

533. Banks (particularly those forming part of international groups) and MVTSs demonstrate the greatest understanding and implementation of EDD measures. The effective implementation of EDD measures is not as effective in MFIs, investment sector entities and the life insurance sector. Generally, the application of EDD measures is weakest across the majority of the DNFBPs.

PEPs

534. Some Banks rely exclusively on PEP declarations by customers (including the more material banks), while others carry out additional searches to identity PEPs, family members and close associates. A minority (which includes one of the largest three banks) uses commercial databases to identify PEPs on an on-going basis. Some banks check whether clients become PEPs, family members or close associates thereof while carrying out CDD reviews which in some cases are carried out every 3 years (medium risk clients) and 5 years for low-risk clients. PEP EDD measures are well understood by banks. All banks mentioned that the decision to onboard or sustain a relationship with a PEP, family member or close associate is escalated to senior management and PEP relationships are subject to more rigorous on-going monitoring.

535. All MVTSs have systems (provided by the international payment institutions) in place to screen customers and identify PEPs. Some MVTSs (including the largest ones) explained that they would check for PEP status when particular transactions thresholds are met (i.e. €1,500). MVTSs stated that in relation to PEPs, family members or close associates they escalate the decision for transaction clearance to senior management, however the smallest MVTSs delegate this decision to the international payment institutions. MVTSs demonstrated awareness of the requirement to perform additional SOF checks before undertaking transactions for PEPs.

536. MFIs are aware of the requirement to identify PEPs, make use of the list of public functions provided by the Agency for the Prevention of Corruption and rely on customer declarations. Some MFIs were not knowledgeable of and applying EDD measures related to PEPs, while others referred to the application of rigorous controls but could not articulate what these entail.

537. The majority of investment sector entities rely on PEP declarations to identify PEPs with only one entity making use of commercial databases or other sources. Investment firms carry out more regular transaction monitoring checks for PEPs (every six months as for high-risk clients). Life insurance companies use commercial databases to identify PEPs, while insurance

intermediaries rely on PEP declarations (these checks are reviewed and confirmed subsequently by the insurance company prior to the issuance of the life insurance policy). Insurance companies and intermediaries were aware of PEP EDD obligations nonetheless rely on customer declarations to determine the source of funds. Financial Leasing companies have effective measures to check for PEP status on an ongoing basis and are aware of the relative EDD measures.

538. Within the DNFBP sector the awareness and application of PEP EDD measures, such as source of wealth/funds checks and enhanced monitoring is limited and applied only by accountants and some notaries. Large accountancy firms use commercial databases or conduct online searches to verify client PEP declarations. All lawyers and half of the notaries rely on the fact that Montenegro is a small country where PEPs are generally well known to all. Other DNFPBs (real estate agents, some notaries and casinos) rely on self-declarations, or the national PEP functions database, which are not considered sufficient to identify PEPs, family members and close associates. Some casinos, including online ones, took no measures to identify PEPs.

New Technologies

539. REs are required to perform a risk assessment before introducing or using new technologies. Except for the larger banks, that are part of international groups, the AT did not observe any instances where new technologies were introduced. Where this took place (e.g. electronic banking), banks assessed the risk as high and took the necessary control measures.

540. With the exception of the roll out of online gaming by certain organisers of games of chance, the AT did not observe any particular use of new technologies in the DNFBP sector. In relation to the online gaming sector, it was apparent that no meaningful assessment of the risks associated with online products had taken place and the relative controls were weak.

Correspondent banking

541. The provision of correspondent banking services is not a significant element of most Montenegrin banks' business. Only two banks provide correspondent banking services (i.e. a total of current eight relationships which over a five-year period (2018-2022) saw the processing of almost €2 billion). One of these banks is part of an international group and offers correspondent services exclusively to six banks belonging to the same group and situated in neighbouring states. The other bank also provides correspondent services to one group bank (subject to group-wide group AML/CFT policies) and a third Bank from the region. Banks have a very good understanding and application of correspondent banking enhanced obligations.

Wire Transfers

542. There are serious technical deficiencies within the Rulebook on Electronic Funds Transfers. These include legal uncertainty whether PSPs of the payer should transmit payer information, while there are no obligations to collect and transmit payee information (see R.16). Notwithstanding these technical deficiencies all banks and MVTS confirmed that they ensure that all wire transfers are accompanied with both payer and payee details, in most cases to align with the group's AML/CFT policies. All such REs have processes in place to detect transactions with missing information and would not process transactions with missing information.

543. Banks and MVTS also explained that compliance with wire transfer rules is a fixed component of the CBM's supervisory reviews, and the CBM goes beyond the technical limitations within the rulebook expecting that Banks and MVTSs ensure that wire transfers are always accompanied with both payer and payee information. REs are cooperative and deem it in their interest to ensure that the system is in line with international standards in view of international group and correspondent bank policies.

TFS

544. Almost all Banks and MVTSs use tools that are integrated into their customer onboarding systems to screen customers at various intervals and when sanction lists are updated. These tools are provided by the group or international payment institutions or developed in house. These tools incorporate UN sanctions lists and are updated regularly and when new designations are made. One MVTS providing its own money remittance service (i.e. not as agent), while using tools to screen clients, relied on the authorities to provide updates of designations to keep its internal tool updated. It was not clear that the MFA and EKIP (regulating such entity) were circulating these updated lists. Banks and MVTSs demonstrated awareness and effective application of freezing and reporting obligations (see IO.10). There was however confusion as to the authority to which reports should be made. Most banks and MVTSs would report to various authorities i.e. FIU, CBM and MFA.

545. All insurance companies (covering also clients introduced by brokers and agents), financial leasing companies, some of the MFIs and most investment firms make use of automated screening tools. Some MFIs, investment firms and all investment intermediaries rely on manual checks and open-source information/databases and carry out checks only at on-boarding. All FIs were knowledgeable about TFS requirements but there was unclarity as to which authority reports of any potential hits should be made.

546. Most DNFBPs are not aware about the need to detect and take measures to prevent their services from being used by designated persons and entities. This lack of awareness was particularly evident in the case of lawyers, accountants (except one large firm) and real estate agents. DNFBPs are unaware about the need to report if they are approached by designated persons or entities and to whom such reports are to be made. Notaries screen customers against UN lists and were doing so manually using a database provided by the Serbian FIU and more recently (February 2023) an online tool provided by the FIU and also made available on the MFA website. Casinos also mentioned making use of this online tool. Most DNFBPs that establish business relationships (except for one large accountancy firm) conduct manual screening at the time of establishment of the business relationship and do not regularly update or repeat such screening.

547. The deficiencies with the implementation of BO obligations effecting some FIs and DNFBPs impact the proper implementation of TF-TFS obligations (see section 5.2.3).

Higher-risk countries

548. Banks, MVTSs and the vast majority of other FIs and DNFBPs are aware of the listing of high-risk jurisdictions, although not necessarily cognisant of the rationale thereof. Some Banks (in

particular the ones forming part of international groups), MVTSs and one investment firm mentioned that they go beyond the FATF list and in line with internal AML/CFT policies, include other jurisdictions that they consider as high risk, including countries known to have terrorist or terrorist organisations operating within which increase the RE's exposure to TF risks. Some smaller FIs (other than banks, MVTSs, and insurance companies) and DNFBPs (other than accountancy firms and accountants) while being aware of the FATF list of high-risk jurisdictions, were not aware of the applicable countermeasures.

5.2.5. Reporting obligations and tipping off

549. REs are required to submit suspicious transaction reports (STRs) and all REs, excluding lawyers and notaries, cash transaction reports (CTRs). Notaries are required to provide the FIU on a weekly basis with all real estate contracts of a value exceeding €15,000. In the case of banks, and to some extent gaming companies reporting is done via the FIU dedicated portal. Banks and MVTSs report the highest number of STRs however (to the exception of MVTSs) the level of reporting remains low across all sectors. STR reporting among all DNFPBs, in particular those exposed to high ML/TF risks (i.e. lawyers, notaries, casinos and CSPs) is low.

Financial Institutions

550. Banks are aware of their reporting and tipping-off obligations and have been provided with guidance and training to detect suspicious transactions by the CBM and the FIU. The majority of banks have well developed internal reporting mechanisms and a good understanding of the typologies for identifying suspicious transactions. It was concerning that some smaller banks were unaware of the obligation to report suspicious attempted transactions, and stated that in such cases they simply desist from establishing a business relationship or carrying out a transaction without following up with a STR.

551. The level of reporting within the banking sector is generally low and has not seen any notable increases over the past five years (see Table 5.3). Table 5.2 provides a comparison between the volume of STRs/CTRs submitted in 2022 and the materiality of individual banks. The volume of STRs/CTRs seems to be distributed amongst all banks, however certain material Banks are submitting few STRs (e.g. Bank 10 which processed 13% of all outward transactions in 2022 submitted 12 STRs, Bank 7 with 10% of all outward transactions in the same year submitted only eight STRs and Bank 3 with 27% of all client deposits 21 STRs). This low volume of STRs submitted by the banking sector is also corroborated by supervisory information. In fact, the CBM reported that there have been a number of misdemeanour proceedings initiated in respect to banks who failed to report STRs.

552. The banking sector has reported very few TF suspicions (i.e. one in six years). This is indicative of a lack of appreciation of TF risks and red flags (as highlighted under section 5.2.1), especially considering that MVTSs are submitting a much larger volume of TF related STRs (i.e. 183 in six years).

Table 5.2: Analysis of STRs/CTRs against market data – Banks 2022

	% of Total Annual value of outward transactions	% of Total Annual Value of Client Deposits	% of Total Annual value of Cash Deposits	Number of STRs / SARs[178]	Number of CTRs
Bank 1	27,17%	40,41%	49,07%	68	9 452
Bank 2	10,82%	2,15%	1,34%	26	4 887
Bank 3	11,15%	27,46%	20,41%	21	4 448
Bank 4	0,84%	0,42%	0,54%	28	2 673
Bank 5	0,00%	0,00%	1,42%	14	3 783
Bank 6	11,69%	13,67%	15,62%	32	7 403
Bank 7	10,18%	4,64%	0,08%	8	403
Bank 8	4,16%	0,74%	8,25%	12	4978
Bank 9	9,46%	4,59%	0,45%	4	391
Bank 10	13,08%	5,32%	0,37%	12	296
Bank 11	1,45%	0,59%	2,44%	12	289

553. MVTSs are the second top-most REs in terms of STR reporting after banks. In 2022 three MVTSs processed €22M in outward transactions compared to the €7.6B processed by Banks. At the same time MVTS reported 84 STRs in comparison to the Banks' 233. It is also positive to note a consistent upward trend of reporting volume within the MVTS sector over the past three years. Similar to banks, MVTSs demonstrated good knowledge of their STR and tipping-off obligations making reference to internal reporting mechanisms and procedures to prevent tipping off. Of concern was the fact that some MVTSs mentioned that they escalate dubious transactions to the international payment institution which they are agents of, delegating their responsibility to decide whether to report potential suspicious transactions. The AT also learnt that at times the international payment institution takes up to a month to conclude its analysis. This hampers the prompt submission of STRs by the Montenegrin payment institutions.

554. While aware of their obligation to report STRs, REs within the insurance, investment and MFI sectors do not demonstrate a strong level of awareness of ML/TF typologies, which is reflected in the very low volumes of STRs submitted. Insurance Intermediaries rely completely on the insurance companies they sell life policies for to determine when and whether to submit STRs, which is reasonable considering that it is the company that determines whether a policy is to be issued or not.

555. Financial leasing companies are more knowledgeable, compared to FIs (other than banks and MVTSs) of their reporting and tipping-off obligations. This is also reflected in their reporting volumes where one leasing companies submitted four STRs in six years almost as much as all investment, insurance firms and MFIs put together (six).

[178] Total STRs/CTRs in 2022 does not tally fully with Tables 5.3./5.4 given that the data for Table 5.2. was provided by banks while Table 5.3. was based on FIU data and slight divergences were noted.

DNFBPs

556. Except for some accountants, a lack of awareness of reporting obligations is present across all DNFPBs. Some DNFBPs (in particular casinos) were not aware of which authority they should submit STRs to. It was also noticeable across all DNFBPs (excluding some accountants), that they have difficulty identifying what a suspicious transaction or suspicious activity might look like. This despite several of them referring to the STR indicators provided by the MoI.

557. Despite the high level of risk they are exposed to, and the important role that they play in the incorporation of companies and real estate transactions, reporting is low within sectors such as notaries and lawyers. Notaries being the top-most reporting DNFBP, submitted 19 STRs in six years, with only two STRs submitted in 2021, and none in 2022.

558. Concerning issues consistently emerged throughout discussions with notaries and lawyers. Notaries are reluctant to submit STRs out of fear that their clients would become aware. As a result, most notaries advised that they rely on reporting the real estate contracts as an alternative mechanism for alerting the FIU. Notaries and lawyers moreover believe that the reporting obligation runs contrary to their client confidentiality obligations and submitting STRs (especially based on mere suspicions) would expose them to lawsuits for damages by clients. Lawyers stated that they would desist from servicing suspicious clients to protect their reputation but would not report these incidents to the FIU.

Table 5.3: Number of STRs/SARs submitted by REs to the FIU

Reporting entities	2017		2018		2019		2020		2021		2022	
	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF
Banks[179]	190	0	189	1	207	0	162[180]	0	201	0	233	0
Payment Service Providers	9	4	8	19	6	11	29[181]	30	41	53	17	67
Post of Montenegro	0	0	0	0	3	0	2	0	1	0	0	0
Financial Leasing Companies	0	0	0	0	0	0	2	0	0	0	1	0
Investment Firms	0	0	0	0	1	0	1	0	0	0	1	0
Life insurance companies	0	0	0	0	0	0	2	0	0	0	0	0
Notaries	0	0	0	0	12[182]	0	5	0	2	0	0	0
Construction Companies	0	0	0	0	0	0	1	0	0	0	1	0

[179] The number of licensed banks went down from 15 to 11 over the review period.
[180] Decrease in STRs is due to reduced cash transactions and account opening challenges for staff working remotely.
[181] Increase in reports by PSPs since 2020 is also owed to the added focus placed on ongoing monitoring and STR reporting through supervisory examinations and measures by the CBM.
[182] Spike in STRs is the result of defensive type of reports which had no basis of suspicion.

Real Estate Investors/Intermediaries	0	0	0	0	0	0	0	0	0	0	1	0
Auditors and accountants	0	0	0	0	0	0	2	0	0	0	0	0
Games on gaming devices	0	0	0	0	0	0	5[183]	0	0	0	0	0
Total	**199**	**4**	**197**	**20**	**229**	**11**	**211**	**30**	**245**	**53**	**254**	**67**

Table 5.4: Number of CTRs[184] submitted by reporting entities to the FIU

Reporting entities	2017	2018	2019	2020	2021	2022
Banks	31,057	31,296	33,966	25,435	30,176	38,915[185]
Payment Service Providers	0	0	0	0	0	0
Post of Montenegro	0	0	0	0	0	0
Financial Leasing Companies	0	0	0	0	0	0
Investment Firms	0	0	0	0	0	0
Life insurance companies	1	0	0	0	0	0
Notaries	0	0	0	0	0	5,105[186]
Traders in Property and Real Estate Agents	160	274	313	265	301	367
Car dealers	108	112	106	77	99	144
Auditors and accountants	0	1	0	6	0	0
Casinos and Games on gaming devices	581	1,156	1,412	324	402	662
Former RE	1	6	4	0	0	0
Total	**31,908**	**32,845**	**35,801**	**26,107**	**30,978**	**45,193**

[183] Spike in STRs is the result of defensive type of reports which had no basis of suspicion.
[184] Reports of transactions in cash in the amount of €15,000 or more
[185] Spike is due to reduced cash transactions over the COVID-19 period and the influx of Ukrainian refugees in 2022.
[186] This figure includes cash transactions handled by notaries. A property contract may include more than one cash payment (e.g. four buyers all paying one seller in cash will add up to four CTRs).

5.2.6. Internal controls and legal/regulatory requirements impeding implementation

559. While only large REs are required to have an officer at management level to oversee the implementation of AML/CFT obligations and to establish an independent audit function (see Rec. 18), it transpired from the on-site discussions that the majority of REs have such dedicated officer.

560. The majority of the banks, MVTSs and financial leasing firms have implemented sophisticated and effective internal controls. Investment firms and insurance firms are by their nature smaller and appear to rely heavily on the authorised officer to ensure compliance with AML/CFT obligations. The internal controls for MFIs require improvement.

561. All banks have a culture of AML/CFT compliance and for the most part reported systems and procedures commensurate to their risks. Banks being part of international groups invested heavily in their AML/CFT controls including through the use of technology. The decisions for onboarding of high-risk customers and the reporting/not reporting of STRs in the case of Banks are handled by the AML/CFT authorised officer.

562. MVTSs also have dedicated AML/CFT compliance teams and procedures in place requiring that decisions on the onboarding of certain users or the execution of certain payments should be escalated to the AML/CFT authorised officer. Regular AML/CFT internal audits are conducted by Banks and MVTS, and their AML/CFT policies and procedures are reviewed at least once a year or more regularly if required in response to updates to the legal requirements.

563. Over the course of the review period, banks have increased the human resources dedicated to AML/CFT compliance. The 11 banks have on average five officers specifically dedicated to AML/CFT compliance. The three largest banks, in terms of client deposits, have seven, three and ten officers respectively. While this is not considered sufficient, dedicated AML/CFT compliance personnel are complemented by other banks staff such as branch officials and internal audit staff that are also trained (see section 5.2.1) and conduct AML/CFT related functions.

564. Most other non-bank FIs have dedicated AML/CFT compliance teams, however their procedures for the execution of high-risk transactions and reporting of STRs are not well developed and do not in all cases involve review or sign-off by the AML/CFT authorised officer. Insurance companies have effective levels of interaction with and control of intermediaries who introduce clients, and in fact reported having a two-tier level of CDD i.e. done by the intermediaries which is then vetted by the insurance company. This is relevant given that some 75% of insurance policies are sold through agents or intermediaries.

DNFBPs

565. The internal control mechanisms within the DNFBP sector vary. Larger accountancy firms providing company formation, accountancy, and audit services, have set-up effective internal control mechanisms to ensure the proper application of AML/CFT obligations.

566. In other DNFBP sectors internal AML/CFT controls require further development. Lawyers mostly operate as small firms or sole-practitioners and notaries as sole-practitioners and hence do not necessitate internal control processes to ensure AML/CFT compliance, however, have

insufficient AML/CFT controls. This was evident when it comes to verifying the source of funds of clients for real estate transactions, with notaries tending to rely on clients' affidavits.

567. Despite the cash intensive nature of the business, organisers of games of chance do not have in place sufficient internal control procedures. This became apparent when discussing: (i) the steps to be taken by staff when a client is identified as a PEP; and (ii) the application of source of fund checks and/or their approach to reporting unusual activity. It was evident that there are limited procedures to guide staff in implementing AML/CFT requirements, and their main focus is on ensuring that the casino or gaming entity is not defrauded by customers. Notaries and lawyers held that conflicts between reporting obligations and professional secrecy legal requirements are hampering effective reporting of suspicious activities.

Overall conclusions on IO.4

568. The most material sector by far in Montenegro is the banking sector which demonstrated a good understanding of ML risks and good level of implementation of AML/CFT obligations. The understanding of ML risks was adequate across most other non-bank FIs, with the effectiveness of mitigating measures varying but being the strongest in important FIs such as MVTSs. The understanding of TF risks is limited across sectors. Certain deficiencies with the identification of BOs persisted across all sectors, in particular the over reliance on the CRBE and CRBO to identify the BOs. It transpired that this was not the case in some banks and most accountancy professionals which took additional measures.

569. Accountants and auditors (which play a central role in the provision of company services) showed a good level of understanding of ML risks and implementation of preventive measures in particular regarding legal persons. Other DNFBPs, such as organisers of games of chance, lawyers and notaries did not demonstrate an adequate understanding of risk and implementation of preventive measures, while the AT could not determine the level of effectiveness by unregulated non-professional third parties providing CSP services. This impacts the effectiveness rating for IO4 given the materiality and risk-exposure of these DNFBPs. STRs are mostly filed by the banks and MVTSs with the volume being generally low across all sectors (except MVTSs), and in particular within the DNFBP sector.

570. **Montenegro is rated as having a Moderate level of effectiveness for IO4.**

6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 3

a) The CBM and CMA have a solid licensing process for banks, other FIs and investment services entities, which would benefit from more systematic cooperation with local and foreign authorities. The overreliance on supplied information and documentation, and lack of cooperation with local and foreign authorities in the case of ISA and the accreditation of professionals hampers all other licensing and authorisation processes. There are no entry requirements and on-going checks to prevent criminals and their associates from being involved in the VASP sector, real estate agents, CSPs, DPMSs and accountancy or legal firms, while it is doubtful whether the Administration for Games of Chance is able to impede criminals from owning casinos. Authorities do not undertake proactive measures to detect unauthorised activities, however they react to reported cases where unauthorised activity is identified.

b) The CBM and ISA have the most developed understanding of ML risk. The CMA and MoI demonstrated an adequate understanding of generic ML risks. The remaining supervisors showed limited understanding. The understanding of TF risks among all supervisors requires further development. Since 2020 the CBM has established an AML/CFT Risk Assessment Framework for banks, and in 2022 for MFIs. Further refinement is needed. The CMA and Authority for Inspection Affairs (Games of Chance) have also recently (end 2022) developed AML/CFT Risk Assessment Frameworks, which in the case of the CMA requires improvement. The remaining supervisors rely on very generic information to understand specific sectorial/entity risks or possess no risk information.

c) The CBM has recently (2021) implemented a risk-based supervisory model for banks that aligns the frequency of supervisory engagements with risk. This risk-assessment framework requires further enhancements. The CBM conducts good quality examinations, which are predominantly full scope irrespective of risk. Thematic reviews started being used recently but are limited to follow-up on remediation exercises. Risk-based supervision of MFIs commenced in 2022, however the underlying risk assessment is based on limited data. The supervision of DNFBPs, and other less important FIs is not risk based. However, some authorities have been able to vary the intensity of examinations according to risk (ISA and MoI). No or very limited supervisory measures have been undertaken in respect of high-risk sectors such as lawyers, notaries and CSPs. The quality of supervisory examinations needs improvement in the case of the CMA, ISA and MoI and significant improvements in the case of the Authority for Inspection Affairs.

d) The CBM is the most active in taking measures to drive compliance, relying mostly on remedial measures, which are used regularly and systematically and positively impact AML/CFT compliance. Pecuniary fines have been mainly imposed by the CBM, the MoI, and to a more limited extent the Administration for Inspection Affairs. These are however not effective and dissuasive, while the process for their imposition is hampered by excessively bureaucratic procedures and stringent prescriptive periods. ISA and EKIP base their enforcement actions on written warnings and remediation orders. The CMA makes use of remedial actions and has also withdrawn authorisations on the back of AML/CFT concerns. Other DNFBP supervisory authorities are not taking any supervisory or enforcement measures to drive compliance including in sectors such as gaming, lawyers and notaries which are exposed to high ML/TF risks.

e) There is limited data available to monitor the impact of supervisory efforts. However, the CBM was able to evidence that its remedial actions are effective. REs in the financial sector reported positive engagement with the supervisory authorities and the FIU. The CBM and the FIU have in recent times put effort into developing training for REs, which however was mainly focused on the dissemination of information on ML/TF risks. Guidance material for most sectors (apart from FIs covered by the CBM) is not practical and sector oriented, while no STR quality feedback is provided except for banks.

Recommended Actions

Immediate Outcome 3

a) CSPs, DPMSs, legal and accountancy firms, real estate agents and VASPs should be subject to market entry requirements and ongoing controls to prevent criminals and their associates from owning and controlling them. The Administration for Games of Chance should enhance the authorisation regime for operators of games of chance to ensure that it is able to scrutinise BOs of operators systematically and continuously and apply effective source of fund controls.

b) DNFPB supervisors should improve the understanding of sectorial and entity specific ML/TF risks, devise risk-based supervisory models, and carry out risk-based inspections.

c) Montenegro should make sure that all supervisory authorities have adequate resources and expertise to enable good quality and risk-based supervision.

d) Montenegro should strengthen the AML/CFT enforcement regime by: (i) ensuring that all REs may have their licenses suspended or revoked in view of serious, systematic and repetitive AML/CFT breaches; (ii) reviewing the level of fines that can be imposed so that these may effectively act as a deterrent; (iii) address the bureaucratic process of imposition of misdemeanour fines and the short prescription periods; and (iv) subsequently ensure that supervisory authorities make effective use of the enhanced enforcement regime as appropriate to drive compliance.

e) Enhance cooperation and exchange of information and intelligence between the FIU, law enforcement and supervisory authorities to assist supervisory authorities in ensuring that potential criminals and their associates do not infiltrate regulated sectors.

f) The CBM should continue to enhance its ML/TF risk based supervisory model for all REs by: (i) enhancing the AML/CFT questionnaires issued for banks and MFIs, (ii) collecting relevant risk data which enables it to detect and focus on specific ML/TF vulnerabilities (relevant to Montenegro) to which REs are exposed; (iii) fine-tuning the risk allocation methodology to ensure a better balance between materiality and risk within the banking sector; and (iv) make wider use of thematic type of reviews to horizontally examine cross-sectorial vulnerabilities that impact Montenegro's ML/TF risk.

g) The CBM should ensure that all identified VASPs established in Montenegro are subject to AML/CFT obligations and supervision.

h) The CMA and ISA should continue with the development and enhancement of their risk assessment models with a view to adopting a risk-based approach to both the frequency and intensity of their supervision.

i) Authorities should introduce appropriate mechanisms to proactively identify persons and entities that are operating without a licence.

j) Supervisory authorities should establish mechanisms to assess the impact that their supervisory actions have on compliance and to assist in modelling their outreach, which should include granular statistics on the number and nature of breaches.

571. The relevant IO considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

6.2. Immediate Outcome 3 (Supervision)

572. The weighting allocated to assess the effectiveness of supervision of FIs, DNFBPs and VASPs, is based on the relative importance of each sector in terms of materiality and risk, as detailed under section 1.4.3. and applied for preventive measures (IO.4).

573. There are four AML/CFT supervisory authorities for the financial sector in Montenegro – the CBM, CMA, ISA and EKIP.

574. The majority of DNFPBs are supervised for AML/CFT purposes by the Ministry of Interior. The other DNFBP supervisors are the Authority for Inspection Affairs (Games of Chance), the Bar Association and Notary Chamber (self-regulatory bodies).

575. Refer to Tables 1.3 and 1.4 for information on division of supervisory responsibilities for FIs and DNFBPs.

576. The analysis of R. 15, 22 and 23 identified that: (i) not all VASPs and company services are

subject to AML/CFT obligations and (ii) the AML/CFT obligations applicable to lawyers and notaries are subject to deficiencies. These shortcomings and the technical deficiencies identified in R.26-28 and 35, impact Montenegro's level of effectiveness for IO3.

6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

CBM – Banks

577. The number of banks in Montenegro went down from 15 to the 11 over the review period. This was a result of bankruptcy proceedings initiated against two banks, and several mergers. The licensing and market entry requirements for banks are set out in the Law on Credit Institutions. These requirements are supplemented with two Decisions: (i) the Decision for the Selection and Appointment of Members of the Management Body and Holders of Core Functions and (ii) the Decision on the Criteria and Documentation for Assessing the Suitability and Financial Soundness of the Acquirer of a qualifying holding in a credit institution. Licensing and authorisation decisions are taken by the CBM's Governor upon the advice of the CBM's Supervision Committee, ensuring collegiality in decisions. The AT found a solid licensing process.

578. Applicants wishing to acquire or increase an existing qualifying holding in a bank must provide the CBM with all relevant information on the nature of the qualifying holding and the source of funds for the acquisition. Applicants that are legal persons must provide details on all BOs, and all applicants must provide proof that they are not subject to any criminal convictions.

579. The CBM assesses the source of funds by examining the audited financial statements, or by engaging auditors to check the assets and financial position of the acquirer. This assessment extends beyond the direct acquirer and to entities in which the prospective acquirers have substantial holdings. In addition, the CBM requires detailed information on how the funds were acquired and information about any property being sold to finance the acquisition.

580. The CBM may refuse to approve the acquisition of a qualifying holding where the applicant does not demonstrate an appropriate degree of financial soundness (case no 6.1), or where the applicant has been convicted of a criminal offence or is subject to criminal or misdemeanour proceedings that may cast doubt on the reputation of the acquirer, or where there are indications that the proposed acquisition will increase the risk of ML/TF (case no 6.2).

Case No. 6.1: Rejected Application – Lack of Financial Stability

A natural person, citizen of a foreign European jurisdiction, applied to become the sole founder (100% participation in the share capital) of a prospective bank in Montenegro. Based on supplied documents it appeared that the said individual owned another 17 legal entities, which, according to the submitted individual and consolidated reports, were evaluated as highly indebted. The prevailing number of those companies were under capitalised and with low profitability, which exposed this group of entities to serious business risk.

In that context, the potential founder failed to meet the "fit and proper" requirements for acquiring qualified participation, which is a process that is formally and essentially legally integrated into the prescribed bank licensing process and was not allowed to become shareholder of a bank in the system.

Case No. 6.2: Rejected QH Application – Adverse Intelligence

The CBM, while assessing an application to acquire shares in a Montenegrin bank, requested intelligence from the FIU. The FIU identified that the BO of the prospective acquirer was implicated in a number of suspicious transactions. On the basis of this information, and even though there were no ongoing criminal procedures, the CBM determined that one of the legal requirements envisaged under the Law on Credit Institutions for "fitness and properness" was not met; i.e. that there must not be any reasonable grounds to suspect that, in connection with the acquisition, ML/TF is being committed or being attempted or that the acquisition would increase the risk of ML/TF financing taking place. The application to acquire the qualifying holding was rejected by the CBM.

Table 6.1 Processed License Applications (Banks 2017-2022)

License Applications Received	License Applications Approved	License Applications Rejected	License Applications Withdrawn
1	0	1 (*see case no 6.1*)	0

581. Applicants for roles on the management body or to hold a core function in a bank must demonstrate to the satisfaction of the CBM that they are of "good repute". Individuals are not considered to be of good repute if they are: (i) convicted of a criminal offence, (ii) subject to ongoing criminal proceedings, or (iii) if there is other information that raises doubts on their reputation. Applicants who were subject to previous regulatory action or part of the management of a firm that was subject to regulatory or criminal action, and applicants who are not transparent with competent authorities or have had previous applications or authorisations turned down or revoked are also considered unsuitable.

582. In respect of both applications (i.e. to acquire a qualifying holding or hold a management or core function role) the CBM's AML unit liaises with the FIU to ascertain if it holds any adverse intelligence on the applicants (including on any BOs of the applicants). The CBM also seeks information from other Montenegrin authorities where applicants are known to have previous operations in Montenegro and foreign supervisors in respect of non-resident persons or entities. Table 6.3 presents the number of such requests. The CBM's AML/CFT unit also uses commercial databases and open-source information to carry out background checks on prospective applicants and to screen for any TFS designated persons. This practice of liaising with local and foreign authorities is not followed systematically which is evident when comparing the number of authorisation applications (Tables 6.1 & 6.2.) with the volume of requests sent to local and foreign authorities (Table 6.3). This impacts the CBM's ability to, consistently and comprehensively, identify adverse information, and detect criminal associates that may be seeking to infiltrate the ownership or management of banks.

Table 6.2 Processed QHs/Managerial & Core Functions Applications (Banks – 2017-2022)

	Applications Received	Applications Approved	Applications Rejected	Applications Withdrawn
2017	40	34	2	4
2018	29	28	0	1
2019	37	37	0	0

2020	43	43	0	0
2021	136[187]	128	6	2
2022	19	18	1	0

583. The CBM confirmed that the majority of rejected or withdrawn applications resulted from a lack of professional knowledge of the applicant.

Table Error! No text of specified style in document.**.3 CBM Requests for Information (Approval Processes for all FIs – 2017-2022)**

Requests to FIU	Requests to Montenegro Supervisory Authorities	Requests to Foreign Supervisory Authorities
9	5	10

584. Each bank is required to regularly (at least annually and on trigger events) assess the continued suitability (from a knowledge, skills and reputability point of view) of members of the management and supervisory bodies and core functions holders and to inform the CBM about the results thereof. In the eventuality of adverse information on the suitability of such members, the CBM may withdraw their approval. In relation to qualifying holders, the CBM entirely relies on supervisory examinations and other information it may obtain from public sources or other authorities. Where the CBM forms the view that a qualifying holder is no longer suitable it may withdraw their authorisation. The CBM does not itself undertake any on-going reviews of suitability of management or shareholders of banks.

585. The CBM provided the AT with a case study concerning employees who defrauded a bank, with the bank failing to report the matter to the CBM as required under the Law on Credit Institutions. In response, the CBM removed two members of the Supervisory Board on the basis that they: (i) failed to report the misconduct of the employees to the CBM and (ii) should have been aware of the weaknesses in the systems and controls that allowed the employees to perpetrate the fraud (see case 6.4.).

586. It appears that the CBM has been hesitant to act on the back of information other than criminal convictions, as is demonstrated in the Atlas Bank case (see case 6.3). In this case the CBM did not take immediate action to suspend or otherwise restrict the involvement of members of the management board that were being investigated for suspected criminal conduct and association in an organised crime group. However more recently the CBM is seen to take a less restrictive approach. As seen from case no. 6.4, the CBM in 2022 withdrew the authorisation of two members of the board of directors of a bank in circumstances where the individuals facilitated, through ineffective internal controls, embezzlement of bank funds by employees.

Case No. 6.3: Forced Administration – Atlas Bank

An investigation was initiated by the Special State Prosecutor on the 6 June 2018, in relation to the misuse of an e-commerce service provided by Atlas Bank to launder the proceeds of undeclared income. The laundering allegedly took place through resident legal entities, owned by BOs (through foreign legal

[187] The increase in applications in 2021 is due to the entry into force of the Law on Credit Institutions on the 1st January 2022 and which replaced the Banking Law. Members of management and supervisory bodies of banks were required to obtain authorisation under the new law.

entities) most of whom were related to employees of Atlas Bank. The legal entities used fictitious deals and documentation to transfer monies through the bank, to offshore destinations, and subsequently were liquidated. The owner of Atlas Bank was part of the organised crime group and allegedly facilitated the perpetration of these offences through the bank.

The CBM launched an on-site examination in June 2018, during which Atlas Bank notified the CBM that the Special State Prosecutor's Office froze all the accounts of suspected domestic legal persons (e-commerce merchants) which amounted to around EUR 63 million. The CBM deemed that it was not purposeful to revoke the authorisations granted at that stage, since the nature of available information on account freezing was not sufficient to revoke the authorisation to acquire qualifying holding and because the CBM, as an authority that exercises public-legal powers, is obliged to respect the presumption of innocence when undertaking activities and measures within its competence.

Interim administration was introduced in Atlas Bank on 7 December 2018 and once the on-site examination results showed that the Bank was critically undercapitalised and insolvent, and hence according to the Banking Law the introduction of the interim administration was required. A number of individuals including the owner Atlas Bank were indicted on the 13 November 2020.

Case No. 6.4: Withdrawal of authorisation of two members of the Board of Directors

In 2022, the CBM became aware through public sources that a number of bank employees were being investigated for the embezzlement of bank funds. The Bank notified the CBM about the case on the same day the case went public. The CBM reported the matter to the relevant authorities.

At the end of February 2022, the CBM initiated an on-site targeted examination, following which the CBM identified inadequate internal control systems and ordered the Bank to enhance them. The CBM also proceeded to withdraw the authorisation of the supervisory board members since they were directly responsible for the weak internal controls (which they had to monitor and ensure the proper functioning of) which facilitated the embezzlement of funds.

Table Error! No text of specified style in document.**.4 Suspension / Revocation of License by the CBM – (2017 -2022)**

	Licenses Suspended	Licenses Revoked	Management Authorisation Withdrawn	Qualifying Holders Authorisation Withdrawn
Banks	2	0	8	1
Payment Institutions	0	0	0	0
Other FIs	1	0	3	1

CBM non-bank FIs

587. The licensing procedures for payment service providers (i.e. payment and electronic money institutions) and non-bank FIs licensed by the CBM are set out in the main laws regulating these sectors, and in the case of non-bank FIs licensed by the CBM supplemented by more detailed subsidiary laws (see R.26).

588. The market entry and integrity requirements for managers and owners of these FIs are explained in c.26.3. The analysis identified limitations in banning criminal associates, and no requirements for qualifying holders of payment and electronic money institutions to be of good

repute. The CBM, while agreeing that the laws need to be enhanced, confirmed that proof of lack of criminal convictions (in the form of confirmation from the Ministry of Justice) is obtained for all prospective qualifying holders, board members and executive directors of these FIs. The CBM verifies this information through additional checks, similar to those undertaken for banks.

589. Regarding the acquisition of qualifying holding in non-bank FIs, the CBM adopts the same approach undertaken for banks when assessing the source of funds. Unlike the obligation placed on banks to regularly assess the fitness and probity of members of the management board and core function holders, there are no similar requirements for payment institutions and FIs, and hence the CBM is completely reliant on supervisory examinations and public or other information sourced from authorities.

Table Error! No text of specified style in document.**.5 License Applications (Payment Institutions and Other FIs – 2017-2022)**

	License Applications Received	License Applications Approved	License Applications Rejected	License Applications Withdrawn
2017	1	1	0	0
2018	2	2	0	0
2019	3	3	0	0
2020	2	2	0	0
2021	1	1	0	0
2022	2	1	0	1

Table Error! No text of specified style in document.**.6 QHs / Managerial & Core Functions Applications (Payment Institutions and Other FIs – 2017-2022)**

	Applications Received	Applications Approved	Applications Rejected	Applications Withdrawn
2017	0	0	0	0
2018	9	9	0	0
2019	16[188]	16	0	0
2020	10	10	0	0
2021	9	9	0	0
2022	13	11	1	1

CBM - VASPs

590. The CBM has received authorisation applications from VASPs operating in Montenegro which were rejected as there is no licensing or registration regime in place. Nonetheless there are no legal prohibitions to operate a VASP. The CBM explained that in a particular case where it was notified about a Bitcoin ATM located in Montenegro it referred the matter to the Police which proceeded to shut it down. While taking note of this action, the AT still remains unconvinced about the authorities' ability to prevent VASPs from operating. Montenegro intends to introduce a licencing regime for VASPs, with a draft law to be presented shortly.

[188] Spike in application is a result of the introduction of the Law governing financial leasing, factoring, purchase of receivables, micro-lending, and credit-guarantee operations.

591. As set out in section 1.4.3., there were indications of VASPs operating in Montenegro and use of VAs by residents as well as OCGs. The volume of identified activity is not considered to be material in comparison to activity going on in more important sectors.

592. There are legal provisions prohibiting banks and non-bank FIs from operating without a license (see R.26). To identify entities operating without a licence the CBM relies on (i) reports from the CRBE on companies registered with a particular activity code for which an authorisation is necessary; (ii) information from members of the public (which may report via dedicated channels made public on the CBM's website); or (iii) the media. It does not carry out proactive market surveillance.

The CMA – Investment Services Entities

593. Prospective qualifying holders and directors of investment firms and fund managers undergo an approval process. There are no similar processes for funds and voluntary pension funds. The requirements are set out in the Law on Capital Markets, the Law on Investment Funds and the Law on Voluntary Pension Funds (see c.26.3). Qualifying holders, and management officials of investment sector entities, must be of good repute.

594. Prospective qualifying holders that are corporate entities must provide information on BOs. The applicant must also supply details of any other legal entities in which it holds a qualifying holding. The CMA in practice requires applicants for qualifying holding and management functions to submit evidence that they are not subject to any criminal convictions, even though for qualifying holders of investment firms and voluntary pension fund managers this is not explicitly required in the law (see c.26.3).

595. A prospective qualifying holder or director must also not be subject to any regulatory action by a domestic or foreign regulatory body. In this regard, the CMA relies on self-declarations and does not seek information from other domestic or foreign supervisory bodies. Acquirers are also required, whether natural or legal persons, to submit evidence on the source of funds for the acquisition or increase in qualified participation.

596. The CMA uses open-source information to check whether any persons involved in licensed entities are connected to criminals. Since September 2022, qualifying holders, their BOs, and directors are also subject to TFS screening, and screening by the FIU upon the request of the CMA (so far there have already been six requests for information made to the FIU).

597. Throughout the majority of the review period, the CMA had no formal mechanism to assess the continued fitness and probity of acquirers or members of senior management. In January 2022, the CMA adopted a procedure (applicable to all investment sector entities apart from funds), which obliges the CMA to collect data at least once every six months from credible sources on whether the persons in the management and ownership structures of REs are subject to criminal proceedings. Where information obtained suggests that an individual no longer fulfils the fitness and probity requirements, the CMA will revoke the individual's authorisation.

598. Although the AT was not provided with any cases where the CMA took action to suspend or revoke licenses or authorisations in view of links to criminality and issues of integrity, there were instances when these actions were taken due to serious AML/CFT breaches that were identified

and not addressed. This demonstrates the CMA's willingness to withdraw and restrict licenses to safeguard the integrity of the sector.

599. The CMA does not have any processes in place to monitor and detect unlicensed operators. It entirely relies on reports from other authorities or members of the public. The AT was however informed about two entities that were detected to be providing investment services without a license. These cases were identified after the review period (i.e. September 2023), however demonstrate the CMA's actions to detect and deal with such cases. The CMA drew the public's attention to these cases through information published on its website.

The ISA – Life Insurance Companies & Intermediaries

600. The licensing requirements for insurance companies, brokers and agents are set out under the Insurance Law. In the case of insurance companies, a rulebook and a decision setting out more details on the licensing process are in place (see c.26.3). The rulebook is relatively new and does not appear to have been fully operationalised.

601. Qualifying holders, members of the board of directors and executive directors of insurance companies, brokers and agents must obtain the prior consent of ISA and are assessed based on their business reputation, the reputation of persons holding a management position (in case of potential acquirers that are legal entities) and whether the prospective qualifying holder will increase the risk of ML/TF occurring through the entity. The ISA requests criminal conduct certificates as part of the authorisation process for qualifying holders and management officials of any insurance entity, broker or agent.

602. The ISA bases its assessment of applications exclusively on the documents submitted by the applicants and liaises with other competent authorities only where a deeper analysis of the authenticity of documents is warranted. The ISA does not seek any further information or carry out any background checks such as seeking intelligence from the FIU or foreign authorities in case of foreign owned entities. This limits its ability to detect and prevent criminal associates from managing and owning insurance entities.

603. In the case of insurance companies, the ISA relies on self-declarations to identify management officials who cease to fulfil the eligibility criteria. Other than that the ISA does not have any mechanism for assessing the ongoing fitness and probity of acquirers of qualifying holdings or senior management, and no procedures for proactively identifying operators acting without a licence.

Table Error! No text of specified style in document**..7 License Applications (Investment & Insurance Entities – 2017-2022)**

	License Applications Received	License Applications Approved	License Applications Rejected	License Applications Withdrawn
Investment Firms	11	9	2[189]	0
Fund Managers	3	3	0	0

[189] These application rejections were due to the incomplete submission of required application documents.

Life Insurance Companies	0	0	0	0
Life Insurance Intermediaries	12	12	0	0

Table Error! No text of specified style in document.**.8 QHs/Management Applications (Investment & Insurance Entities – 2017-2022)**

	Applications Received	Applications Approved	Applications Rejected	Applications Withdrawn
Investment Firms	76	71	4[190]	1
Fund Managers	74	71	1[191]	2
Life Insurance Companies	99	99	0	0
Life Insurance Intermediaries	0	0	0	0

Table Error! No text of specified style in document.**.9 License Suspension/Revocation (Investment & Insurance Entities - 2017-2022)**

	Licenses Suspended	Licenses Revoked	Directors' Authorisation Withdrawn	Qualifying Holders Authorisation Withdrawn
Investment Firms	3	1	1[192]	0
Fund Managers	3	4	1[193]	0
Life Insurance Companies	0	1	0	0
Life Insurance Intermediaries	0	10	0	0

604. The CMA revoked the license of an investment firm due to serious AML/CFT breaches that were not remedied, and of four investment fund managers for various reasons including: (i) failure to appoint a custody bank, (ii)bankruptcy, (iii) capital inadequacy, (iv)misuse of client funds and (v) inability to deliver official regulatory notifications at the licensee's address. The ISA withdrew one license of a life insurance company due to capital inadequacy and nine licenses of intermediaries as a result of a prolonged period of inactivity. The remaining licence was withdrawn by the ISA as a result of the firm's failure to appoint an executive director as well as other non-AML/CFT governance issues (see Table 6.9).

EKIP – The Post of Montenegro

605. EKIP supervises postal operators including those providing financial postal services. At the

[190] One application was rejected due to lack of academic qualifications, while two applications for acquisition of qualifying holding were rejected due to a potential 100% acquisition without specific pre-approval and risks of potential market manipulation.
[191] One application was rejected in view of lack of academic qualifications.
[192] Authorisation withdrawn in view of actions taken against the firm for misuse of client funds.
[193] Individual considered unfit in view of previous irregularities committed in a bank he was involved in.

time of the on-site mission there was only one such operator (i.e. the Post of Montenegro). The Post of Montenegro is fully owned by the State which makes all decisions as regards its management structure. The board of directors and all management members are required to provide evidence that they are not subject to criminal convictions.

The Administration for Games of Chance - Casinos

606. For legal entities to be authorised to offer games of chance they must be granted a concession. Online games of chance may only be provided by entities that are authorised to operate land-based casinos or betting shops. Persons managing the casino must provide proof that they have not been convicted of criminal offences against the payment system and commercial operations[194], however there are no requirements for casino owners to provide proof of absence of criminal convictions (see. C. 28.1). The Administration of Games of Chance explained that it requires evidence of lack of criminal convictions for those managing casinos and other gaming operators, and occasionally (although not systematically) also for BOs. The AT was made aware about a case when the Administration for Games of Chance was not able to refuse a licence to an individual convicted for grievous bodily harm from owning a gaming operator. This evidences the limitations in barring criminals from being involved in casinos and gaming entities.

607. When processing applications, the Administration for Games of Chance obtains publicly available information on the management, owners and BOs, checks whether any such individuals are designated for TFS purposes or are coming from FATF high risk jurisdictions. The Administration for Games of Chance also requests the FIU to confirm if there is any adverse information on the individuals, identified as managers, owners and beneficial owners of the prospective licensee. The Administration for Games of Chance does not perform inquiries with foreign regulators in relation to prospective operators established in foreign jurisdictions.

608. Prospective owners of casinos and other gaming entities are not required to provide information about the source of funds for the acquisition and the Administration of Games of Chance does not carry out any checks. This limits the ability of to detect criminals and criminal associates.

609. The Administration for Games of Chance does not have a procedure for assessing the ongoing fitness and probity of owners and management holders and relies on supervisory examinations conducted by the Authority for Inspection Affairs. The AT was informed that in 2016 the Administration for Games of Chance carried out a probity assessment on the owners and BOs of casinos with no issues being identified. No gaming license or authorisation for management or owners thereof was ever suspended or withdrawn.

610. The Authority for Inspection Affairs (being the supervisor of operators of games of chance) identifies unlicensed operators on the basis of tip-offs from the public, information from other authorities and through supervisory activities. The Authority provided a case example showing how regular inspections in the Herceg Novi Municipality led to the identification of a betting shop

[194] This covers some 30 finance-related offences but does not include all the designated categories of offences envisaged in the FATF Recommendations (e.g. terrorism, terrorism financing and trafficking in human beings and migrant smuggling among others).

that was operating without a license. Action was taken to prohibit further provision of services, while the entity and responsible person were subject to misdemeanour fines.

The Ministry of the Interior - accountants, real estate agents, CSPs and DPMSs

611. The MoI supervises accountants, real estate agents, CSPs and DPMSs. Real estate agents, CSPs and DMPSs are not subject to any licencing, registration, or market entry requirements. Not all company services as envisaged under the FATF Recommendations are subject to AML/CFT obligations (see R. 22/23).

612. The Ministry of Finance has delegated responsibility for the professional accreditation of accountants to the Institute of Certified Accountants of Montenegro. The Ministry of Finance retains responsibility for the accreditation of auditors. In order to obtain certification, an accountant or auditor must among other criteria prove that he/she has not been convicted of a criminal offense that makes him or her unworthy, which includes all those criminal offences against payment transactions and economic operations (see footnote 194). Lack of criminal convictions is determined based on criminal conduct certificates issued by the Ministry for Justice. Audit Firms need to obtain an audit permit, and the majority of holders of voting rights and majority of members of the management body need to be certified auditors.

613. Auditors and accountants may have their authorisation withdrawn if they no longer fulfil the requirements of the law, including being found guilty of criminal offences against payment transactions and economic operations. There are no registration or market entry requirements for accountancy firms or requirement for the managing officials and owners of such firms to be accountants themselves that would have undergone probity checks.

614. Company services such as company formation, directorship, registered office and other services (see IO4) are, according to the MoI mostly provided by accountants and lawyers. Accountants and lawyers that provide company services are not subject to any additional licensing or registration requirements. The AT understands that there are entities other than accountants or lawyers that provide these services (see section 1.4.3), which are not required to register or be authorised. As a result, the MoI does not have any visibility on the number of entities that are not accountants / lawyers and providing company services, nor of which accountants and lawyers are providing such services.

615. Real estate agents are not subject to any authorisation or registration requirements. The MoI relies exclusively on information contained in the CRBE to identify the entities operating as real estate agents. There are approximately 1,168 real estate agents that are supervised by the MoI.

The Notary Chamber and the Bar Association – Notaries and Lawyers

616. Notaries are supervised for AML/CFT purposes by the Notary Chamber, while lawyers are supervised by the Bar Association. Notaries and lawyers are subject to professional accreditation, which involves confirmation of professional qualifications, practical experience and confirmation that they are not subject to any criminal convictions. (see R.28). The Notary Chamber and the Bar Association do not have a mechanism for identifying individuals acting without registration.

617. While there is no mechanism in place for the Notary Chamber or the Bar Association to proactively identify any issues relating to the ongoing fitness and probity of notaries and lawyers,

the AT was informed that both bodies have established disciplinary committees that are responsible for receiving complaints about breaches of ethics or other issues of integrity, and they also pay attention to any media allegations in such regard. The Bar Association also made reference to a particular case where an individual was barred from practicing as a lawyer due to an ongoing prosecution relating to corruption and involvement in organised crime.

6.2.2. Supervisors' understanding and identification of ML/TF risks

618. Understanding of ML risks by financial sector supervisors varied, with the CBM and the ISA having the most developed understanding, while the CBM is the most advanced in terms of ability to collect and exploit data to understand sectorial and RE risks. Across the remaining financial sector supervisors, the concept of risk identification and assessment is still nascent. The MoI demonstrated an adequate understanding of general ML risks, and the Authority for Inspection Affairs (casinos) took recent commendable steps to improve risk understanding. The understanding of ML risks by the remaining DNFBP supervisors is underdeveloped and superficial, while the understanding of TF risk requires further development across all supervisors.

CBM - Banks

619. The CBM demonstrates a sufficient degree of understanding of general ML risks within its supervisory population. In relation to banks, the risks highlighted related to deals in real estate, corporate accounts, custody services, electronic banking, clients providing gaming services and transactions to and from accounts held in offshore jurisdictions. The CBM has a limited understanding of TF risks and could only refer to the risks associated with NPOs.

620. In 2020, the CBM developed an ML/TF risk assessment model for banks. The central plank of this risk assessment model is the questionnaire for assessing ML/TF risk ("the Questionnaire"), which banks are required to and have been completing yearly since 2021. The AT is of the view that the Questionnaire constitutes a solid basis for the risk categorisation of banks and understanding of the risk exposure. Data obtained is also verified to improve the quality, through flagging of empty fields, provision of pre-determined answers, comparison of entries to connected data fields, and cross-checking with data already available to the CBM.

621. The AT believes that some aspects of the Questionnaire would benefit from further refinement to enable an appropriate assessment and weighting of all relevant inherent ML risks and corresponding control measures, which would facilitate the choice of entities and client files for specific thematic reviews in line with the country risks. By way of example, no information is collected on how many corporate clients have multi-tiered or complex structures, or on the geographic location of their BOs. The Questionnaire would also benefit from further enhancements on AML/CFT control information (e.g. not enough detailed questions to understand the banks' on-going monitoring capabilities and information on internal suspicious reports raised and analysed). In addition, while the Questionnaire requires information on inward and outward financial flows to high-risk countries, this information is not necessarily sufficient to identify potential outflows to countries with elevated risks of terrorism or presence of terrorist organisations. This hampers the ability to understand TF risks.

622. The data on inherent ML/TF risks and controls sourced through the Questionnaire is combined with information obtained during supervisory inspections to calculate an individual risk rating for each bank. Based on the analysis of the data, each bank is rated as high, medium or low risk. The AT is concerned that the final risk rating allocated to the various banks may not adequately reflect the actual ML/TF risk of each bank. In particular, the AT notes that the largest three banks in terms of volume of client deposits (i.e. accounting for 70% of all client deposits within the sector), and the largest bank in terms of value of outward transactions (i.e. 30% of all outward bank transactions), have been categorised as L in one case and M in two other cases. This means that in 2023 one of these three banks is considered to pose less risk than another eight banks, while the other two banks are considered to pose the same level of risk as another five less material banks (see Table 6.10).

Table Error! No text of specified style in document.**.10 Risk Categorisation of Banks**

Name of the institution	ML Risk Category 2021	ML Risk Category 2022	ML Risk Category 2023	TF Risk 2021 - 2023
Bank 1	H	H	M	L
Bank 2	H	M	M	L
Bank 3	M	M	M	L
Bank 4	H	M	M	L
Bank 5	M	M	M	L
Bank 6	M	M	M	L
Bank 7	L	L	L	L
Bank 8	M	L	L	L
Bank 9	M	M	M	L
Bank 10	M	L	M	L
Bank 11	L	L	L	L
Bank 12[195]	L	-	-	-

623. Another Questionnaire has also been rolled out by the CBM for MFIs at the end of 2022, which all MFIs have submitted. This enables the CBM to collect sufficient information to formulate a good understanding of the ML risks to which MFIs are exposed. As is the case with the Questionnaire for banks, the MFI Questionnaire is limited when it comes to the collection of information on controls and needs to be refined.

624. Questionnaires have not been rolled out to the other FIs supervised by the CBM however, in the case of the three licenced payment institutions, the CBM already possesses information (i.e. data from previous supervisory examinations and statistics on their operations) which enables it to assess the primary ML/TF risks. The number of remaining non-bank FIs is very small (six in total) and therefore the fact that they are not required to complete a Questionnaire has a negligible impact on the CBM's understanding of ML/TF risk.

The CMA

625. The CMA has a basic understanding of the generic ML/TF risks impacting the investment sector. For several years it has required REs to complete and submit questionnaires twice a year, which provides information on the inherent ML/TF risks and the level of controls. The

[195] Bank no longer in operation.

information on inherent risks collected via this questionnaire is limited and further enhancements are necessary. By way of example the AT would expect the CMA to collect information on funding methods, information on significant investors, volume of investments held by intermediaries, information on type of products/services offered and jurisdictions of origin of investments, among others.

626. The CMA has not been using the collected information to analyse ML/TF risks. It was only at the end of 2022 that the CMA adopted a risk matrix to risk rate REs using the collected information. This risk matrix categorises risk according to a very limited set of data fields and the CMA plans to enhance it and improve the data collected in the annual questionnaire in 2023.

The ISA

627. The ISA has a sufficient understanding of ML/TF risks impacting the life insurance sector. It does not have a process to assess the specific ML/TF risk within the life insurance sector, with all insurance companies rated as medium risk, and brokers as low risk. This rating is based on the inherent risks for the life insurance industry as set out in the NRA. The ISA is currently developing a ML/TF risk model with the assistance of the CBM and a foreign authority.

628. Furthermore, the ISA has not been able to identify the licensed insurance brokers and agents that provide life insurance related services. While this undermines ISA's ability to effectively supervise these brokers and agents, the impact is limited given that intermediaries do not handle funds and as is explained under IO4 are subject to effective scrutiny by insurance companies. A legal obligation for intermediaries to inform the ISA when they terminate or conclude new contracts with life insurance companies has been introduced after the review period.

EKIP

629. EKIP's understanding of the ML/TF risks is based on the information provided semi-annually and/or quarterly by the Post of Montenegro. These reports contain information on cash transactions exceeding €15,000, transactions of €1,000 or more, suspicious and suspended transactions, total number of transactions carried out as agents of international payment institutions, data on linked transactions (i.e. name of persons, transaction data, postal office/s involved in these transactions), actions to address issues with suspicious transaction detection and reporting, and information on AML/CFT training.

630. To assess ML/TF risks, EKIP also relies on data collected through supervision, the data collected from reports of international organisations and media information. EKIP uses this data and information to update the ML/TF risks and to identify threats. In assessing ML/TF risks, EKIP also has regard to the risk factors set out in the guidelines for developing risk analysis.

DNFBPs

Authority for Inspection Affairs (Games of Chance)

631. The Authority's understanding of generic ML/TF risks and specific risks within the gaming sector is basic and requires significant development. The Authority develops annual supervisory plans based on a rudimentary understanding of risk derived from a limited set of data. Such data includes NRA conclusions, information on non-compliance with the gaming rules, adverse intelligence obtained from the FIU, the size, turnover and location of REs. Based on this

methodology, the Authority for Inspection Affairs assesses casinos to pose a medium risk, with organisers of online gaming/betting considered to be the highest risk entities.

632. The Authority issued an AML Questionnaire to REs in 2023, for which it is commended. The Questionnaire is comprehensive and enables the collection of extensive data on inherent risks and AML/CFT controls. Given that the process of data analysis and subsequent risk conclusions was still underway the AT was not able to assess the risk assessment methodology and outcomes.

Ministry of the Interior

633. Officials of the MoI were able to demonstrate an adequate knowledge of the ML/TF risks associated with real estate and use of companies, in line with the findings of the NRA. They were cognisant of risks associated with property deals by foreign nationals and drug dealers mostly in the coastal areas, and the misuse of companies through the use of fictitious and fabricated evidence to launder proceeds of crime.

634. When it comes to the understanding and the assessment of the specific ML/TF risks within the regulated sectors, the MoI bases its assessment of ML/TF risks on data from the Tax Administration and Customs (turnover data) as well as data from the CRBE (company structure) and the Real Estate Administration (property deals). The MoI also has regard to any relevant open-source information. The MoI does not obtain any specific data on inherent ML/TF risks and control measures from the REs. The information collected by the MoI is therefore limited. While it allows the MoI to formulate a basic understanding of entity risk, it does not enable it to sufficiently understand the specific ML/TF risks to which its REs are exposed.

The Notary Council and the Bar Association

635. The Notary Chamber and the Bar Association confirmed that they do not conduct an assessment of the risk of their respective RE populations. The Notary Chamber has a rudimentary and generic understanding of ML risks within the sector confirming what is highlighted in the NRA. The Bar Association was not aware and took no part in the formulation of the NRA. Moreover, it does not take any steps to assess the ML/TF risks of lawyers and has no appreciation and understanding of the ML/TF risks of the sector.

6.2.3. Risk-based supervision of compliance with AML/CFT requirements

636. The risk-based approach to supervision is well developed in the case of credit institutions, but less developed for other FIs. Supervisory initiatives in the DNFBP sector are limited, in most cases not risk-based and of lacking quality (except to a limited extent in the case of the MoI).

The CBM - Banks

637. In 2019-2020 the CBM carried out several reforms to strengthen AML/CFT supervision. This included the setting up of a dedicated AML/CFT Supervision directorate (currently composed of five officials with another four vacancies to be filled) and the development of a risk-based supervisory manual and strategy. The Risk-Based Supervisory Manual defines the process for the rating of individual REs and the frequency and type of inspections that are to be undertaken (see Table 6.11 below). This supervisory model was first implemented in 2021 and following this strategy, the CBM develops multi-annual and annual supervisory plans.

Table Error! No text of specified style in document.**.11 Frequency/Type of Inspections – 2021 Supervisory Model - CBM**

Risk category	Scope and frequency of on-site inspections	Scope and frequency of off-site inspections
High risk	Annual full-scope inspections	Annual inspections Thematic inspections when deemed necessary
Medium risk	Biennial full-scope inspections Thematic inspections when deemed necessary	
Low risk	Following initial inspection, full-scope inspections only in response to an incident Thematic inspections	

638. The CBM's Risk-Based Supervisory Manual envisages four types of examinations: Full scope examinations covering all AML/CFT controls and implementation of all AML/CFT obligations; Targeted/thematic examination – targets a specific topic or risk; Incident (by request) examinations – which are triggered by requests received from domestic or foreign authorities; and off-site examinations – desk-based analysis of documentation.

639. The frequency of examinations for banks is aligned to risk. High risk and medium risk REs are subject to a full scope AML/CFT inspection once a year, and every two years respectively. Low risk entities are subject to thematic reviews, while full-scope examinations are incident based. The CBM has implemented this frequency of supervisory engagement in past three years, with all high-risk entities being inspected once a year, and eight inspections have been carried out on medium risk entities over the same period (see Table 6.12).

640. Given that the risk assessment framework is leading to most banks being rated as medium risk (see Table 6.10), the CBM started increasing the number of examinations on medium risk banks. Three of these reviews were conducted in December 2022 (see case 6.5) targeting the two largest banks (in terms of client deposits and the largest bank in terms of volume of outward flows). This ad-hoc revision to the supervisory plan results from the issues with the risk rating methodology highlighted under section 6.2.2, which is leading to the most material banks being rated as medium or low risk. In the longer term, the refinement of the risk assessment framework is necessary to enable the CBM to systematically ensure that the frequency of supervisory engagement is commensurate to ML/TF risk.

Table Error! No text of specified style in document.**.12 Risk-Based Supervisory Inspections - Banks**

Sector	Year	Risk (H/M/L)		Full Scope Inspections	Thematic Inspections	Incident-Based Inspections	Off-Site Examinations
Banks	2018	H	1	1			
		M	6	4			1
		L	8	4			
	2019	H	1				
		M	6	4		3	
		L	6	2		1	
	2020	H	1	1			

		M	7	3			
		L	4	2			
	2021	H	2	2		1	
		M	3	1		1	
		L	6	3		1	
	2022	H	1	1			
		M	6	3	3	0	
		L	4	2			

641. The type and scope of supervisory inspections on banks is not aligned to risk. According to the Supervisory Manual, all high and medium risk banks are subject to the same type of examination (i.e. full scope inspections), while thematic inspections (which are an ideal tool to focus on specific themes and risks) are only envisaged systematically for low-risk entities and are only considered for higher risk firms in certain limited circumstances. In practice, the purpose of most thematic reviews carried out in 2022 was to follow-up on the remediation of identified breaches. The CBM explained that it adopted this approach of conducting full-scope inspections as opposed to thematic reviews in respect of banks to ensure that all banks would have been extensively examined in line with the new supervisory framework launched in 2019. The CBM is encouraged to widen the use of thematic reviews to also horizontally examine vulnerabilities that impact Montenegro's ML/TF risks.

Case Study 6.5 – Thematic Risk-Based Inspections – Bank A

The CBM carried out a thematic review on Bank A in December 2022. The focus of this examination was narrow, as the Bank was under supervisory measures, with strict deadlines to perform several activities. Hence, the strategy when selecting the sample was to consider all areas where deficiencies were identified in the previous examination (concluded in June 2022), and other higher risk areas identified via the annual AML/CFT questionnaire and the analysis of trends over a three-year period.

For Bank A these areas were: private banking, clients based in off-shore jurisdictions and custody clients. Additionally, the risks recognized in NRA were included, as in every examination (points related to PEPs, real-estate, games of chance). For these clients, the sample selection took place on a semi-random basis and based on all of the client information the Bank provided just before the on-site examination. For example, through client turnover information and number of transactions, it was possible to filter clients by average transaction value; based on client business activity this filtering could also be done for specific business sectors, clients could as be filtered by country of residence, employment status, type of institution etc.

In addition, examiners also took care to cover the whole predefined observation period, in order to establish whether practices of the Bank are showing improvements in relation to imposed measures.

642. The CBM also conducts incident-based inspections at the direction of the FIU, when the FIU identifies potential deficiencies in REs' AML/CFT controls. To date, all incident-based inspections have arisen out of reports by the FIU that a RE failed to report STRs and led to identification of breaches in all cases except one.

643. It was also clear (including from meetings held with Banks) that the CBM adjusts the extent of the sampling of client files and transactions as well as the focus and intensity of supervisory examinations according to the size of the entity and its risk exposure (see case 6.6). When significant deficiencies are detected, the sample is extended to establish whether deficiencies are systemic. CBM officials indicated that on average, in the case of banks, 60 client files are reviewed,

and would always cover the top ten clients in terms of volume of transactions and a sample of clients posing higher ML risk (e.g. legal entities, non-residents, PEPs, private banking clients, clients carrying out particularly risky activities, e.g. gaming, MVTSs and NPOs). The effectiveness of transaction monitoring is also tested based on a sample review. Banks are required to submit transaction reports in a manner which allows the CBM to filter transaction information and detect more relevant ones based on value and lack of transaction purpose information.

Case Study 6.6 – Full Scope Inspection – Bank B

Bank B is a large bank offering various products and services, having a large client base and numerous branches and employees. The pre-examination letter of requests would involve additional tailored requests over and above the standard ones to cater for the increased materiality and risk such as:

- Overview of accounts (according to residency) opened per individual branch
- Overview of private banking clients
- Overview of clients who are trusts or have trusts in their ownership structure
- Overview of 20 largest resident accounts for NP and LP
- Overview of 20 largest non-resident accounts for NP and LP
- Overview of 50 largest transactions
- Overview of clients who use custody services
- Overview of transactions and checks that the Bank conducted for holders of physical transferable funds

Since it was noted that Bank B previously had major issues with record keeping as a result of a recent merge with another large Bank, the sampling also focused on Bank's activities to remediate these issues.

644. In order to ensure that it has access to any information in the possession of the FIU that may be relevant to REs it intends to inspect, the CBM sends details of its planned inspections to the FIU on a monthly basis. The FIU in turn provides the CBM with any information it may have in relation to the REs.

The CBM – Non-bank FIs

645. With regards to supervision of MFIs, the CBM started applying a risk-based approach following the launch of the AML/CFT questionnaire in 2022. Until then, the CBM examined 2-3 MFIs a year through full-scope onsite inspections. The largest MFI however was subject to an on-site inspection only once in four years denoting the lack of risk-based approach.

646. In relation to payment institutions and other non-bank FIs, the CBM has been taking the approach of reviewing 1 payment institution per year, without any risk logic in the planning of examinations. This is clear when considering that the largest payment institution (out of the three) was inspected only once in four years, while much less material payment institutions were reviewed twice over the same period.

647. The remaining non-bank FIs are much less material and pose much less risk in comparison to MFIs and payments institutions. These remaining non-bank FIs have more or less been subject to the same supervisory scrutiny which is indicative of a misalignment to ML/TF risks. The impact of not adopting a risk-based methodology for monitoring these FIs is very low considering that there are only six such FIs and they are all low risk.

Table Error! No text of specified style in document..**13 AML/CFT Supervisory Examinations (Non-Bank FIs licensed by the CBM)**

Sector	Year	No. of REs	Full Scope Inspections	Thematic Inspections	Incident-Based Inspections	Off-Site Examinations
Payment Institutions	2018	4	0	0	0	1
	2019	4	1	0	0	0
	2020	5	2	0	0	0
	2021	3	1	0	0	0
	2022	3	1	1	0	0
Post of Montenegro	2018	1	n/a[196]			
	2019	1	7			
	2020	1	4			
	2021	1	7			
	2022	1	9			
MFIs	2018	7	0	0	0	0
	2019	8	2	0	0	0
	2020	8	3	0	0	0
	2021	8	2	0	0	0
	2022	8	2	0	0	0
Other FIs	2018	2	0	0	0	0
	2019	4	1	0	0	0
	2020	5	3	0	0	0
	2021	6	2	0	0	0
	2022	6	1	0	0	0

The CMA

648. The CMA does not currently apply a risk-based approach to its supervision of REs and does not have a specific AML/CFT team, with only one supervisory officer out of eight being focused on AML/CFT supervision. The CMA is in the processes of establishing a risk-based supervisory methodology and setting up an AML/CFT team, to be composed of four officials. The staff shortages and funding challenges are impacting the CMA's ability to conduct effective supervision.

649. All investment sector entities have been subject to an annual inspection, except in 2020 and in view of the COVID-19 pandemic. These are combined inspections covering prudential, consumer and AML/CFT matters.

650. The AML/CFT component of these inspections is satisfactory but requires improvement. The inspections typically involve a review of RE's risk assessment and AML/CFT policies and examination of ten client files for legal persons and ten client files for natural persons. The CMA's supervisory planning requires improvement to ensure that the frequency, scope and intensity of examinations are responsive to ML/TF risk. Moreover, the quality of examinations should be improved to include a review of a greater number of transactions and files. The manner in which

[196] Prior to 2019 EKIP conducted AML/CFT reviews on postal operators other than the Post of Montenegro, since the LPMLTF at that stage did not clearly define when postal operators became REs, and since other postal operators performed express (postal) service (delivery of letters and parcels) considered to be property having a registered value.

the application of BO obligations is monitored also needs enhancement and checks should go beyond mere confirmation that register excerpts have been obtained by REs.

Table Error! No text of specified style in document**..14 AML/CFT Examinations - Investment and Insurance Sectors**

Sector	Year	No. of REs	Full Scope Inspections	Thematic Inspections	Incident-Based Inspections	Off-Site Examinations[197]
Investment Firms	2018	8	11			25
	2019	10	10			20
	2020	11	1		1	10
	2021	11	10		1	12
	2022	11	10			22
Fund Managers	2018	8	4			23
	2019	6	5			16
	2020	6				7
	2021	6	7			8
	2022	6	2			12
Insurance Companies	2018	4	1			16
	2019	4				16
	2020	4	2			16
	2021	4	1			12
	2022	4	1			4
Insurance Intermediaries	2018	16	3			
	2019	17				
	2020	19				
	2021	19	1			
	2022	19				

The ISA

651. AML/CFT Supervision of life insurance companies and intermediaries consists of a combination of on-site and off-site reviews. Reviews are conducted by a team of three officials (with another two planned to join in 2023) who are also responsible for licensing and prudential supervision. Throughout the review period ISA had no means of identifying brokers and agents that provide life insurance products, which is a matter the ISA has indicated that it addressed after the review period (see section 6.2.2.).

652. Until 2021, one off-site inspection was conducted each quarter. This involves the examination of the REs' internal audit report and examining a sample of policies chosen on the

[197] Off-site examinations involve the submission and analysis of questionnaires. Investment services entities are required to submit these questionnaires twice a year (see section 6.2.2.). For life insurance entities off-site examinations involve the submission and analysis of internal audit reports and data on largest policies. Up until mid-2021 insurance entities were required to submit his information every quarter, and as from 2022 once a year.

basis of value to check that all AML/CFT requirements were implemented. All onsite inspections combine prudential and AML/CFT matters. For onsite inspections, each RE is required to provide an extract from their book of claims, which is useful to identify policies that appear to have unusually high premia and/or high redemption values. The inspectors also conduct interviews with the directors, AML/CFT compliance officer and internal auditor. The sample policies are examined to ensure that: appropriate risk assessment was undertaken, adequate CDD information and documentation has been obtained, the necessary PEP screening was conducted and adequate risk mitigating measures were taken in respect of unusually high amounts of premia or paid redemption values. In relation to CDD for corporate clients, the ISA only checks that REs obtain the relevant excerpt from the CRBE.

653. Decisions as to the plan for the inspection of brokers offering life insurance products is made on an ad-hoc basis by the relevant head of department. Inspections of brokers are not AML/CFT specific and cover prudential and other matters. They also do not involve any checks on implementation of AML/CFT obligations. The last three inspections conducted revealed no deficiencies. In the last three years, the ISA inspected every insurance company and only one RE was found to have deficiencies in their AML/CFT frameworks. The intention of the ISA is that each RE will be subjected to an on-site inspection every four years.

EKIP

654. The Post of Montenegro operates more than 150 branches in Montenegro, not all of which provide financial postal services. EKIP carries out general inspections and AML/CFT specific inspections based on its annual supervisory plan. EKIP uses a number of data sources to assist it in identifying ML/TF risks (see section 6.2.2), which in turn feeds into the EKIP's annual supervisory plan.

655. Between 2017 and 2022, EKIP conducted a total of 27 inspections which were either AML/CFT focused or included AML/CFT matters combined with general supervisory matters, which on average led to the coverage of six post offices every year. EKIP's examinations include an examination of the appointment of the AML/CFT compliance officer, a review of client records, business relations and transactions, a review of documentation for some specific individual transactions and monitoring information system improvements.

DNFBPs

Authority for Inspection Affairs (Games of Chance)

656. The Authority has five officers responsible for monitoring adherence to gaming laws and AML/CFT obligations. The annual plan of inspections is determined by factors such as the size of the entity (in terms of physical outlets), its turnover and location. On this basis, the authority focuses on targeting casinos and the bigger operators of games of chance, with one casino being targeted every year. Other than that, there is no risk-based approach to either determining the frequency nor the type and intensity of examinations. The AT was also informed that when operators of betting shops are inspected, such inspections would also cover the provision of on-line services were applicable.

657. The quality of inspections is very basic and not considered effective to monitor compliance.

Inspections are based on a check-list approach aimed at determining whether (i) an AML/CFT authorised officer has been appointed, (ii) client risk assessments have been conducted, (iii) the organiser has a copy of the indicators of suspicious transactions, (iv) cash and suspicious transactions over €15,000 are reported to the FIU, (v) records of individuals who gambled or drew winnings in excess of €2,000 are retained, and (vi) AML/CFT training is provided to employees. The inspections do not involve any scrutiny of CDD measures (including source of funds), systems to detect PEPs and TFS designated individuals or to monitor and detect linked and potentially suspicious transactions.

658. A positive feature of the system is the level of cooperation with the FIU, where prior to conducting inspections on organisers of games of chance, on a monthly basis inspectors contact the FIU to obtain any adverse information that may be relevant to the inspection.

659. The lack of risk-based methodology to determine the frequency and intensity of AML/CFT examinations, coupled with low-quality examinations is not conducive to an effective system to monitor compliance within this material and risky sector. These factors (and bearing in mind the lack of effective implementation of preventative measures by operators – see IO4) could also explain the reason why out of 56 examinations over five years, AML/CFT breaches were only identified once and involved very minor type of infringements.

MoI - Real estate agents, accountants and CSPs

660. The MoI has a significant population of REs to supervise for AML/CFT purposes (approximately 4,876), being the responsibility of the Section for Supervision in the field of PML/TF composed of only five officers.

661. Supervisory examinations are conducted in accordance with yearly and monthly plans. The risk data available to the MoI is limited and generic and does not enable the formulation of risk-based supervisory plans. By way of example, the MoI does not have information on which accountants are providing CSP services. In practice, this means that MoI inspectors do not know if an accountancy practice is providing CSP services until it commences its inspection. The AT was also informed that CSP services are also provided by specialist CSP firms (other than accountants/lawyers) however the MoI does not appear to have any knowledge of these providers, which prior to 2019 were classified under a larger umbrella of companies providing consultancy and management of businesses. The coverage of consultancy providers was nonetheless very limited (i.e. 6 entities inspected over 4 years out of a total population of approximately 2000 – see Table 6.15.

662. In relation to real estate agents the MoI focuses its efforts on real estate agents located on the Montenegrin coast as that is where non-residents tend to purchase property. Supervisory examination of real estate agents and accountants are initiated by the sourcing of information about the RE's activities, records on clients and transactions (such as whether these were carried out in cash), and their risk categorization, which enables the MoI to determine the sample of client files to be reviewed there and then on-site. The examination itself consists of the following aspects: (i) determining whether clients are risk classified, (ii) determining whether an AML/CFT authorized person is appointed and notified to the FIU; (iii) checking identification and verification measures including whether corporate client files include company structure charts

verified on the basis of CRBE or excerpts of foreign registers; (iv) an analysis of cash transactions and whether source of funds information and documentation is obtained were appropriate; (iv) compilation of PEP declarations and additional checks to identify PEPs and (v) as from 2020 monitoring for TFS obligations. The quality and extent of supervisory examinations while being generally satisfactory needs improvement in some crucial aspects i.e. the monitoring of adherence to beneficial ownership obligations (limited to whether CRBE or other registry excerpts are obtained) and source of funds checks (reduced to checking whether a client declaration on source of funds is collected).

663. Furthermore, the number of inspections conducted on DNFBPs by the MoI is low and not proportionate to the size and risk of some DNFBPs subject to supervision (see Table 6.15).

Notary Chamber - Notaries

664. The Notary Chamber has a Supervision Commission (i.e. Commission for the control of notaries), consisting of three members responsible for monitoring notaries on compliance with all laws they are subject to. In practice monitoring is conducted through informal meetings with each of the notaries once a year, and do not involve the inspection of any client files or other documents, or the monitoring of compliance with AML/CFT aspects apart from monitoring whether all real estate contracts exceeding €15,000 in value are being reported to the FIU. The Commission follows up these meetings by providing minutes of the meetings.

Lawyers

665. Based on the information provided by the Bar Association it does not appear that any AML/CFT supervision for lawyers has been or is being conducted.

Table Error! No text of specified style in document**..15 AML/CFT Examinations - DNFBPs**

Sector	Year	No. of REs	Full Scope Inspections	Inspections with Identified Breaches
Games of Chance Operators	2018	35	12	0
	2019	40	9	0
	2020	38	11	0
	2021	36	10	0
	2022	35	14	1
Accountants/Auditors	2018	525	11	1
	2019	525	2[198]	0
	2020	618	4	1
	2021	692	2	1
	2022	714	11	1
Real Estate Agents	2018	1423	11	3
	2019	1423	1[199]	0
	2020	1589	56	17
	2021	1694	52	17
	2022	1785	64	15
	2018	1937	1	0

[198] In 2019 supervision of DNFBPs was shifted from the FIU (APMLTF) which had an impact in the number of visits.
[199] Same as above.

Consultancy and Management of Businesses (Also providing CSP services)[200]	2019	1937	0	0
	2020	n/a	0	0
	2021	n/a	5	5
	2022	n/a	0	0
Notaries	2018 - 2022	56-59	0	0
Lawyers	2018 - 2022	902-987	0	0
DPMSs	2018- 2022	122 - 210	0	0

6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

666. Supervisory Authorities have an array of supervisory and enforcement measures applicable to AML/CFT breaches, including written warnings, the imposition of remedial measures, temporary or permanent prohibitions from conducting business and the imposition of misdemeanour fines.

667. Within the financial sector the CBM has the most well-developed approach to address AML/CFT deficiencies, although reliant on remediation measures. The CMA makes use of written warnings and the imposition of remedial measures and has also suspended and revoked licences in case of serious unremedied AML/CFT breaches. ISA and EKIP addresses AML/CFT shortcomings exclusively through warnings and remediation requests. The MoI is the most active in applying misdemeanour fines, while the Authority for Inspection Affairs (Games of Chance) has issued two misdemeanour orders in 2022. Other DNFBP supervisors do not conduct AML/CFT supervision and any ensuing remedial and enforcement measures.

668. Apart from the CBM, none of the supervisors have sanctioning policies and guidance to assist them in issuing proportionate, dissuasive and effective sanctions. The CBM's procedures are not considered detailed enough to determine the appropriate measures to be taken and the quantum of any pecuniary fine. By way of examples these procedures do not include a methodology to determine (i) the importance of the various AML/CFT obligations and the impact of violations which would help evaluate the severity of breaches, (ii) whether a violation is systemic and (iii) the quantum of any potential pecuniary fine.

CBM

669. The supervisory and enforcement measure most used by the CBM is the written warning. A written warning serves to notify the RE about identified AML/CFT breaches and requires remedial action within a defined timeframe. To ensure that all breaches are remedied, the CBM follows-up and carries out a final, targeted inspection. If the CBM is not satisfied with the remediation measures, it enters into a "settlement agreement" with the senior management of the RE, which makes the individual or individuals in question personally responsible for completing the remediation. Failure to undertake the necessary remediation measures, could lead to the revocation of licenses for REs or management officials, however so far the CBM did not

[200] Following changes to the LPMLTF in 2019, persons/entities providing company formation and/or fiduciary services started being regarded as REs subject to AML/CFT obligations. The population of such services providers is unknown.

take any such actions as banks have always adhered to and implemented the required remedial action. This goes to evidence the effectiveness and impact of these remediation actions (see Table 6.16 and cases 6.7 and 6.8).

Case Study 6.7 - Written Warning issued on Bank A in September 2022:

An on-site examination on one of the largest banks conducted in June 2022, identified several AML/CFT breaches. The CBM issued a warning ordering the bank to eliminate the established irregularities, by:

- introducing an adequate record keeping system;
- improving the internal control mechanisms by the introducing electronic KYC forms to permit the systemic collection of CDD data and monitoring of expired CDD documents;
- taking measures to improve the detection of ML/TF suspicions;
- reclassifying the risk of 55 clients not categorised as high risk, and develop an automated solution for the determination of client risk;
- deploying a system to record and display the purpose of client transactions on clients' transaction reports, to enable more effective on-going monitoring;
- conducting repeated controls for a number of clients to ensure the proper application of CDD and BO obligations; and
- conducting employee training and regularly monitor the implementation of AML/CFT obligations.

The Bank was required to address the identified breaches within six months and to report monthly to the CBM on progress achieved. Within the stipulated deadline the Banks provided evidence (via monthly reports) to the CBM on how it addressed all the deficiencies identified in the written warning. These included: (i) the implementation of a KYC solution integrated with account opening and which enables immediate scanning and saving of all documentation on a data management server, (ii) the adoption of new AML/CFT reports reflecting suspicious indicators, (iii) improvements to the transaction monitoring solution, (iv) a reclassification of the risk for 55 clients and others identified by the bank itself which were wrongly risk assessed, (v) adjustments to allow proper retention and display of transaction information, (vi) carrying out repeated controls on identified clients which led to the enhancement of CDD and termination of some business relationships, and (vii) formulated a professional development and training programme and carried out a number of training events.

Following the receipt of these monthly reports, the CBM carried out testing and an on-site examination (in December 2022) to confirm the proper implementation of some aspects that required testing and verification on-site. By way of example the CBM examined the new KYC solution for opening accounts. Employees were asked to demonstrate how data was logged into the core system, how and when documentation was scanned and stored on the server, and whether date and name logs were maintained. Examiners also tested the enhancement to the Bank's internal control systems to ensure the verification of file completeness and proper implementation of the KYC procedure. The Bank explained how initially acquired data and documents were being verified by the Payment Operations Department. The CBM interviewed employees of this department, tested the quality of data verification conducted, and whether KYC data was being safely recorded on the server and made accessible at any point. Regarding the proper detection of suspicions the CBM reviewed new report types launched by the bank to identify irregularities through Transit Account Reports, IP Address/Device ID Report, ATM Reports, Strawman Debit Card Reports, Trends and Tendencies Report, and Branch Network Report. The testing also involved the creation of dummy accounts to ensure that clients (e.g. clients being or connected to PEPs) would be automatically and properly classified in the future.

Case Study 6.8 - Written Warning issued on Bank B in February 2022:

CBM performed a regular on-site examination of Bank B in December 2021, which revealed several key AML/CFT deficiencies. Considering the significance of these irregularities but at the same time the

readiness of the bank management to rectify them, CBM issued a written warning in February 2022, obliging the Bank to:

- eliminate deficiencies in the risk classification of clients noted in the Examination Report and improve the software for automated risk classification;
- keep records of dates and reasons for classification of clients and make this data available to the employees in charge of client monitoring;
- update the Risk Analysis procedure to include the methodology for implementing automated ML/TF risk classification;
- carry out proper analysis of complex and unusual transactions which have no obvious economic justification or legal purpose;
- ensure proper collection of source of funds data and supporting documentation;
- improve the content of transaction reports to ensure better usability by employees;
- provide additional training and education of all employees on some aspects.

Bank B was required to address the identified deficiencies within 90 days. For on-going improvements, such as one related to analysis of complex and unusual transactions, Bank B was obliged to report monthly. Based on the provided evidence and reports by Bank B, CBM conducted an on-site examination which confirmed that all remediation measures were taken.

670. Pursuant to the LPMLTF, the CBM is also empowered to commence what is known as a misdemeanour procedure where breaches of the law are identified. To commence a misdemeanour procedure against a RE the CBM must file the proceedings with the Misdemeanour Court. The Misdemeanour Court then determines if the RE is guilty of committing the misdemeanour and if so the appropriate financial penalty. The CBM also has the power to impose an "on the spot fine" itself where a breach is identified following the conclusion of an examination.

671. The effectiveness of the misdemeanour procedure is undermined not only by the low level of fines imposed but also by prescription periods set out in the Law on Misdemeanour. The following statutory deadlines apply: (i) initiate the action or impose the fine itself directly within 60 days from when the CBM gets to know about the breach; and (ii) initiate the action or impose the fine itself directly within 1 year from when the breach took place. The law also envisages that the proceedings in court have to be concluded within two years from when the breach takes place. The CBM initiated seven misdemeanour procedures (three of which are still on-going) for what it considers to be the most serious of breaches: i.e. failure to report STRs, and non-compliance with BO obligations. Out of four misdemeanour fines imposed by the Misdemeanour Court, two have been revoked on appeal, as the processes did not respect the prescription periods.

672. The Law on Credit Institutions envisages other enforcement measures such as the ability to restrict and revoke licenses. It is however not clear whether the CBM may revoke license of Banks and impose all these other enforcement measures on other FIs when systemic, repeated or serious AML/CFT breaches are identified (see c.27.4). No such actions for AML/CFT breaches were taken by the CBM during the review period.

Table Error! No text of specified style in document.**.16: Written Warnings Issued/Implemented - CBM**

	2018	2019	2020	2021	2022

	Orders Issued	Orders Implemented	Orders Issued	Orders Implemented	Orders Issued	Orders Implemented	Orders Issued	Orders Implemented	Orders Issued	Orders Implemented
Banks	3	3	1	1	7	7	5	5	5	4[201]
MVTSs[202] and E-Money Institutions					1	1				
Other FIs							4	4		

Table Error! No text of specified style in document.**.17 Misdemeanour Fines - CBM**

	2018		2019		2020		2021		2022	
	Total No. of Fines	Total Value of Fines	Total No. of Fines	Total Value of Fines	Total No. of Fines	Total Value of Fines	Total No. of Fines	Total Value of Fines	Total No. of Fines	Total Value of Fines
Banks	0	0	1	€3,500 (0)[203]	0	0	2	€3,600[204]	1	€4800
MVTSs[205]	0	0	0	0	0	0	0	0	0	0
Other FIs	0	0	0	0	0	0	0	0	0	0

The CMA

673. The CMA uses remediation orders, misdemeanour fines and licence restrictions or revocations to drive compliance. While no misdemeanour fines have been imposed, the AT was informed about two ongoing proceedings.

674. The CMA issues remediation orders (i.e. rescripts to remove irregularities), setting out identified breaches, remediation required and the timeframe for completion. REs are also required to provide the CMA with proof that remediation has been completed. In circumstances where REs failed to comply with such orders and to provide proof of remediation, the CMA took action to restrict or withdraw the RE's authorisation (see cases 6.9 and 6.10).

Case No. 6.9: Temporary withdrawal of authorisation for failure to remediate

The CMA conducted a supervisory examination of a brokerage firm, which identified a number of breaches of the LPMLTF. The CMA subsequently issued the brokerage firm with an examination report detailing the outcome of the inspection and a Decision setting out the steps that the brokerage firm was required to take in order to remediate the identified breaches. The brokerage firm subsequently failed

[201] One order is not considered implemented as its implementation is still on-going
[202] Includes Payment Institutions supervised by the CBM and the Post supervised by EKIP
[203] On appeal this fine was revoked
[204] On appeal one of the fines was revoked
[205] Includes Payment Institutions supervised by the CBM and the Post supervised by EKIP

to provide the CMA with the required proof that the remediation had been completed. As a result of the brokerage firm's failure to comply with the Decision of the CMA, in March 2022 the CMA issued a further decision prohibiting the brokerage firm from conducting its business for a period of 12 months. Pursuant to this Decision the brokerage firm was required to provide the CMA with proof that all of the AML/CFT breaches had been remediated during this 12-month period.

Case No. 6.10: Revocation of License – Investment Firm

Following the receipt of information from the Special Prosecutor's Office requesting direct control to establish the legality of conduct of business by an investment services firm (including adherence with AML/CFT laws), the CMA started an intensive targeted inspection of the entity in October 2020. This inspection led to the identification of several violations of the Law on Capital Markets and the LPMLTF. As a result, in December 2020 the CMA issued a Decision suspending the authorisation of the firm and requested it to address the identified breaches. At the same time the CMA also initiated misdemeanour proceedings for AML/CFT infringements. The CMA established that the entity failed to remedy the identified AML/CFT shortcomings which led to the CMA revoking the entity's license in September 2021.

ISA and EKIP

675. ISA imposed three remediation orders to ensure compliance within the life insurance sector. During the period under review, EKIP confirmed that it has identified AML/CFT deficiencies arising out of its inspection of the Post of Montenegro and issued a total of ten written warnings in respect of these deficiencies. After the expiration of the deadline specified in the written warning, the EKIP conducts further supervisory inspections to ensure that breaches are remediated appropriately. The EKIP confirmed that all written warnings were complied with.

Table 6.18 Supervisory / Enforcement Actions - CMA

		2018	2019	2020	2021	2022	Total
CMA	Rescript to remove irregularities	1	0	0	2	2	5
	Request for infringement proceedings	0	0	1	0	1	2
	Suspension / Revocation of License	0	0	0	3	1	4
ISA		2018	2019	2020	2021	2022	Total
	Warnings	0	0	0	0	0	0
	Remediation Orders	2	0	1	0	0	3
	Misdemeanour Fines	0	0	0	0	0	0
EKIP		2018	2019	2020	2021	2022	Total
	Warnings	7	1	1	1	0	

Ministry of the Interior

676. The MoI has imposed a number of on-the-spot fines and, on two occasions, initiated misdemeanour court proceedings, which led to the imposition of fines by the court on REs for AML/CFT breaches. On average, these misdemeanour fines range from €1,600 - €1,900 per case, which is equivalent to the minimum amount which can be imposed by the MoI. These fines are not considered to be effective and dissuasive enough to drive compliance in the regulated sectors. The MoI also provided case studies showing that it orders the remediation of deficiencies and carries out follow-up controls to ensure remediation. The same restrictions with the Law on Misdemeanour explained for banks impact the MoI's actions.

Table 6.19 - Misdemeanour Fines - MoI

	2018		2019		2020		2021		2022	
	No. of Fines	Value of Fines	No. of Fines	Value of Fines	No. of Fines	Value of Fines	No. Fines	Value of Fines	No. Fines	Value of Fines
Accountants /Auditors	2	€3,500	1	€3,500	2	€2,400			2	€3,500
Real Estate Agents	5	€8,300			26	€52,900	34	€58,400	29	€50,900
Consultancy and Management of Businesses [206]							10	€17,500		
Car Dealers	2	€5,900							2	€3,500
DPMSs										
Total	9	€17,700	1	€3,500	28	€55,300	44	€75,900	33	€57,900

Authority for Inspection Affairs (Games of Chance)

677. The Authority for Inspection Affairs has not taken any remedial action, but it has issued two misdemeanour orders in 2022 for failure to report transactions of more than €15,000. One fine was imposed on a legal entity (€3,000) and the other on a natural person (€500).

Notary Chamber and the Bar Council

678. The Notary Chamber confirmed that it has identified between five and six notaries who failed to report contracts of property sales of €15,000 or more to the FIU. The Notary Chamber confirmed that however no enforcement or other action was taken. Notwithstanding the AML/CFT supervisory and enforcement powers vested in the Chamber, it did not appreciate and consider these functions and responsibilities as its own and could not indicate any other agency or government body that may take action in relation to notaries in these cases.

679. The Notary Chamber also noted that notaries are subject to an administrative disciplinary process however this process appears to be confined to situations where a notary has breached ethical codes of practice only.

680. The Bar Association has not taken any action against or imposed any sanctions on lawyers for breaches of AML/CFT requirements and similarly to the Notary Chamber expressed doubts whether it should be vested with supervisory and enforcement powers.

6.2.5. Impact of supervisory actions on compliance

681. The AT observed that the supervisory and enforcement measures undertaken by the CBM are positively impacting compliance within the supervised financial sectors. This was also the

[206] A number of which also provide company formation and management services.

case, although to a limited extent, for other FI supervisors and the MoI.

The CBM

682. The CBM regularly makes use of the written warning procedure in circumstances where banks are found to have committed breaches of the LPMLTF, and to a lesser extent in the case of other FIs. This tool provides the CBM with a mechanism to require the REs to take steps to rectify breaches within a certain timeframe. REs are required to provide regular updates to the CBM on the remediation exercise and, the CBM conducts a final targeted inspection to ensure that all necessary remediation measures have been completed.

683. Over a five-year period (2018-2022) the CBM conducted 44 inspections on banks which resulted in the issuance of 21 written warnings. Out of these, only a small number resulted in requests for additional time to complete the remediation exercise. The CBM has reported that the REs that are subject to written warnings tend to rectify breaches quickly and within the allowed timeframe. This conclusion is supported by the fact over a five-year period there were no instances where a RE failed to implement the remedial measures imposed by the CBM.

684. The CBM also reports that it has observed a marked improvement in certain specific areas as a result of remediation actions. Specifically, the CBM reports a decrease in the frequency of deficiencies in respect of monitoring business activities and transactions. The CBM contends that this conclusion is supported by the fact that whereas in 2019 14% of deficiencies related to monitoring of business activities and transactions this fell to 8% in 2021. Similarly, deficiencies in the RBA went down from around 31% in 2017 to 11% of all identified irregularities in 2021.

685. Banks, non-bank FIs and payment institutions all spoke favourably of the CBM's approach to remediating breaches of AML/CFT requirements. In all cases REs confirmed that where AML/CFT breaches had been identified by the CBM, they were provided with an examination report detailing the deficiencies identified, the steps required to rectify those deficiencies and the timeframe within which the remediation had to be completed. In all cases, REs confirmed that the breaches had been remediated to the satisfaction of the CBM.

686. The AT is of the opinion that the remediation and more crucially, the follow-up actions taken by the CBM in response to identified AML/CFT breaches are having a positive impact on compliance and are driving up standards. The AT also observed that the risk mitigation policies that banks and non-bank FIs are required to apply by international parent entities or in order to maintain their correspondent relationships have a significant impact on REs' attitude to compliance. While the CBM is to be commended for its work in identifying and remediating breaches, the AT is of the view that major improvements are required in respect of its enforcement framework to make sure it can take action that deters serious misconduct.

The CMA, ISA and EKIP

687. The CMA communicates the outcome of its supervisory inspections via examinations reports and formal decisions setting out the remedial measures that the firms are required to take within a specified timeframe. Firms are required to provide proof of completion of remediation within a certain timeframe.

688. EKIP also communicates the outcome of their supervisory inspections to REs providing

details of the deficiencies identified together with the improvements that are required to rectify the deficiencies. The EKIP has confirmed that it conducts follow-up inspections with a specific focus on ensuring that all remediation measures have been taken.

689. The ISA does communicate its findings to REs and also provides details of the remediation steps that are required. REs are subsequently required to provide the ISA with a report setting out how the remediation measures have been implemented. This report must be accompanied by evidence of the remediation.

DNFBP Supervisors

690. The remediation orders imposed and followed-up by the MoI induced REs to improve some aspects of their AML/CFT frameworks, consisting in the appointment of AML/CFT compliance officers and compilation of risk analysis. Though positive, these improvements are limited and do not address the most relevant weaknesses identified by the AT within the AML/CFT frameworks of DNFBPs supervised by the MoI (see IO4). Thus, the MoI's supervisory actions do not seem to be positively impacting compliance within the supervised DNFBPs.

691. The AT was not provided with information from the remaining DNFBP supervisors to demonstrate the impact of supervisory action on compliance.

6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks

692. The CBM, CMA, ISA, the MoI and the Authority for Inspection Affairs have provided guidance to REs on how to assess ML/TF risk. Other guidance has been issued including the: (i) Rulebook on the manner of work of the compliance officer – detailing how compliance officers of REs should go about ensuring that AML/CFT implementation programs are followed; (ii) Rulebook on the indications of suspicious transactions and clients – which provides a list of red flags indicative of potential suspicious activities for various FIs and DNFBPs; and (iii) Guidelines on the implementation of international restrictive measures by banks and financial institutions. The Guidelines other than those issued by the CBM, do not provide practical sector specific guidance on the implementation of CDD obligations.

693. The CBM has also been active in recent times to provide training on risk analysis, risk management and the outcomes of the NRA to banks and other FIs (see Table 6.20). It was however noted that only one training event over the past 3 years focused on trends, typologies and red flag indicators of suspicions, and the practical implementation of AML/CFT obligations. When these topics were dealt with, they were dealt with very summarily to be considered impactful. The CBM also regularly provides REs with updates on the FATF high risk countries as well as updates on the imposition of UN sanctions.

694. It is observed that there is a lack of communication on the quality of STRs and CTRs reported to the FIU. Except for banks that received such feedback indirectly from the CBM and in some cases via direct meetings requested with the FIU, the other REs only obtain feedback on whether the FIU established a case of suspicion or otherwise as a result of that STR.

Table 6.20 AML/CFT Training provided by the CBM

Date	Name and brief description of training	Entity	Participants
December 24, 2020.	Risk management of ML/TF risks in banks	CBM	Banks (22 participants)
January 29, 2021.	Webinar: ML/TF Risk management in other FIs	CBM	OFIs (29 participants)
September 19, 2022.	Seminar: improving the system of preventing money laundering and financing of terrorism in financial institutions	CBM	All FIs (44 participants)
February 7, 8 & 10, 2023	Interactive training: NRA; RE Risk analysis and management; implementation of International Restrictive Measures	CBM	Banks (11 AML officers)
February 13, 2023	Interactive training: NRA; RE Risk analysis and management; implementation of International Restrictive Measures	CBM	Other FIs (16 AML officers)
February 13, 2023	Meeting with representatives of Payment Institutions to discuss the application of the list of indicators for the financing of terrorism as well as the management of the ML/TF risk	CBM	PIs (3 AML officers and deputies)

Overall conclusions on IO.3

695. In reaching its conclusion the AT has placed a higher weighting on the supervisory actions taken in respect of banks, given the very significant role played by banks in various financial and non-financial sectors in Montenegro (see section 1.4.3), including their significant involvement in transactions conducted by Montenegrin legal persons and real estate transactions. Due weighting was also given to other important sectors namely casinos, lawyers, notaries and CSPs.

696. The CBM has a solid licensing regime for banks, a good understanding of ML risks, but a limited understanding of TF risks. The CBM has established an adequate risk assessment framework and risk-based supervision for several years, which still requires further development. The CBM takes systematic action to address breaches of AML/CFT obligations within the banking sector, which actions are effectively followed up and are improving compliance. Major enhancements, particularly regarding the imposition of pecuniary fines via the misdemeanour procedure, are necessary to make the enforcement regime effective and dissuasive in driving compliance.

697. Regarding the important sectors of casinos, accountants, lawyers, notaries, and CSPs, the AT has identified major to moderate issues within the authorisation and registration processes. The BA and NC have a limited understanding of sector specific risks for lawyers and notaries, while AML/CFT supervision and enforcement has been lacking in the case of lawyers and limited for notaries. The supervisory initiatives undertaken by the MoI are more positive, however some factors undermine their effectiveness, namely, a lack of resources and expertise, the absence of a systematic risk-based supervisory model and an inability to identify the accountant/lawyers and other entities providing CSP services falling under its supervisory remit. The MoI is the authority

that makes most use of misdemeanour actions to impose pecuniary fines for AML/CFT breaches, however these are limited in value and deterrence. The level of supervision and enforcement for operators of games of chance is generally weak, although the AT notes positive improvements in the framework especially in regard to sector and RE specific risk understanding.

698. The effectiveness of supervision on the remaining moderately important sectors, namely (i) Investment Sector, (ii) MFIs, (iii) MVTSs, (iv) Real Estate Agents, and (v) VASPs, varied extensively, from a total absence of licensing and supervisory framework in the case of VASPs, to sufficient supervision in the case of MFIs, MVTSs and the Investment Sector.

699. Taking into consideration and putting more weight on the performance of the CBM as the supervisor for banks, being by far the most material and important sector, and also considering the positive and weak aspects of the supervisory framework for the important DNFBPs the AT is of the view that Montenegro has achieved IO3 to some extent.

700. **Montenegro is rated as having a moderate level of effectiveness with IO.3.**

7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 5

a) Information on the creation and types of legal persons and arrangements is publicly accessible.

b) Most competent authorities (notably LEAs, FIU and the CBM) have an adequate understanding of the ML risks posed by legal persons and have assessed elements of the respective ML threats through multiple exercises: (i) the 2020 NRA, (ii) the 2021 SOCTA and (iii) a specific 2019 risk assessment. LLCs have been identified as the most vulnerable type of legal person for ML purposes. These risk assessments could benefit from further comprehensiveness in relation to vulnerabilities and risk-control measures. A limited analysis and understanding of ML/TF risks was noted in relation to foreign legal arrangements, operating in Montenegro, which materiality is however negligeable. TF vulnerabilities were not examined.

c) The Montenegrin authorities have put in place various mitigating measures to prevent legal persons from being misused, which vary in their level of effectivity. These include: (i) a requirement to register and update information in the CRBE, (ii) obligation to have a bank account for legal persons, (iii) setting up of a BO register, (iv) a requirement to have company statutory documents notarised, and (v) a Central Registry of Transaction Accounts holding information on transaction account holders including legal persons.

d) The registers and the registration mechanisms in place, apart from the ones applied by the Central Clearing Depository, have a number of shortcomings which impede the effectiveness of the system in place. Particularly, overreliance on self–declarations, limited verification, lack of ongoing monitoring of changes and absence of sanctions for failures.

e) Despite the BO register being largely unpopulated, the authorities demonstrated ability to obtain BO information from: (i) the REs and (ii) legal persons themselves, which are bound to hold accurate and updated BO information. Some concerns were noted on the accuracy of BO data maintained by REs (other than the most material ones i.e. some Banks including the major one and accountants). The lack of AML/CFT regulation and supervision of non-accountant/lawyer CSPs also impacts the availability of company BO information, however it is estimated that in the majority of cases CSP services are provided by accountants or lawyers.

f) The AT has overall concerns on the availability of adequate, accurate and current basic and BO information on foreign legal arrangements operating in Montenegro. However, it does not appear to be of major impact in the light of the limited number and materiality of foreign legal arrangements operating in Montenegro.

g) Montenegrin authorities were unable to demonstrate that effective, proportionate and dissuasive sanctions have been applied against persons not complying with the requirements related to basic and beneficial ownership information.

Recommended Actions

Immediate Outcome 5

a) Competent authorities should conduct an in-depth analysis of the ML/TF risks related to the abuse of all types of legal persons, including (i) single member LLCs; and (ii) the use and involvement of CSPs. The analysis should extend to the use of strawmen, as well as the exposure of legal persons to high-risk underlying predicate offences, most notably corruption and OCGs. The analysis would benefit from the use of a wider set of information and intelligence and should also seek to examine the control framework to mitigate the misuse of companies.

b) Systemic mechanisms should be implemented to ensure: (i) the verification of all relevant information provided when registering a legal person, in particular the verification of identity of all company founders and BOs; (ii) the prevention of legal persons from being owned or controlled by criminals or their associates; (iii) introduction and implementation of an ongoing monitoring mechanism to ensure the adequacy, accuracy and timely detection and verification of changes to basic and BO information; (iv) application of effective, proportionate and dissuasive sanctions for failure to retain and provide adequate, accurate and timely basic and BO information, and (v) compiling and maintaining statistics on application of sanctions. This should be complemented by the allocation of adequate powers and resources to the CRBE and CRBO.

c) Authorities should ensure full population, operation, and accessibility of the CRBO register. Consideration should be given to enhance and promote discrepancy reporting and ensuring that any changes are reported in a timely manner.

d) Supervisors should implement targeted activities (as required under RA(f(iv)) for IO3) to monitor the effective implementation of BO obligations by the most relevant REs providing services to legal persons and arrangements, and ensure the availability of adequate, accurate and current basic and BO information.

e) Guidance and training should be provided to the Registers to ensure proper understanding of the concept of the BO.

f) Montenegro should take actions to address technical deficiencies relating to transparency of legal persons and arrangements (R.24-25) which inhibit the effectiveness of the overall regime.

701. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25,

and elements of R.1, 10, 37 and 40.[207]

7.2. Immediate Outcome 5 (Legal Persons and arrangements)

702. As of December 2022, there were 66,260 legal persons registered in Montenegro. Legal persons carrying out economic activities are regulated under the Law on Companies and include general partnerships (GP), limited partnerships (LP), limited liability companies (LLCs), and joint stock companies (JSC). The most used form to conduct business activities is the LLC (amounting to 54,666) and in particular the single-member LLC. See Table 1.2 for statistics on the number and type of legal persons in Montenegro.

703. Taking into consideration the fact that Montenegro is not a financial nor a company formation centre the total number of legal persons appears to be significant and disproportionate to the country's economic profile and characteristics. There are number of reasons contributing to this significant number. The SOCTA 2021 notes a modus operandi involving Turkish smuggling networks establishing companies in order to acquire transit visas, which may also contribute to the significant volume of legal persons (mainly LLCs) in Montenegro. Moreover, approximately 16,000 LLCs have not submitted their financial statements which is indicative of a potential substantial number of inactive companies that are still registered. Other contributing factors to the high number of legal persons are the straight-forward administrative procedures, as well as low costs for establishment and registration of LLCs.

704. During the past years, there was a significant increase in the number of registered companies (i.e. from approximately 37,000 partnerships and companies in 2017 to almost 56,000 by the end of 2022). This increase is mainly in relation to new LLCs, primarily due to the ease of registration procedures and costs. The number of companies struck off the register amounted to 10,530 over the review period and resulted solely from court or voluntary winding up processes.

705. Legal persons do not tend to present structure complexity. According to the statistics provided by the CRBE, most LLCs are owned solely by natural persons (51,992 out of 54,666 as of December 2022). Around half of these companies are exclusively owned by domestic persons.

706. Legal arrangements cannot be formed in Montenegro. However, the LPMLTF provides for a definition of "trust" as well as CDD and other measures to be taken by REs when establishing a business relationship or carrying out occasional transactions with a client that is a foreign trust[208]. Statistics provided indicate that there is a limited presence of foreign trusts in Montenegro's financial sector, while they have rarely featured in STRs or incoming FIU intelligence.

707. In August 2021, a Central Beneficial Ownership Register (CRBO) has been established. The CRBO however, holds BO information on a very small number of companies (i.e. 32 out of total number of companies required to submit BO information[209]). This despite several calls for

[207] The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.
[208] See R.10 analysis.
[209] This includes all legal persons excluding individual entrepreneurs, single member LLCs and direct and indirect budget users, which amounts to almost 37608 legal persons.

registration organised by the Montenegrin authorities. It is also worth noting that single-member LLCs are exempt from providing BO information to the CRBO, although their founders (the majority of which are natural persons) would be registered within the CRBE. The risk of use of strawmen or undeclared representatives (the extent of which is not assessed and unknown) however impacts the availability of accurate BO data for single-member LLCs. Where founders are foreign legal persons information on their BOs is thus unavailable through any of these two registers. Nevertheless, this information can be obtained through the banks, which open bank accounts for the latter.

7.2.1. Public availability of information on the creation and types of legal persons and arrangements

708. Types, forms and features of legal persons, as well as information on their creation is provided under the Law on Companies and the Law on NGOs (see c.24.1) in respect of commercial entities and voluntary organisations. This information is complemented by a rulebook issued by the CRBE on the registration procedure, which was unavailable on the Tax Administration's website for approximately eight months including during the on-site visit due to a cyberattack. In respect of other types of legal persons not undertaking business activities information on the creation process and the different types of such legal persons is provided under various specific laws. All legal acts adopted in Montenegro are officially published and accessible free of charge.

709. The Tax Administration administers both the CRBE (holding basic and shareholder information on legal persons) and the CRBO (holding BO information). These registers as well as the NPO register, administered by the Ministry of Public Administration, were not fully operational during the onsite mission due to the mentioned cyberattack.

7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

710. The Montenegrin authorities have assessed elements of ML/TF risks associated with legal persons through: (i) the 2020 NRA, (ii) the 2021 SOCTA and (iii) a separate specific risk assessment conducted in 2019. Nevertheless, a significantly more comprehensive and detailed assessment is necessary for Montenegrin authorities and the private sector to understand ML/TF risks and vulnerabilities of legal entities, and the adequacy of the control framework.

711. **NRA** - The 2020 NRA contains some general descriptions of ML threats associated with legal persons as well as typologies observed by the FIU. The NRA highlights that the most serious risks of misuse of Montenegrin legal entities are in relation to tax fraud, corruption, and linked ML, through fictitious transactions, and the misuse of offshore companies. The NRA identified the establishment of fictitious companies and the use of false invoices and cash withdrawals (later reinvested) as a modus operandi that a number of legal persons undertake to lower their tax obligations[210]. Typologies were also identified through supervisory findings in relation to transactions coming from foreign legal entities (established in tax havens) to Montenegrin legal

[210] NRA page 56

entities, under the justification of "consulting services". These incoming funds would be retransferred after a few days back to the foreign legal entities' bank account. Such typology was found to be increasingly common in the recent years[211].

712. **SOCTA** - The 2021 SOCTA highlights the existence of a typology involving the establishment of legal persons in Montenegro by founders who are migrants, and which use a certificate of a registered company in Montenegro for the purposes of obtaining a transit visa to reach the countries of final destination[212]. This assessment also highlights the use of Montenegrin companies, by OCG members who at times own such companies through foreign legal persons set up in tax havens or through family members or close persons (i.e. strawmen)[213]. Another typology in relation to legal persons involved the misuse of e-commerce services by Montenegrin legal entities, which were registered at the same address, without civic number and with the same activity code (activity of computer programming services). These companies were operative for a short period of time and were subsequently deregistered from the CRBE[214]. Companies engaged in import/export services and transport of goods are also used to smuggle drugs[215].

713. **Specific risk assessment on legal persons** - With regards to the specific risk assessment on the abuse of legal persons conducted in 2019, various sources of data were used, including from the CRBE, SPO, FIU, MoJ and the Police directorate. The analysis was however mainly based on data from investigations involving legal entities and did not take into account other information, such as information coming from foreign counterparts and STR data. The analysis has concluded that limited liability companies (LLC) are the most represented in criminal proceedings and that they are most often used when committing criminal offences, including ML. The ML proceedings initiated by the SPO highlighted the involvement of legal persons, notably LLCs, and were followed by indictments. Over the review period criminal proceedings were initiated against a substantial number of LLCs (albeit in a limited number of cases – see IO.7). There were 166 legal entities investigated and 23 legal entities were indicted for ML in 2017-2022, out which the court confirmed the indictments against 12 legal entities. As regards the predicate offences, legal persons have mostly been represented in tax evasion cases.

714. LLCs are thus identified as the most vulnerable and they represent a large majority of the total number of legal persons established in Montenegro. This understanding was also confirmed by the FIU through the intelligence held, who identified the LLCs as the most vulnerable, based on the simple requirements to set them up and the low amount of capital required.

715. The AT however notes that these risk assessments do not assess the vulnerabilities of Montenegrin legal persons including the misuse of powers of attorney, use of shell companies and companies having other entities/arrangements within their shareholding structure. It further does not appropriately consider how legal persons could be vulnerable to ML from corruption or OCG activities representing major areas of risk for Montenegro. Montenegrin authorities have also not assessed the adequacy of the control framework to prevent the misuse of legal persons

[211] NRA page 163
[212] Serious and organized crime threat assessment, 2021, page 58.
[213] 2021 SOCTA, page 71.
[214] 2021 SOCTA, page 74.
[215] 2021 SOCTA, page 20.

and to mitigate vulnerabilities identified.

716. **BO Transparency** - There has been a sharp increase in the number of registered entities during recent years in particular LLCs (see introduction). Single-member LLCs are exempt from the obligation to provide BO information to the CRBO, nonetheless single-member LLCs are required under the Company Law to hold data on shareholders, which is available in the CRBE, and the large majority of LLCs are exclusively owned by natural persons. For the small percentage of single-member LLCs that have shares held by or through foreign legal persons, data on the ultimate BOs is not retained and available by LLCs or through the two registries. Moreover, considering that the large majority of LLC shareholders are natural persons no assessment has been conducted to identify any trends and patterns of abuse of such companies, to conceal BO such as through the use of strawmen.

717. With regards to foreign legal arrangements operating in Montenegro, the authorities explained that according to analysed statistical data, there appears to be minimal presence of foreign trusts in Montenegro. In fact, less than ten foreign legal arrangements/ trusts have opened bank accounts with Montenegrin banks with insignificant amount of assets held and they have rarely featured in FIU intelligence. There is however no regulatory regime for TCSPs in Montenegro and the exact population of lawyers, accountants, and other individuals/entities conducting TCSP services is not known. This limits the understanding of the extent to which foreign legal arrangements may be used in Montenegro.

718. Issues with the understanding of the BO concept and application of BO verification measures by REs were also identified (see IO4). This vulnerability along with the level of effectiveness or the approach to obtain, retain and make available accurate and updated BO data were likewise not assessed and analysed.

719. **TF** - Other than general elements presented in the 2020 NRA in relation to the NPO sector (see IO.10), there was no consideration of the different inherent vulnerabilities of all types of legal persons and arrangements, including on their activities for TF purposes.

720. LEAs and the FIU (which have dealt with criminal cases involving legal persons) demonstrated an adequate understanding of the current risk of abuse of legal persons in relation to both ML and TF. The CBM, the main AML/CFT supervisor, recognised the increased risks associated with corporate accounts, and could articulate modus operandi how legal entities could be abused for ML purposes drawing from the NRA findings. Other authorities were however unable to share concrete views on risks associated with legal persons including the results of the risk assessment exercises. Some of the authorities did not acknowledge any risks in relation to abuse of legal persons.

7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements

721. The Montenegrin authorities have put in place an array of mitigating measures aimed at preventing legal persons from being misused, which vary in their level of effectivity. These include (i) transparency of basic information through registration and a requirement to update the information in the CRBE within seven days by the legal persons, (ii) the requirement to have a bank account for legal persons, (iii) since 2021 a BO register has been introduced with legal

persons being required to register their BO information, (iv) a requirement to have company statutory documents required for incorporation certified by a notary, and (v) since 2009 a Central Registry of Transaction Accounts holding information on transaction-account holders including those that are legal persons (updated in 2021). CDD obligations for banks and other REs are an additional measure providing access to basic and BO information by the authorities.

722. **CRBE Registration** - The information held by the CRBE, the Central Securities Depository and the NPO register is publicly available and transparent. As part of the registration process all the registers are required to screen the entities subject to registration against the lists published in accordance with UNSCRs. Nonetheless, regular checks on the existing database are only carried out by the Central Securities Depository.

723. The process of establishment and registration of business entities is governed by the Law on Companies and the Rulebook on the Registration Procedure, based on which the decision or agreement on establishment of the company should be first notarised. The notary would check that the person presenting the decision for notarisation is listed in the decision itself as one of the founders or is otherwise empowered by a power of attorney to represent them. Notaries are also required to conduct CDD in accordance with the LPMLTF. This includes verification of the founder/s and authorized persons (executive director).

724. Registration of business entities is carried out in the Tax Administration (CRBE). The registration procedure is initiated by submitting a registration application which is to be accompanied by documentation in accordance with the Company Law. The registration decision is made within four working days from the day of receipt of the documentation. Every entity that is registered receives a registration number, and every subsequent change contains the same number under which the company or other legal entity was first registered.

725. The CRBE verifies the identity of the person submitting the application (i.e. founder or authorised representative) and in the case of a representative whether he is empowered by a power of attorney with certified signatures. The CRBE also cross-checks the applicant's personal data through the Montenegrin population register maintained by the MoI and Central Register of Taxpayers and Contributions. Where a founder is already registered as an owner of another legal person within the CRBE the registry checks that the identity details provided match with those already entered in the register. It however transpires that it is only partnerships that are required to submit proof of identity for each founder. In the case of companies only the person submitting the application is required to do so.

726. The CRBE also verifies that the legal requirements for registration have been fulfilled and that all the necessary documentation has been provided and also checks whether the founder has been connected with a company that underwent bankruptcy proceedings or did not fulfil tax obligations. Apart from this, the registers do not undertake any other checks to verify the identity of natural persons and legal persons that will be involved in the company (i.e. directors and shareholders) disclosed in the presented incorporation documents, unless such a person is the one presenting the registration application. The authorities held that this is however mitigated by the fact that the majority of LLCs are single member, owned by natural persons, and the person presenting the application is usually the founder. The AT however was not convinced, by the

evidence provided, that this is the case considering the shortcomings in verifying the adequacy of BO data as well as the risk associated with use of strawmen. Criminal background checks are only carried out in respect of executive director/s of companies that are foreigners (who must have a residence permit for which they need to present a clean criminal conduct and certification that there are no criminal proceedings against him). For resident directors and all shareholders, the CRBE mainly relies on the fact that the applicant is criminally liable for any incorrect or untruthful data provided and does not carry out any criminal probity checks.

727. The registration is only a confirmation that the founding documents, on the basis of which the registration was made, contain the data established by law. However, registration is not a confirmation of the truthfulness of the data contained in the founding documents. Similar mechanism is also set for the NGO register. The authorities met onsite did not have any data to indicate whether the entities seeking registration mainly apply themselves or through a representative.

728. Another manner in which basic and BO data held in the registers may be verified is through the reporting of inaccuracies identified by REs accessing the Registers (mainly CRBE) and comparing accessible company information with information obtained from other sources. Nonetheless, the authorities indicated that they never received any such reports.

729. With regards to changes in basic information, partnerships and companies are required to notify the registry within seven days of any change occurring. Nonetheless the CRBE has no formal mechanism to check whether changes to basic information on legal persons have been notified to it. No regular checks are conducted on changes to the management or shareholders.

730. As regards registration of Joint Stock Company shares with the Central Clearing Depository, the process for registration is provided under R.24. The depository keeps the accounts of securities holders, registering issuance, issuers and owners of securities, processing of non-market transactions, as well as clearing services and market transactions, assembled on the stock exchange. When registering the dematerialized securities, as well as processing transactions, it conducts due diligence obligations of its clients as prescribed by the LPMLTF. Checks are conducted against the UN lists, while there is also periodic monitoring of the client base and transactions based on the risk factors, including geographic, transaction and customer related. Overall, through the meetings with the Depository representatives, the AT was satisfied with the process to ensure the accuracy and veracity of the information held within the register.

731. Overall, the effectiveness of the registration process raises concerns for most of the registers (except for the Central Clearing Depository) for the following reasons: (i) there is over-reliance on the self-declarations presented by the entities including in relation to criminal probity checks, or CDD conducted by notaries which as highlighted under IO.4 are not considered adequate; (ii) poor to no verification is set up for the accuracy, veracity and up-to-datedness of the information; (iii) no supervisory powers are prescribed for the Registers, thus no checks have been conducted so far; and (iv) lack of ongoing monitoring of changes and absence of sanctions for failures.

732. When asked about shortcomings within the system, the Registers did not raise any concerns on the scope of their authorities, apart from the need to increase the human resources in place.

733. **Bearer shares and nominees** - Turning to the issue of bearer shares, the authorities

advised that all the securities should be registered and kept in dematerialised form, (see R.24) and hence no shares may be issued to bearer. As for the notion of fiduciary shareholders and directors, the Montenegrin authorities advise that these concepts are not recognised in the country. The AT is concerned that there is no mechanism to detect shareholders or directors that may be acting on behalf of others. This shortcoming is further accentuated by the fact that: (i) the AT identified that lawyers, accountants, and other persons/entities are providing company formation services which also include nominee director services (see section 1.4.3), (ii) the NRA highlights the risk of companies being owned by strawmen and the fact that there are no control mechanisms such as licensing or registration requirements for the provision of fiduciary services or prohibition thereof.

734. **Requirement to have a bank account and quality of BO information** - Legal persons are legally required to maintain a business relationship with a Montenegrin bank, which is necessary step in the process of registration and to register with the tax authorities to conduct business. The Tax Authorities check whether Montenegrin companies hold Montenegrin bank account when they conduct tax audits. During the period under review the FIU identified only one instance when a legal person did not hold a bank account in Montenegro. It is therefore possible to rely upon banks to access basic and BO information. As described under IO4 the AT noted concerns with the understanding of the concept of beneficial ownership and the overreliance by some banks on register excerpts to verify BO information. This latter issue was identified in some banks, and which does not include a major bank in Montenegro serving more than half of Montenegrin legal persons.

735. The CBM provided statistics on identified breaches in relation to BO-related obligations in the banking sector. From the statistics, it appears that the type of BO-related breaches are relatively minor in nature and usually relate to (i) the fact that they are based on excerpts from the CRBE which are older than three months, (ii) CDD data is not reviewed and updated regularly, and (iii) sole reliance on company documentation with no CRBE registry searches. The CBM also indicated that it has never came across cases where the bank failed to identify the BO of a corporate client. While this does not shed any light on the level of accuracy of BO information available to banks, it clearly indicates that banks systemically check and identify BO information based on registry excerpts and in some cases other business documentation.

Table 7.1 Irregularities relating to BO identification in the banking sector

Year	% of total number of BO irregularities out of all breaches	Number of banks with BO irregularities identified	Number of supervised banks	Total number of banks
2017	7.7%	1	9	15
2018	13.3%	4	8	15
2019	7.3%	3	7	13
2020	8.3%	2	6	12
2021	6.4%	4	8	11
2022*[216]	11.1%	7	9	11

[216] The increase in the percentage of breaches for 2022 and the number of banks with BO irregularities identified is also the result of inspections conducted which specifically focused on BO-related obligations.

*3 on-site Examination reports are finalized but are yet to be delivered to the bank and the FIU

736. As from 2009 (and significantly enhanced with additional information in 2021) Montenegro has put in place a Central Registry of Transaction Accounts that is maintained by the CBM. This registry holds information on holders of transaction accounts, including holders that are legal persons, and hence provides a useful venue for the timely obtainment of relevant company information, such as company name, registered address, company formation number, tax registration number and business activities. The source of information are Banks and there are no verification checks conducted by the CBM. No BO information is available in this database.

737. A positive feature of the system which helps in preventing bank accounts of dissolved companies from remaining operative, is the fact that the CBM on a monthly basis obtains information from the Tax Administration on companies that have been de-registered or liquidated. The CBM cross-checks this information against the transaction-account register to identify bank accounts that are still open on the name of de-registered/liquidated companies. Where such cases are detected, the respective bank is informed to close the concerned account/s.

738. CSPs (other than accountants) might not always hold reliable BO information and also have a limited understanding of the BO concept (as provided under IO4). Due to the presence and activities of non-supervised CSPs there are doubts about the reliability of BO data collected by such CSPs. The MoI however estimates that the majority of CSP services are provided by accountants and lawyers (see section 1.4.3).

739. **BO Register (CRBO)** - The CRBO was introduced in 2021, however since then only 32 out of 37,608 entities subject to registration have registered BO information. The authorities have organized several calls for registration however this has not been effective. While the obligation to register the BO information is provided under the LPMLTF, so far no sanctions have been applied towards the entities subject to registration. The authorities advised that their decision was to go for encouraging rather than sanctioning entities. However, as the practice demonstrates, this approach is not sufficient and effective, as no results have been achieved. Nonetheless, the authorities have not made a decision to supplement this approach of encouragement with enforcement measures as yet. Neither there is a set due date for completion of the registration process of BO information. The AT was also concerned to note issues with the understanding of the BO concept by the CRBO.

7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

740. Basic and BO information is obtained and are used by the competent authorities and foreign partners. The AT noted no obstacles for the collection of basic and BO information (see IO.2).

741. Basic information is available to all competent authorities through various registers of legal persons, which are accessible online for no fee. It should be noted, however, that due to the cyber-attacks in August 2022, the online registers were not fully operational (for about eight months), with information only accessible from the registers through a paper-based application. Discussions with the LEAs, FIU and supervisory authorities revealed no difficulties accessing the basic information on registered legal persons either through online mechanisms or through

direct co–operation with the Registers. The LEAs indicated that they also request the FIU to obtain BO information from REs.

CRBE

742. All companies created in Montenegro are registered with the CRBE, which includes recording the company name, the address of the registered office, date of incorporation, legal form and status, code and name of predominant activity, list of founders/equity holders and a list of legal representatives/directors. The actual ownership and management structure of companies registered in Montenegro are publicly available through the search tools contained on the website of the CRBE[217]. CRBE is managed in electronic form as a single database. Data entered in this register is public and can be consulted at any time via electronic means of communication. Due to the aforementioned cyber-attacks, at the time of the on-site, the information was accessible through paper application[218]. The officially certified extract from the register can be obtained directly from the register. Competent authorities can easily obtain all this information and a paper copy of documents free of charge upon a formal request. As described above, the AT has however concerns about the adequacy and accuracy of the available information.

743. Legislation requires notification of changes of basic information and shareholding to the CRBE within 7 days, but this is not subject to supervisory checks by the CRBE. There appears to be over–reliance on self–reporting of changes with little effective monitoring to ensure the register is updated in a timely manner. In the absence of information on detected non reporting of changes and with a lack of data regarding the application of sanctions, the accuracy of the data held by the registers cannot be verified and confirmed.

744. During the discussions held on-site, the CRBE advised there were no detected cases of inaccuracy of data, notably given the daily contact with the Prosecutor's Offices and the FIU which carry out investigations / analysis concerning legal persons and which hence provide a mechanism for checking CRBE held data to some extent.

NGO register

745. Registers on associations, foundations and foreign associations (being voluntary organisations) are kept with the Ministry of Public Administration. NPOs provide information on their founders to the Register, as well as any changes to the list of founders and members of the executive body thereof. Information on the changes should be submitted within 30 days from the moment the changes occur. The processes for registration and the powers of the registers are the same as for the CRBE.

746. For already registered entities, the Register does not have tools to detect unreported changes. While generally the Register would ask the entity to rectify the inaccuracies no enforcement powers are available to them. The concerns in relation to the CRBE are thus similarly applicable in this case.

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[217] http://www.pretraga.CBR.mehttps://efirma.tax.gov.me/StvarniVlasnici/Index

[218] This issue lasted for eight months, and the AT was informed and confirmed that access was restored after the on-site

Central Clearing Depository

747. The Central Clearing Depository Company (CCDC) provides support to the capital market as a technical provider of services for keeping the accounts of securities holders, registering issuance, issuers and owners of securities, processing of non-market transactions, as well as clearing services and market transactions, assembled on the stock exchange.

748. The CCDC is obliged to publish and update daily data on: 1) broadcast, exchange and deletion of dematerialized securities in the CCDC; 2) all dematerialized securities registered in the CCDC; 3) corporate activities conducted through the CCDC; 4) the owners of the first ten accounts in which the largest quantity of any securities and data on the quantity of securities in those accounts (in absolute and relative values) were recorded. The cyber-attacks did not have any impact on the operations of the CCDC.

BO information from the BO register and other sources

749. As analysed above, the AT does not consider the BO register to be an effective and operational tool for accessing the BO information.

750. Supervisory authorities, the FIU, LEAs and Prosecutors can obtain BO information directly from the REs, obligations of which are provided under the LPMLTF and Rulebook. There is a good legal framework for the REs to identify inaccuracies in the Registers and reporting identified inconsistencies between the information held with the BO Register and the data obtained by the reporting entities. Nonetheless, this has not been practiced so far.

751. Overall, as already analysed above, some banks (excluding the most material one) and other REs might not always hold reliable BO information and also have a limited understanding of the BO concept (see IO.4). However, as set out under section 7.2.3, the CBM identifies relatively minor breaches of BO obligations by banks, which indicates that banks systematically check and identify BO information, although the AT expressed reservations on the adequacy of such checks by some of the banks (excluding the most material one).

752. Additionally, in the course of criminal proceedings or a tax audit, the LEAs and the Tax Administration obtain basic and BO information directly from the legal persons. The competent authorities noted that they never encountered any difficulties or delays in obtaining basic and BO information from either of the sources. The AT did not come across any such instance as well.

7.2.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

753. According to the competent authorities, no legal arrangements can be established in Montenegro. However, there is still the possibility for foreign trusts to operate in Montenegro, since they are not prohibited from doing business in Montenegro (c.10.11).

754. From data provided by banks, the number of foreign trusts being serviced by Montenegrin banks appears to be negligible. Information on foreign registered trusts would be accessible from the REs serving the former as a customer or from a foreign counterpart. Moreover, during the discussions with the FIU and other authorities no specific cases were identified in relation to the involvement of foreign trusts. LEAs would seek information in the same way they access

information for legal persons.

755. Regarding supervisors, the information is available for the CBM from the REs through onsite and offsite supervision, through the collection of annual and the collection of data upon request. Nonetheless, as provided under R.25, while REs are obliged to check that any person acting in the name of a customer has the right to represent and is authorised by the customer, and to establish and verify the identity such person, there are no specific obligations for trustees of foreign trusts to disclose their status to REs.

756. Moreover, as highlighted in R.22, the provision of trust services is not regulated for AML/CFT purposes and thus any accountant, lawyer or any other person providing services of setting up or administration of foreign trusts for Montenegrin residents is not a reporting entity subject to AML/CFT obligations. The AT however noted that accountancy firms go beyond limitations of the law and would also carry out CDD in respect of foreign trusts. Trust and company services are provided by persons other than accountants and lawyers which are unknown to the supervisors, not subject to supervision and where the level of application of AML/CFT obligations is unclear to the AT (see IO.3). Nonetheless the MoI estimates that in most cases TCSP services are provided by accountants and lawyers.

757. Due to the presence and activities of non-supervised CSPs (the quantity of which could not yet be determined), the country has not made appropriate arrangements to raise awareness of REs exposed to relationships with trustees and thus provide for adequate, accurate and current BO information on foreign trusts. Although the AT has overall concerns on the availability of adequate, accurate and current basic and BO information on foreign legal arrangements, it does not appear, as explained above, that this is to be weighted of major impact in the light of the limited materiality of foreign legal arrangements operating in Montenegro.

7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions

758. Montenegrin authorities were unable to demonstrate that effective, proportionate and dissuasive sanctions have been applied against persons not complying with the requirements related to basic and beneficial ownership information as required under Recs 24 and 25. During the period under review warnings were issued by the CBM against REs for failures in relation to identification of BO information. These measures are considered under IO3, as effective in driving compliance within the banking sector in particular.

759. Competent authorities, in particular the Registers, lack powers to check information in the registers and thus apply sanctions in relation to discrepancies or failures identified. Overall, there are 57,771 entities registered with the CRBE of which 37,608 should provide BO data to the CRBO. At the end of the on-site visit, only 32 entities had complied with this obligation. However, no sanctions are currently being imposed for failures to populate information or notify of changes to information in the BO register, and nor does the CRBO or CRBE take any measures to de-register companies who repeatedly fail to provide updated basic or BO information.

760. No data was provided on failures to provide accurate basic information or shareholding information for legal persons or the level of any actual sanctions imposed.

Overall conclusions on IO.5

761. Adequate understanding of the risks related to the abuse of legal persons for ML purposes was demonstrated by the competent authorities. Multiple analyses on ML threats associated with legal entities were conducted, identifying LLC as the most vulnerable for ML purposes. A number of aspects, including (i) the misuse in connection with high-risk predicate offences such as corruption and OCGs, as well as (ii) the use of strawmen, shell companies and multi-tiered structures and (iii) the adequacy of control measures have not been subject to proper analysis by the authorities. TF threats and vulnerabilities were not assessed, and a limited understanding was also demonstrated in this regard.

762. The country has put in place several measures aimed at preventing the misuse of legal persons. These include, inter alia, the requirements of registration and holding a bank account. There are several registers on basic and BO information, however the AT has concerns on the availability of accurate, adequate and up-to-date basic and BO information on legal persons and entities through the registries (except the Central Securities Depository for JSCs) due to a number of deficiencies identified. These include overreliance on self–declarations, limited verification, lack of ongoing monitoring of changes and absence of sanctions for failures.

763. The authorities can obtain basic and BO information from the REs and the legal persons themselves, which are bound to hold accurate and updated BO information. Nonetheless, concerns were noted on the accuracy of BO data maintained by REs (other than some Banks including the major one servicing more than half of Montenegrin companies) and accountants.

764. No effective, proportionate and dissuasive sanctions have been applied against persons not complying with the requirements related to basic and beneficial ownership information as provided under R.24 and 25.

765. **Montenegro is rated as having a Moderate level of effectiveness for IO.5.**

8. INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 2

a) Overall, Montenegro has a sound legal framework for international cooperation. The MoJ is the central authority for the receipt and transmission of MLA and extradition requests. The authorities provided statistics and examples demonstrating their ability to effectively execute MLA and extradition requests in a constructive and timely manner.

b) The prioritisation processes and case management systems at the MoJ, courts and prosecutor offices for the handling of incoming MLAs are not sufficiently developed, which is of relevance considering the limitations in human capacity to handle these requests and at the same time attend to other numerous tasks.

c) Montenegro seeks information through international judicial cooperation, to a generally satisfactory level in respect of cross-border elements of organized crime and drug-trafficking. A general decline in outgoing requests is noted. Assistance in respect of corruption, tax evasion and ML is lacking, reflecting the lower rate of investigation and prosecution of these crimes at a domestic level. The limited initiative to detect and secure proceeds of crime located abroad was also noticeable.

d) Incoming information and intelligence from foreign counterparts is used to trigger domestic ML analysis and investigations of other transnational crime linked to Montenegro, which corresponds to the risk and context of the country. Incoming MLA requests have triggered domestic ML investigations only in two cases.

e) The competent authorities actively use other forms of international cooperation for domestic ML/TF analysis and investigation purposes, and effectively and promptly assist foreign counterparts. The type of cooperation sought by the FIU largely corresponds to the country's ML/TF risks, except for cooperation in relation to ML related to corruption which is limitedly sought. The positive level of international cooperation demonstrated by the ARO Police Unit after its establishment brought an added value to domestic procedures. The AT was unable to determine whether the type of outgoing police requests are aligned with Montenegro's risk profile.

f) The FIU is well integrated in the international community and is considered a reliable partner, as manifested by the feedback received from the global network. The responses to requests are comprehensive and timely. The FIU also ensured continuity of international cooperation while it was disconnected from the ESW. However, the FIU is less proactive in sharing relevant intelligence on a spontaneous basis.

g) The CBM reaches out to international counterparts throughout licensing processes and participates in supervisory colleges, while other supervisors are less proactive. The

main financial supervisors have also demonstrated capacity to assist their foreign counterparts although such occasions were limited.

h) Basic and BO information on legal entities is exchanged, however the deficiencies related to BO information accuracy (see. IO.5) impact effectiveness in this area.

Recommended Actions

Immediate Outcome 2

a) The Montenegrin authorities should ensure that comprehensive statistics and data on all forms of international cooperation is retained in a consistent manner to better manage the effectiveness of international cooperation and to continue improving the existent mechanism.

b) The MoJ, Courts and the prosecutors should put in place more granular and formalised prioritisation mechanisms and increase the capacity of the *LURIS* and *PRIS* systems to serve as effective case management tools, especially in respect of passive judicial cooperation in criminal matters.

c) Montenegrin authorities involved in the analysis, investigation and prosecution of ML cases should be more proactive in seeking legal assistance and intelligence in respect of cross-border ML cases, and in particular ML cases related to tax evasion and corruption.

d) The FIU should introduce and implement procedures for the prioritisation of incoming requests, and systematically share relevant intelligence with counterpart FIUs.

e) The Montenegrin authorities should be more proactive in the search, seizure and confiscation of criminal proceeds located abroad.

f) Montenegrin supervisory authorities should enhance their participation in the international exchange of information and related assistance, in respect of licensing processes and more so to enhance supervisory activities in respect of REs with international connections.

766. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

8.2. Immediate Outcome 2 (International Cooperation)

767. Effective international cooperation is important for Montenegro's AML/CFT efforts considering its geographical position along drug trafficking and migrant smuggling routes in the region, and also considering the ML threats posed by Montenegrin OCGs operating in cross-border crimes such as international drug trafficking. Montenegro has a sound legal framework enabling effective international cooperation based on international treaties, bilateral agreements (which various authorities have signed with neighbouring countries) or on the principle of reciprocity (see. R36-40).

768. Montenegro has reserved the right to refuse assistance due to the principle of dual

criminality. The AT noted the authorities' declarations that they do not perceive this issue as a serious obstacle in providing the necessary legal assistance, which was further demonstrated through the relevant data provided.

769. The MoJ and prosecutor's offices makes use of the *LURIS* system to keep track of MLA workload which was introduced in January 2015. The AT was concerned with the country's difficulties to provide the necessary statistical data to demonstrate effectiveness in this area. The MoJ is currently working to enhance the statistics retention capabilities of *LURIS* by introducing new options for data inputs and search indicators.

8.2.1. Providing constructive and timely MLA and extradition

770. The MoJ is the central authority responsible for handling incoming MLA and extradition requests related to any criminal offence, including ML and TF. The MoJ can act on some requests directly itself (e.g. provision of official certificates or records it has access to). Requests are immediately forwarded to the competent court or the Supreme State Prosecution Office, depending on the type of legal assistance sought and the criminal procedural stage throughout which the request is sent (i.e. whether within the investigation stage or prosecution stage). The Supreme State Prosecution Office channels the requests to the respective prosecutor's office (i.e. high, special or basic prosecutors) based on their territorial jurisdiction and competence regarding criminal acts. The various prosecutors' offices may also receive requests directly from foreign counterparts based on bilateral arrangements and are required to inform the MoJ when receiving such requests. It is however unclear whether this happens systematically in practice which impedes the MoJ ability to keep full track of incoming MLA requests. The requested data or information, once obtained, is referred to the MoJ which forwards it to the requesting state without delay or is exchanged directly with foreign judicial authorities in case of direct requests.

771. The MoJ has a dedicated unit (i.e. Unit for Cooperation in Criminal Matters) composed of four officers tasked with handling incoming requests and provision of replies. Within the High Courts, MLA is handled by four investigative judges, who are assigned to perform these tasks in accordance with the court's annual work schedule, while at the basic courts there are no officials specifically dedicated to handling MLA. Since 2015 the Higher Court in Podgorica established a special department for trials in criminal proceedings for organized crime, high-level corruption, ML, terrorism and war crimes. Judges who act in these special cases also handle the related MLA. The SPO annual work schedule defines which four special prosecutors oversee cases involving international cooperation. These four prosecutors are dealing with various other primary tasks including launching and leading criminal and financial investigations (and undertaking all connected operational investigative work), prosecuting the most serious crimes and attending court sittings. The SPO informed the AT that an additional prosecutor would be assigned to handle MLA requests (who was subsequently assigned in June 2023). In addition, and to address gaps in human resources at the SPO five independent legal advisors have been recently recruited which have significantly beefed-up resources to assist in the MLA workload. Within other prosecutor's offices there are no officials specifically assigned to international cooperation cases.

772. The *LURIS* system records: the number of cases received, activities of the processor, statistics by direction (incoming and outcoming) and types of legal assistance, the country to which the request is sent or from which it was received and the criminal offences for which MLA is sought. The courts make use of the judicial information system (*PRIS*), to also keep records on MLA cases.

These systems are mainly aimed at keeping records on MLA and judicial cases, which is valuable to monitor the workload. Nonetheless the systems are not geared to offer case management solutions.

773. The MoJ has a purely administrative role in the handling of MLA requests and does not prioritise requests. It ensures that all requests received are forwarded to the courts or supreme prosecutor within the same day, expediting requests marked as urgent. Requests are in practice prioritised by the court or prosecutor office. The Supreme State Prosecutor, in accordance with the Law on the State Prosecutor's Office, determines the priority of requests according to the order in which they are received. However, it assigns a higher priority in some exceptional cases i.e. cases of detention, cases were the criminal procedure is threatened in view of prescription and cases marked as urgent by the requesting country. Moreover, since cases involving serious offences, ML, TF and drugs and organised related crimes are handled by the SPO, these are in practice prioritised. Prioritisation can also be assigned to other cases and indicated (along with the reason for urgency) on the *LURIS* system. The courts are bound by their rules of procedure when it comes to the handling of criminal cases, however there are no specific procedures applicable to MLA cases. In respect to extradition requests, there are no formal procedures, however the Law on MLA imposes deadlines for different procedural phases when considering foreign requests which are aligned to the European Convention on Extradition and considered to meet international standards and best practices (see R.39).

774. While there appears to be a reasonable prioritisation process, the AT believes that this is too broad to enable effective prioritisation of incoming MLAs, and the authorities would benefit from a more granular and formalised mechanism (such as through the introduction of clear procedures including prioritisation criteria that go beyond the type of crime) in prioritisation of requests. This is important considering the limitations in human capacity to handle these requests and at the same time attend to other numerous tasks.

775. The capacity to retain statistics on MLA needs improvement. The AT was provided with statistics on incoming and executed MLAs from various sources, which at times were conflicting. The AT is unable to conclude that the figures in Table 8.1 cover all received requests for judicial cooperation in criminal matters, since the MoJ and the High Courts provided differing figures.

Table 8.1: Incoming MLA Requests per category of offence

	2017	2018	2019	2020	2021	2022	**Total**
Drug Trafficking	44	44	37	29	13	17	**184**
Fraud	18	31	26	13	10	15	**113**
Robbery and theft	32	27	20	18	6	9	**112**
Forgery	28	22	15	10	14	17	**106**
Money Laundering	9	8	15	16	11	11	**70**
Smuggling	11	18	14	7	6	6	**62**
Participation in organised criminal group and racketeering	18	9	8	10	2	6	**53**

Murders and grievous bodily injury	12	13	13	4	3	7	**52**
Tax evasion/tax crimes	2	5	5	9	3	2	**26**
Trafficking in Human Beings and migrant smuggling	0	0	5	3	2	2	**12**
Terrorist financing	1	0	1	0	0	0	**2**
Others	11	14	4	3	6	5	**43**
Total	**186**	**191**	**163**	**122**	**76**	**97**	**835**

776. The data provided (see Table 8.1) shows that the number of requests for judicial cooperation in criminal matters is decreasing. Moreover, the number of incoming requests related to ML are not significant (approx. 8%), while there were two cases of incoming TF related MLAs over the review period. Most requests received related to cross-border drug-related crime, in which Montenegrin entities are involved. Apart from fraud and tax related criminality, there are no other requests related to economic criminal activities.

777. The legal framework[219] allows for direct cooperation between judicial authorities without the need to go through the MoJ, which is often done in practice. In fact, the prosecutors' offices indicated that direct communication with foreign judicial authorities took place in 394 cases (320 of which were incoming requests).

778. From the data provided by the SPO regarding incoming MLA requests, it follows that this office handled a total of 162 requests for legal assistance in the evaluated period, which is a significant percentage out of the total MLAs received (see Table 8.1). This further highlights the importance of having appropriate prioritisation policies and procedures and to ensure that the necessary human resources are available to this office.

Table 8.2: Incoming MLA Requests – Special Prosecutor's Office

SPO – MLA requests						
	2017	**2018**	**2019**	**2020**	**2021**	**2022**
Received	21	25	30	28	33	25
Out of which ML	2	2	4	3	4	2

779. The AT was provided with case examples which evidence that the authorities are able to assist in complex MLA requests in a timely manner and on a whole set of ordinary procedural actions including identification of persons, sourcing of banking data, documentary evidence (especially criminal records), and interrogations of persons among others. The country also provided case studies demonstrating its capability to assist in respect of coercive measures (e.g. house searches and searches of other premises and secret surveillance of suspects). Most of the required actions that SPO handled (including those requests for ML) consisted in the submission of procedural documentation and identification and subsequent hearing of persons.

[219] Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182)

Case No. 8.1: Use of coercive measures in the context of MLA

The Police Directorate and the US Drug Enforcement Administration (DEA) cooperated in the investigation of a Montenegrin resident (arrested in the US) in connection with drug trafficking. The US authorities sent a MLA request to obtain evidence that the individual (and connected individuals) were importing high volumes of narcotic drugs (marijuana) through a neighbouring country.

The request was submitted to the High Court investigation judge that ordered to the High Prosecutor to provide all information, objects and data obtained in the course of police activities (objects collected after premises search, results of secret surveillance and all other valid documentation obtained by Police Directorate).

Additionally, the high prosecutor requested from the High Court the suspension of suspect's transactions and seizure of funds in his bank accounts This order was granted which resulted in two bank accounts being suspended and the amount of USD116,908.00 were seized. The High Court judge positively responded to the MLA request, and all collected data and information were provided in accordance with the request and funds were seized.

Case No. 8.2: MLA in connection with organised crime and drug trafficking

The Prosecutor's Office of a neighbouring country sent a request for international legal assistance to the MoJ on January 15, 2019, and the same request was forwarded to the SPO on January 22, 2019. Special investigative actions were requested, namely (i) surveillance and technical recording of telecommunications and secret monitoring and technical recording of persons, means of transport, and objects related to them. The request was in relation to 26 persons who lived or reside in Montenegro, and which were being investigated in the neighbouring country for organized crime, drug trafficking and money laundering. The investigating judge of the High Court in Podgorica approved the secret surveillance measures, which approval was communicated to the SPO and the SPU for execution on 5 February 2019. Secret surveillance measures lasted from 02/08/2019 to 06/08/2019.

Meanwhile, the SPO and the SPU held a series of operational meetings with representatives from the prosecutor's office and police of the neighbouring country regarding the request, and they exchanged data and documentation. In addition to the secret surveillance data, information, and documentation on monetary transactions, bank accounts, and data on movable and immovable property owned by the suspects, or by family members or third parties was also obtained and provided to the requesting country on December 25, 2019, via the Ministry of Justice of Montenegro.

MLA: Freezing and Confiscation

780. The Montenegrin authorities are capable of providing effective MLA on freezing and confiscation. The High Court issued decisions to seize assets based on requests from Spain, Ukraine, the Russian Federation, Italy, Serbia, and Germany. In summary these cases involved: (i) temporary suspension of transactions through bank accounts (ii) freezing of funds held by Montenegrin Banks in five cases (€7.2M, USD306K, €67M, €98K and CHF128) with most of the cases relating to accounts held by corporate clients, (iii) freezing of immovable properties, (iii) freezing of shareholding in a Montenegrin company and (iv) seizure of movable properties (yacht). In the absence of requests, the authorities' ability to freeze, seize and confiscate other types of property such as VAs and substitute values was not tested in practice.

Case No. 8.3: Freezing of Assets on the basis of MLA

The State Prosecutor's Office of a European jurisdiction on the 17 October 2019 requested (through the MoJ) the freezing of funds held in a Montenegrin bank account, and the collection of bank documentation and information on the balance and movement of funds in the account.

An investigation was being conducted in the foreign country on company "D.G." for suspicions of investment fraud and ML. In that procedure, it was established that after the closure of the company's account, which was the subject of seizure by the State Prosecutor's Office of the foreign country, certain funds were transferred to an account held with a commercial bank in Podgorica. There was a well-founded suspicion that these funds originated from criminal activity i.e. that they are the result of fraud committed in respect of two individuals.

The MoJ transferred the request to the High Court on the 24 October 2019. The court through the investigative judge confirmed that the allegations and requests were founded, and on the 25 October 2019 a temporary measure was imposed prohibiting the disposal of funds in the amount of EUR97,749.42 and CHF127.60 held at the Montenegrin commercial bank. The Court also ordered the bank to submit all relevant documentation and data related to that bank account.

781. Montenegro provided data demonstrating the provision of other types of passive judicial cooperation in criminal matters, such as transfer of criminal proceedings. There were 196 requests received by Montenegrin authorities in the period of 2017-2022, all of which were considered. For 95 requests the analysis was concluded while the rest are still ongoing. In 34 of these cases Montenegro took over the criminal prosecution, while in 61 it decided not to, due to: (i) not enough facts being provided and lack evidence or suspicion that the crime has been committed (31 requests), (ii) accused person or witnesses were not in Montenegro but in the requesting country or elsewhere (7 requests), (iii) criminal offence indicated in the request was not a criminal offence according to the domestic legislation (11 requests), (iv) criminal offences barred by statute of limitations (9 requests) and other reasons (3 requests). Proceedings were most frequently transferred from Serbia and Bosnia & Herzegovina in connection with fraud and drug related offences. Over the review period there were also 41 cases of recognition and execution of foreign court decisions.

782. Requests of foreign judicial authorities, which demand the presence of their investigators or prosecutors during the carrying out of the respective procedural actions in Montenegro are acceded to. These procedural actions in most of the cases involved the questioning of witnesses.

783. Incoming MLA requests to a large extent originate from neighbouring countries and other jurisdictions with whom Montenegro has close commercial or economic ties which is largely consistent with the country risk profile. Montenegrin authorities receive incoming requests mostly from Serbia, Bosnia and Herzegovina, Albania, Croatia, Slovenia and Germany. Within the review period the SPO received MLA requests mainly from judicial authorities of: Bosnia and Hercegovina (53), Serbia (20), Croatia (14), Albania (8), Netherlands and Germany (6) Austria and Poland (5), Romania and France (4). In total, the top five criminal offenses for MLA and extradition requests were falsification of documents, unauthorized production, possession and distribution of narcotic drugs, fraud, traffic crimes, and creation of criminal organization.

784. The AT noted that 20% of all incoming MLA requests were not executed. The Montenegrin authorities explained that these are predominantly cases where it was not possible to perform the required actions for formal reasons (mainly for the reason that the requesting state did not deliver additional information or documentation upon the request). In addition, they also include non-execution in view of objective reasons where, despite the efforts of the Montenegrin judicial authorities to perform the required actions of judicial cooperation, it was found that the required data, information, documents or other sort of evidence is not available or located on the territory of Montenegro (e.g. the person is not present in Montenegro or cannot be found). The authorities

also confirmed that they process and answer each MLA request, including those which could not be executed (providing justification for not being able to execute). The AT in this regard analysed the response of the international community to this evaluation process which also indicates that most rejections are due to the objective reasons. A small number of MLA requests remain pending in view of a number of reasons i.e. awaiting additional information from the country, requests taking additional time to address, persons cannot be found for some period, additional requests made by foreign country and in particular length of communication process.

Table 8.3: Executed / Refused MLA Requests

	Total	Refused	Executed	Pending
2017	184	21	159	4
2018	186	42	141	3
2019	158	37	115	6
2020	113	20	92	1
2021	73	18	53	2
2022	96	23	70	3
Total	**810**	**161**	**630**	**19**
		20%		

Table 8.4: Executed / Refused ML/TF related MLA Requests

	ML	Refused	Executed	Pending	TF	Refused	Executed
2017	9	1	6	2	1	0	1
2018	8	1	7	0	0	0	0
2019	15	1	12	2	1	0	1
2020	16	0	16	0	0	0	0
2021	11	2	8	1	0	0	0
2022	11	0	10	1	0	0	0
Total	**70**	**5**	**59**	**6**	**2**	**0**	**2**
		7%				**0%**	

785. Out of 70 ML related MLA requests, the authorities did not execute five (i.e. 7%). These requests were not executed since the subjects of the request could not be located in Montenegro. The Montenegrin authorities provided judicial cooperation in two TF related requests (which were not exclusively related to TF but included suspicions of other offences). These requests were executed promptly by the competent authority (i.e. the High Court) providing the relevant data and the responses with comprehensive materials (documentation).

786. The execution time, (naturally depending on the scope of the required actions), ranges from 40 days in simple cases to 18 months in complex cases, such as corruption, bribery and sexual exploitation. MLA requests are mostly implemented within six months or less, while the average time has been going down over the assessment period to 59 days in 2022. Moreover, when the processing exceeded four months, this was partially owed to technical deficiencies on the part of the requesting party (e.g. incomplete applications or missing attachments). The international community's feedback was rather positive on the timeliness of responses to MLA requests.

Table 8.5: Average Execution Time - MLAs

	Incoming MLA Requests: average execution time
2017	144 days
2018	117 days
2019	103 days
2020	126 days
2021	88 days
2022	59 days

787. The discussions held with the authorities, case studies analysed, and the generally positive feedback of the global community indicate that the Montenegrin authorities provide a wide range of MLA, which is considered to be of satisfactory quality. The lack of comprehensive statistics however limited the AT's ability to fully analyse the extent of cooperation.

Extradition

788. Extradition to foreign states is primarily regulated by the relevant international treaties[220] but it is also possible on the basis of number of bilateral treaties or reciprocity (see R.39). The extradition of Montenegrin nationals is prohibited, unless subject to international obligations to which Montenegro is a party. Bilateral agreements with Serbia, Croatia, Italy, Bosnia and Herzegovina and the UK provide grounds for the possibility of extradition of Montenegrin citizens, which is a positive feature of the Montenegrin system.

789. The MoJ (being the central authority for the receipt of incoming extradition requests) transmits incoming extradition requests along with the necessary documentation to the competent court (High Court), which determines whether the conditions for extradition are fulfilled. When extradition is consented the MoJ would inform the requesting state. Extradition may also be granted under a simplified procedure (see. c.39.4). When extradition is granted, the police authorities of both countries organise the execution of the extradition (surrender) of the person/s in question.

Table 8.6: Incoming Extradition Requests

Incoming Extradition Requests				
	Incoming Requests (Total)	**ML**	**FT**	**Terrorism**
2017	60	1	0	0
2018	64	2	0	1
2019	68	0	0	0
2020	42	1	0	0
2021	34	2	0	0
2022	43	6	0	0
Total	**311**	**12**	**0**	**1**

790. As can be seen from Table 8.6 requests for extradition in relation to ML cases represented a modest proportion (i.e. about 4%). In all twelve ML related requests, the extradition was granted through standard procedure. In addition to robbery and theft, extradition was requested mostly

[220] such as the 1957 European Convention ETS 043

for drug-related criminal conduct (see Table 8.7).

Table 8.7: Incoming Extradition Requests (Related Offences)

	2022	2021	2020	2019	2018	2017	Total
Robbery and theft	15	12	9	23	22	23	**104**
Drugs related crime	10	3	13	17	18	12	**73**
Fraud	2	9	6	6	5	10	**38**
Murder and grievous bodily injury	3	6	1	7	6	5	**28**
Trafficking in Human Beings and migrant smuggling	2	0	2	5	3	2	**14**
Participation in organised criminal group and racketeering	0	1	4	5	1	2	**13**
Forgery	3	1	3	1	2	2	**12**
ML	6	2	1	0	2	1	**12**
Smuggling	2	0	2	0	1	0	**5**
Terrorism	0	0	0	0	1	0	**1**
Other	0	0	1	4	3	3	**11**
Total	**43**	**34**	**42**	**68**	**64**	**60**	**311**

Case No. 8.4 - Co-Leader of COVID-19 Loan Fraud Ring Extradited from Montenegro[221]

A person member of a fraud ring based in a third country, through which more than $20 million in relief funds were defrauded, pleaded guilty for conspiracy to commit wire fraud and bank fraud, money laundering, and aggravated identity theft. The person was sentenced in December 2021 to 10 years and 10 months in prison.

In January 2022, the convicted person fled the country to Montenegro and joined two other participants in the scheme who also fled after their convictions. These two other persons were respectively sentenced to 17 years and six years in prison. All three persons were extradited to the foreign country from Montenegro in November 2022. The extradition request was received by MoJ on 18 April 2022, and forwarded to the High Court for execution on the 19 April 2022.

791. The majority of extradition requests over the review period were mostly received from the following countries: Serbia, Germany, Russia, Bosnia & Herzegovina and North Macedonia.

792. The authorities also demonstrated the ability and applicability of the available bilateral legal framework for the extradition of its own citizens. In fact case examples provided to the AT[222] demonstrated the extradition of Montenegrin citizens to Serbia and Italy, based on bilateral agreements signed with these two respective countries. The summary extradition procedure (see c.39.4) was applied by the High Court in ten cases, for criminal offences other than ML.

793. The AT noted that 11% of extradition requests were not executed (see Table 8.8). The reasons for refusals were standard grounds and no exceptional circumstances were noted. These included: (i) requests related to offences punishable with less than the legal minimum of four months of imprisonment (ii) the person was granted international protection (asylum) (iii) the sentence is barred by statute of limitations (iv) the request for extradition was withdrawn by the

[221]https://www.justice.gov/opa/pr/co-leader-covid-19-loan-fraud-ring-extradited-montenegro-begin-serving-prison-sentence

[222] Provided by Department for International Police Cooperation.

requesting country or (v) person was not found at the territory of Montenegro.

794. The AT examined the application of the principle of *aut dedere aut judicare*. Authorities through practical case examples demonstrated that in the case of refused extraditions of Montenegrin nationals or residents, the criminal proceedings would be subsequently assumed by Montenegro based on the request of the foreign judicial authority, and if the requesting state indicates that it will not subsequently prosecute the defendant for the same offense and provides the necessary documents. Moreover, it was clear from some cases that the initiative to take over the proceedings came from the judicial authorities of Montenegro.

Table 8.8 – Incoming Extradition Requests (Refusal Rate)

Incoming Extradition Requests – Refusal Rate							
	Received (Total)	**Refused**	**Executed**	**Pending**	**Received (ML)**	**Refused**	**Executed**
2017	60	5	55	0	1	0	1
2018	64	7	57	0	2	0	2
2019	68	4	64	0	0	0	0
2020	42	6	36	0	1	0	1
2021	34	9	25	0	2	0	2
2022	40	3	37	0	3	0	3
Total	**308**	**34**	**274**	**0**	**6**	**0**	**6**
	11%				**0.0%**		

795. The AT was concerned to note that in 2017 and 2018 some cases took more than 200 days and in one ML case 538 days to be executed. In 2021 and 2022 the lengthiest procedure took 240 and 125 days respectively. Numerous reasons were indicated to justify these delays including slow communication via diplomatic channels, failure of the requesting country to provide translation of the case files or necessary documentation, and insufficient information provided for the execution of the particular request among others. It is however not possible for the AT to exclude that the length of the process in question is also caused by the overall workload of the High Court of Podgorica or other authorities (Supreme Court or MoJ) involved in the final extradition.

Table 8.9: Extradition Requests – Average Execution Time

	Incoming Extradition Requests: average execution time
2017	160 days
2018	165 days
2019	165 days
2020	162 days
2021	159 days
2022	103 days

796. It should also be positively noted that the Authorities presented several cases where the country demonstrated its ability to use foreign MLA requests as a source of information to detect and launch domestic criminal investigations and even prosecutions of serious offences where it was appropriate. The AT however noted that the authorities were not sufficiently exploiting international cooperation channels to launch domestic ML investigations, with only two ML

investigations opened over the review period being triggered by MLA information.

8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

797. Montenegrin judicial authorities are active in seeking MLA, although a decreasing trend in requiring judicial cooperation abroad is evident both generally and in respect of ML cases. Montenegrin LEAs concentrate on seeking international cooperation through other forms of international cooperation, while the limited extent to which ML is investigated (see IO7) has a substantial bearing on the volume of outgoing MLAs. The processing and formulation of outgoing requests is done in an expedient manner since judicial authorities are often already involved in the operational stages of the case.

Table 8.10: Outgoing MLA Request - MoJ

Outgoing MLA Requests			
	Total	**ML**	**FT**
2017	243	10	0
2018	187	12	0
2019	168	12	0
2020	81	5	0
2021	58	1	0
2022	101	9	0
Total	**838**	**49**	**0**

798. The data provided by the MoJ on outgoing requests does not comprise direct requests sent by Montenegrin judicial authorities to their foreign partner authorities. The prosecutors' offices indicated that there were 394 cases of direct communication over the review period, 74 of which were outgoing requests. Table 8.11 provides data on outgoing requests registered in the SPO information system. It is however not clear how many of these requests were implemented in direct legal contact and how many cases were sent through the central judicial authority (MoJ).

Table 8.11: Outgoing MLA Requests - SPO

SPO – MLA requests sent to foreign authorities						
	2017	**2018**	**2019**	**2020**	**2021**	**2022**
Total Sent	39	55	67	28	36	64
ML Related	9	24	48[223]	5	8	13

799. MLAs were mostly sent to the following countries ranked by volume: Serbia, Bosnia and Herzegovina, Albania, Kosovo*, Russian Federation, Croatia, USA, UK, and Germany. This is in line with Montenegro's risk profile.

800. The MoJ provided data on the criminal offences for which judicial cooperation in criminal matters is sought (see Table 8.12). Data provided by the MoJ and the SPO was somehow contradictory, which according to the authorities is owed to different methodologies for keeping statistics related to MLAs. It is also worth noting that the SPO sent out multiple requests in 2018

[223] 38 of these 48 ML related requests concerned one criminal proceeding.

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

and 2019 (more than 50) which were connected to two on-going cases, which leads the AT to conclude that the total number of cases of criminal proceedings in which the SPO requests judicial cooperation in criminal matters is a fraction of the above numbers, as the largest number of MLA requests sent by the SPO abroad is de facto generated in a few complex cross-border cases.

Table 8.12: Outgoing MLA Requests (MoJ) – Related Offences

	2017	2018	2019	2020	2021	2022	Total
Robbery and theft	72	28	38	9	10	16	173
Participation in organised criminal group and racketeering	32	25	31	12	9	10	119
Drugs related crime	31	25	20	19	8	14	117
Forgery	31	25	23	12	9	15	115
Frauds	19	37	14	8	12	15	105
Murders and grievous bodily injury	22	16	17	12	6	13	86
ML	10	12	12	5	1	9	49
Smuggling	4	7	3	0	0	1	15
Trafficking in Human Beings and migrant smuggling	0	3	5	0	0	3	11
Terrorism	8	2	0	0	0	0	10
Terrorist Financing	0	0	0	0	0	0	0
Other	14	7	5	4	3	5	38[224]
Total MLA requests sent	**243**	**187**	**168**	**81**	**58**	**101**	**838**

801. The above figures (see Table 8.12) clearly demonstrate the dominance of cross-border drug-related crimes (in case of SPO always connected with OCG element) in MLA sought. Data also shows that there were several terrorism related outgoing MLA requests issued by Montenegrin authorities (SPO). In reality these requests were mainly related to two particular cases.

Case No. 8.5 – Outgoing MLA Request

Criminal proceedings were initiated against six individuals for involvement in a criminal organization and ML. The group devised a criminal scheme to launder illegal funds originating from two companies established in a foreign European jurisdiction. The illegal funds were remitted to bank accounts opened by these entities in Montenegro, and the funds were subsequently used to pay off fictitious loans owed to connected individuals and entities.

On the 30 October 2017 a MLA request was sent out to the European country were the two companies were incorporated, requesting transaction data for four years from the accounts held by these two

[224] Other cases included kidnapping, illegal restraint and hostage-taking, corruption/bribery and illicit arms trafficking.

companies in the European country, data on all principals who transferred monies to the accounts of the legal entities in question, monetary amounts, and data on specific transfers to bank accounts in Montenegro opened by the same legal entities and other natural persons. Following the evidence obtained the authorities identified other transfers of multi-million dollars to another 20 companies which had bank accounts opened at the same bank in Montenegro. The large majority of these companies were incorporated in the same European jurisdiction.

This led the SPO to send a new MLA request on the 18 May 2018 asking for data on accounts from which these funds were remitted including transaction data, account opening dates, information on monies held in those accounts, information on authorised signatories and persons who authorised specific transactions, information on the origin of monies into those accounts and who made payments in favor of those accounts, and other related evidence.

The requested evidence was received by the SPO on the 14 March 2019. This evidence was instrumental to assist in the investigation and enabled the authorities to indict 12 persons on the 12 July 2021 for several offences including participation in a criminal organisation, tax evasion and money laundering. The proceedings are on-going.

802. To some extent the MLA outgoing requests reflect the country risk (e.g. regarding organised crime and drug trafficking cases). However, with regards to other major ML cross-border threats (e.g. human trafficking, tax evasion, and high-level corruption which could also have potential cross-border links) and ML Montenegrin authorities are not sufficiently seeking MLA (see Table 8.12). However, looking at the picture in its entirety it becomes evident that the limited MLA requests in some cases are reflecting the limitations in the proactive investigations and prosecutions of the respecting crimes, which often have cross-border elements (and corresponding use of MLA requests to gather the necessary evidence). Moreover, the volume of outgoing MLAs in respect of on-going ML cases is also relatively low compared to other cases, which is also a result of the low rate of ML investigations (see IO7).

Table 8.13: Outgoing MLA Requests (SPO) – Related Offences

	ML	Abuse of position in business operations	Abuse of official position	Abuse of authority in the economy	War crimes	Terrorism
2017	9	4	2	1	1	11
2018	24	1	2			1
2019	48	3				1
2020	5	1			1	1
2021	8	4			3	
2022	13	7	2		3	1

803. From discussions held and case studies analysed the AT could also notice that the outgoing MLAs were mainly aimed at obtaining information and evidence in respect of on-going investigations. The SPO also requested assistance for (i) the provision of documentary evidence (ii) the identification of persons and their subsequent interrogation, (iii) banking data and other data on business relations which were also required regularly; and (iv) the identification of property suspected of originating from criminal activity. This confirms the proactive approach taken by the SPO in asking for various types of MLA. To a lesser extent there were also requests for the provision of computer data or data of telecommunications operations, and one request

issued for ordering secret surveillance measures. AT was not made aware of any requests for house searches, searches of other premises, and other operative searches such as interception and recording of telecommunication, controlled deliveries, sham transfers and others.

804. The SPO showed ability to seek international assistance to better investigate complex cross-border cases such as in case of E-Commerce. In this case the SPO pursued information and evidence from numerous countries (35 countries), which were requested to serve summons for the hearing of accused natural persons and authorized representatives of the accused legal entities. Most of these requests still remain unanswered. The AT also took note of a ML case which was transferred to another European country.

805. The statistics provided indicate that there is a significant volume of requests for judicial cooperation in criminal matters, that are refused (see Table 8.14). Throughout discussions held it transpired that in most cases these requests were not executed for objective reasons (e.g. persons not found). The international community also highlighted no issues with the quality of outgoing requests by Montenegro.

Table 8.14: Outgoing MLA Requests – Refusal Rates

OUTGOING MLA REQUESTs – Refusal Rate								
	Outgoing (Total)	Refused	Pending	Executed	Outgoing (ML)	Refused	Pending	Executed
2017	243	43	4	196	10	0	0	10
2018	187	31	4	152	12	2	0	10
2019	168	31	4	133	12	3	0	9
2020	81	22	3	56	5	1	0	4
2021	58	10	3	45	1	1	0	0
2022	101	17	9	75	9	0	1	8
Total	**838**	**154**	**27**	**657**	**49**	**7**	**1**	**41**
	18.37%				**14.28%**			

806. With regards to the time of execution the AT noted some requests which were executed after almost two years. However, on the positive side it appears that the average time for response has significantly decreased over the review period. In the given context, AT cannot disagree with the authorities that some jurisdictions are not cooperative at the necessary level.

Table 8.15: Outgoing MLA Requests – Average Execution Time

	Outgoing MLA Requests: Average Execution Time
2017	245 days
2018	260 days
2019	240 days
2020	182 days
2021	132 days
2022	137 days

Seizures and confiscation

807. The AT was informed of only one request regarding the identification and seizure of the

proceeds of crime generated in Montenegro and moved abroad (i.e. see Case No. 8.6).

Case No. 8.6 - MLA Request to identify and seize proceeds of crime

The SPO sent a MLA request on the 15 July 2020 requesting the judicial authorities of a European country to assist with the gathering of evidence on an ogoing investigation (related to tax evasion and ML), in particular through the provision of documentation and evidentiary material in connection with the purchase of real estate by the defendants EK and EPK. Namely the SPO requested the following:

- Data and documentation on whether and which real estate was bought and from whom, including the consideration paid for the acqusition;
- The location of these properties, and the current tenants of those properties;
- Information on the real owners of these properties

Furthermore, the SPO asked for the imposition of a temporary security measure (freezing) over those immovable properties to prohibit the defendants EK and EPK from transferring the said immovable property to third parties or selling the same immovable property, considering that these immovable properties were purchased with loans that were allegedly funded with cash originating from the suspected crime. The foreign judicial authorities informed the SPO that the two immovable properties in question had been sold in June and December 2020. Defendants EK and EPK were indicted in Montenegro in July 2021.

808. The AT notes that overall, the authorities actively request MLA when investigating cases with cross border elements. There does not appear to the AT that there are concerns with the quality of outgoing MLA requests. The AT however remains concerned that the type of investigations in relation to which MLA is sought is not fully aligned with the risk profile of Montenegro. Few requests are linked to tax evasion, high-level corruption or human trafficking or intended to detect and freeze proceeds of crime located abroad, and a relatively low number of ML related requests. This is heavily impacted by the low volume of ML investigations/prosecutions (IO7).

Extradition

809. The activity of the Montenegrin judicial authorities for securing the presence of accused persons for criminal proceedings in Montenegro and extradition is significant. This reflects and is a reaction to the modus operandi in particular of OCG members who seek to abscond from Montenegro. Numerous cases were presented to the AT evidencing how the success of the criminal procedure is challenged for this very reason.

810. Data provided by the Police shows that in the reporting period there were 246 persons arrested upon the execution of International Arrest Warrants (out of which 67.9% were Montenegrin nationals). The largest number of persons were arrested in Germany, Hungary and Serbia. MoJ provided information in regard of 2021 in which, Montenegro sent extradition requests to the following top 5 countries: Serbia, Germany, Bosnia and Herzegovina, Croatia, Spain. Generally, this is largely in line with the risk profile of the country. However, in so far as the crimes in relation to which these requests are made is not entirely aligned with the country's risk profile. As is the case with MLAs, very few extradition requests were issued by Montenegrin authorities in respect of tax evasion (considered to pose a significant ML threat to the country), and no such action in respect of ML cases which is a logical result of the low level of ML investigations (see IO7).

Table 8.16: IAWs and Outgoing Extradition Requests

	International Arrest Warrants Issued	Outgoing Extradition Requests	
	Total	**Total**	**ML**
2017	102	32	0
2018	95	74	0
2019	94	60	0
2020	69	33	0
2021	66	49	0
2022	87	27	0
Total	**513**	**275**	**0**

Table 8.17: Crimes related to outgoing extradition requests

	2022	2021	2020	2019	2018	2017	**Total**
Robbery and theft	7	7	8	17	21	7	**67**
Drugs related crime	6	14	9	11	16	8	**64**
Murders and grievous bodily injury	7	10	7	11	17	4	**56**
Forgery	-	1	2	3	4	1	**11**
Participation in organised criminal group and racketeering	6	13	6	5	4	5	**39**
Fraud	-	0	1	9	7	3	**20**
Trafficking in Human Beings and migrant smuggling	0	0	0	1	1	1	**3**
Terrorism[225]	0	0	0	1	0	2	**3**
Smuggling	-	1	0	0	0	0	**1**
ML	0	0	0	0	0	0	**0**
TF	0	0	0	0	0	0	**0**
Other[226]	1	3	0	2	4	1	**11**
Total	**27**	**49**	**33**	**60**	**74**	**32**	**275**

811. Around 15% of all outgoing extradition requests were refused by foreign authorities mostly since they would also claim jurisdiction. Out of three extradition requests sent in 2019 and 2017 related to terrorism cases one is still pending while the other two have been rejected for political reasons and since the person was granted refugee status in the requested country. Extradition requests are refused mostly when a foreign country court determines that the conditions for extradition have not been met. In those cases, Ministries of Justice of foreign countries only inform Montenegrin MoJ that the extradition was refused due to non-fulfilment of the legal requirements (most often because the criminal offense was partially committed on the territory of the requested country). These are typically cases with the countries of the region, which have legislation similar to Montenegrin.

Table 8.18: Outgoing Extradition Requests (Refusal Rate) and Average Time for Replies

Outgoing Extradition Requests – Refusal Rate					
	Outgoing (Total)	**Refused**	**Pending**	**Executed**	**Average Execution Time**
2017	32	8	1	23	143 days

[225] In three cases the Montenegrin judicial authorities demanded the extradition of a person on suspicion of terrorism related to an attempted coup d'etat.
[226] Other crimes included corruption/bribery kidnapping, illegal restraint and hostage-taking issued.

2018	74	13	0	61	160 days
2019	60	3	3	54	139 days
2020	33	3	0	30	137 days
2021	49	10	0	39	85 days
2022	27	3	0	24	47 days
	275	40	4	231	
	14,55%				

812. For both active and passive forms of judicial cooperation in criminal matters, Eurojust's capacity is extremely important. Eurojust offers a platform for EU judicial authorities as well as other non-EU authorities to cooperate in investigating and prosecuting serious organised cross-border crime. In November 2017, the cooperation of the State Prosecutor's Office of Montenegro with Eurojust officially began. A state prosecutor is in charge of EUROJUST cooperation, which has been increasing over the review period.

Table 8.19: Use of EUROJUST for active and passive cooperation.

Year	2017	2018	2019	2020	2021	2022
No. of cases	3	27	26	58	82	92

8.2.3. Seeking other forms of international cooperation for AML/CFT purposes

FIU

813. The Montenegrin FIU is a fully-fledged internationally integrated unit, being a member of the Egmont Group and connected to the Egmont Secure Web (ESW) system. The FIU has a dedicated International Cooperation Department, which is responsible for the incoming/outgoing exchange of information and is currently composed of five employees which focus on international cooperation. With respect to foreign FIUs who are not connected to the ESW Network, the FIU sends its requests through INTERPOL. This is however done in isolated cases. The feedback of the international FIU community on the provided cooperation throughout the evaluated period was positive.

814. The FIU seeks the assistance of foreign counterparts in connection with its own on-going analytical cases, and also in respect of on-going investigations related to ML/TF by the SPU and the SPO. The FIU's international cooperation is not limited to operational information exchange, but also includes exchange of experiences, best practices and involvement in international working groups and organizations.

815. While the FIU does not require the signature of an agreement or MoU to exchange information with its foreign counterparts, it has signed 36 MoUs with foreign FIUs to facilitate the exchange of information. This list includes the FIUs of all the neighbouring countries, and other countries among which those that are considered to pose a high threat of ML to Montenegro.

816. The Montenegrin FIU sent 1271 requests to foreign counterparts over the review period. The top five foreign FIUs from which intelligence was sought were: Serbia, Russia, UK, Cyprus and Türkiye. Data on destination of outgoing requests also includes other jurisdictions such as other neighbouring countries or international/regional financial and company formation centres which tallies with the risk profile of Montenegro.

Table 8.20: Outgoing FIU Requests for Information

	FIU – Outgoing Requests			FIU – Incoming Spontaneous Information	
	Total	**ML**	**FT**	**ML**	**TF**
2017	226	224	2	9	5
2018	225	222	3	34	2
2019	16[227]	16	0	6	0
2020	107[228]	106	1	4	0
2021	459	459	0	33	1
2022	207	207	0	32	1
2023[1]	31	35	0	3	0
Total	**1271**	**1269**	**6**	**121**	**9**

817. Most outgoing requests were related to ML emanating from (i) fraud, (ii) tax evasion, (ii) drug trafficking, and other cases where the suspicion of ML emanated from suspicious cash movements, loan agreements and gaming transactions. The Montenegrin authorities sent also six requests over the review period in regards of TF suspicions. The underlying crimes in relation to which the FIU seeks intelligence from its counterparts are ones which pose a high threat of ML to Montenegro, and which are by their nature expected to have international elements. The AT team however notes the lack of outgoing requests in relation to corruption related ML.

818. The quality of outgoing requests is good, taking into account the feedback provided by foreign FIUs and also considering that over the review period none of the outgoing FIU requests were refused by foreign counterparts.

819. The Montenegrin FIU was suspended from the Egmont Group and disconnected from the ESW (between May 2019 and November 2020) following the restructuring of the FIU and the shift from an administrative to a police type FIU. The AT paid particular attention to this period and analysed the FIU's international cooperation capabilities throughout this phase. While it is clear that during this period international cooperation was limited (see Table 8.20), the AT noted that the FIU was active in finding alternatives to enable international cooperation. Over this period in fact several operational agreements defining the manner and procedure for the exchange of financial intelligence data exchange were signed with counterparts from Serbia, North Macedonia, Cyprus, Slovenia, Kosovo* and Azerbaijan. The AT was also informed that some European FIUs enabled exchange of financial intelligence with the FIU of Montenegro by providing access to its web portal (through authorised username and password).

Police

820. The Department for International Operational Police Cooperation Interpol-Europol-SIRENE is the police unit responsible for managing police international cooperation. It's, quite important, overall performance is indicated in the table below:

[227] This includes the period when the Montenegrin FIU was suspended from the Egmont Group.
[228] This includes the period when the Montenegrin FIU was suspended from the Egmont Group.
* All reference to Kosovo, whether to the territory, institutions or population, in this report shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Table 8.21: Outgoing Police Requests for Information

	2022		2021		2020		2019		2018		2017	
OUTGOING REQUESTS	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**
Number of requests sent abroad by law enforcement authorities related to ML/TF	14	0	46	4	124	40	33	18	1	0	1	2
Number of requests sent and executed	10	0	40	4	117	40	31	18	1	0	1	2
Number of requests sent and refused	**4**	**0**	**6**	**0**	**7**	**0**	**2**	**0**	**0**	**0**	**0**	**0**

821. From available statistics it is clear that the Police has become more active in seeking information from its counterparts in relation to ML/TF over the past four years. It is also more active in requesting information in relation to ML/TF than its foreign counterparts. The volume of requests that were refused is relatively low and taking into account the generally good feedback of the international community raises no doubts about their quality.

822. The Asset Recovery Office Police Unit (located within the Department for International Operational Police Cooperation and which became operational in the middle of 2019) is also significantly active when it comes to international cooperation to identify criminal/illicit assets. The ARO is part of the CARIN network. LEAs and prosecutors' offices recognise the ability of ARO to assist their efforts in the area of identification of suspected property or proceeds of crime placed abroad.

Table 8.22: Outgoing Police Requests for Information (ARO)

Outgoing Requests – ARO (Police Unit)				
	Cases/requests	**Channels used**		
		Interpol	Siena	Carin
2020	20	19	1	-
2021	7	4	31>[229]	
2022	14		14	

823. Apart from the limited set of statistics provided by the ARO Police Unit on the countries of foreign counterparts to which requests are sent, the AT was not provided with other information on the country of destination of outgoing requests and the type of underlying crimes to which these outgoing ML requests relate for the AT to be able to analyse whether these requests are in line with the ML/TF risks to which Montenegro is exposed.

Case No. 8.7. – ARO's efforts to trace proceeds of crime abroad

ARO Montenegro received a request from the SPU requesting assistance to help trace assets of a former local PEP who was being investigated for suspicions of illegal enrichment. The ARO processed and

[229] Numerous requests were sent to different countries in connection with common cases.

forwarded the request to ARO offices of countries that had direct or indirect links with aforementioned person, based on investigatory data provided by the SPU. as well as to EUROPOL.

The investigatory work conducted by the SPD prior to formulation of ARO request, allowed the ARO of an EU country to identify legal entities and a bank account who were owned by a close relative of the investigated former PEP. The foreign ARO submitted extensive documentation on ownership structure of commercial entities, history of changes in ownership and management structure, along with other relevant details. This additional information obtained allowed the investigation to further progress.

Supervisors

824. The financial supervisors are integrated in the international community, through membership in international supervisory communities or via signature of multilateral or bilateral agreements to facilitate international supervisory cooperation.

825. The CBM has signed 30 MoUs with other Central Banks or relevant authorities mainly related to banking supervision. These include also MoUs on bilateral technical cooperation with Central Banks of the EU and the Western Balkans. The CBM has also taken part in an international college set up to facilitate the consolidated supervision of a financial group with entities located in different jurisdictions. This college was setup by a neighbouring country in 2020.

826. The CBM seeks assistance and information from foreign supervisors throughout the licensing process. This assistance is sought to verify and supplement the information obtained from licensing applicants and ascertain if there is any adverse regulatory or other information on applicants who are non-residents, or which have prior regulatory history outside of Montenegro. Over the past five years the CBM has on ten occasions sought information from foreign supervisors in conjunction with application processes or material changes to existent licenses.

827. The CMA is a full member of IOSCO and a signatory to the multilateral Memorandum of Cooperation and Mutual Understanding between IOSCO members. In addition, the CMA signed seven MoUs with regulators from the region (i.e. North Macedonia, Croatia, Romania, Bosnia & Herzegovina, Serbia, Albania and Turkiye) and a Multilateral MoU regarding Consultations on Cooperation regarding Supervision of AIFMD Entities signed with another 23 foreign regulators. The AT was informed that over the evaluation period there was one outgoing request.

828. The ISA has concluded five MOUs with foreign partners that also cover cooperation and exchange of information in the area of supervision. There were however no cases where ISA sought information from foreign competent bodies regarding licensing or supervisory activities. EKIP on the other hand has signed MoUs with eight postal services counterparts. However, the Agency was informed by these foreign regulators that they have no jurisdiction in the area of AML/CFT supervision to facilitate cooperation on such matters.

829. In the case of other AML/CFT supervisors covering the DNFBP sector there were no instances of any cooperation with foreign counterparts over the review period.

Ministry of Interior (Citizenship by Investment Scheme)

830. In connection with the Citizenship by Investment Scheme which the Government of Montenegro operated between 2019 and 2022 (see Chapter 1), the AT also sought to assess the extent to which international cooperation tools were being used to mitigate ML/TF risks associated with the program. As highlighted under IO.1 the due diligence on prospective applicants is mainly conducted by private due diligence agencies. The AT team was informed that

such due diligence practices involve checks on a number of aspects such as checks on whether the applicant and related persons (i) have criminal records in their country of origin or any other country where they reside, (ii) have been charged by the International Criminal Court, or are on the Interpol or Europol's wanted list, (iii) own or manage companies that have been convicted for economic crimes or were banned from carrying out certain activities, and (iv) are accused of acts of terrorism, TF or crimes against humanity.

831. These checks are carried out based on open-source information, use of commercial databases as well as through the presentation of official documentation (e.g. criminal conduct certificates). Prior to the granting of citizenship, the MoI also checks whether the NSA, Police Directorate (Interpol) and the High Court possess any adverse intelligence / information on the applicants or connected individuals, which would also involve cross-checks against intelligence or information obtained from international partners. No similar cross-checks are carried out with the FIU, however it was noted that in one particular case the FIU received a request from a foreign FIU concerning a foreign resident who applied for Montenegrin citizenship. This request led to the opening of an FIU analysis and, in view of suspicions identified and information shared with the MoI, the application for citizenship was refused.

Customs

832. The Revenue and Customs Administration has an adequate legal basis to provide international cooperation and exchange information with foreign customs services. The RCA is a member of the World Customs Organisation (WCO) and makes use of its cooperation channels to exchange information. The RCO exchanges information also with international institutions such as OLAF and SELEC and has signed several bilateral agreements with customs services from neighbouring countries and others including Albania, Croatia, Kosovo*, Moldova, Serbia, Slovenia, and UK.

833. Statistics provided by the RCA shows that it is active when it comes to international cooperation (see Table 8.23) in respect of customs fraud, such as smuggling, undervaluation of customs value, fraud in the area of excise goods and fraud in the area of customs origin among others. None of these exchanges related to the illegal smuggling of funds.

834. The RCA also actively participates in international customs operations which include activities in the fight against illegal trade in various goods such as narcotics, tobacco products, counterfeit medicines and medical devices, protected plant and animal species and other goods. These international joint customs operations are coordinated by international organisations such as the WCO, Interpol, Europol and SELEC. The RCA also made reference to a recent JCO it participated in, coordinated jointly by the WCO and Interpol which focused on the fight against illegal trade in protected plant and animal species, and which saw the involvement of about 120 customs administrations. Participating countries exchanged data on seizures and warning messages through the WCO network.

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Table 8.23: Statistics on International Cooperation – Revenue and Customs Administration

	Exchanged Information with international bodies (OLAF, SELEC, INTERPOL & HMRC)	Exchanged Information with foreign customs services	Number of international joint customs operations (JCO)
2017	23	27	9
2018	164	114	3
2019	124	14	7
2020	128	9	7
2021	268	47	9
2022	85	7	10

8.2.4. Providing other forms international cooperation for AML/CFT purposes

835. The Montenegrin FIU exchanges information with its counterparts via the ESW and the FIU has a dedicated International Cooperation Department (composed of five employees) that is responsible for handling incoming requests of information. The FIU's Internal Working Procedures have a dedicated section (i.e. section 8.2.3) for the handling of incoming FIU requests. This section is however mainly focused on the administrative process and checks that are to be conducted to reply to incoming requests and does not provide any procedures for the prioritisation of requests. They only indicate that cases should be dealt with in line with the urgency request denoted by the requesting FIU.

Table 8.24: Incoming FIU Requests for Information

Incoming FIU Requests for Information					Outgoing Spontaneous Intelligence
	Total	ML	FT	Executed	Total
2017	46	38	8	46	1
2018	44	42	2	44	1
2019	32	30	2	32	0
2020	33	33	0	33	3
2021	79	75	4	79	37
2022	51	49	2	51	13
Total	**285**	**267**	**18**	**285**	**55**

836. The top five countries from which the FIU Montenegro received incoming requests or spontaneous intelligence are (i) Serbia, (ii) Malta, (iii) Germany, (iv) Ukraine and (v) Slovenia. These requests and incoming spontaneous intelligence related mainly to ML cases connected with tax evasion, abuse of power, embezzlement fraud, corruption and organised crime. Incoming FIU requests typically involve (i) requests on whether subject persons are known to the Montenegrin, (ii) data on business and financial activities (bank accounts, safe boxes, securities, real estate, other property and assets), (iii) details on bank accounts and transactions, (iv) information on ownership of movable, immovable property and legal entities, and (v) information on criminal background of subject persons among others.

837. To a lesser degree incoming requests also related to environmental crimes and human trafficking. The FIU received 18 international requests in connection with the TF suspicions over the review period.

838. The AT was also provided with case studies evidencing the ability of the FIU to suspend

transactions on the basis of requests from foreign FIUs.

839. Over the review period all of the received FIU requests were responded to. The average time frame for responses is between 30-45 days. In addition, the response of the international community on the level of FIU cooperation was positive. In 2019, the FIU was suspended from the EGMONT group and the respective ESW system and hence alternative ways were used to exchange data with counterparts (as demonstrated by Table 8.24 above).

Case No. 8.8 – Provision of FIU Cooperation

The FIU Montenegro received a request for information from a counterpart FIU on the 15 November 2022, which concerned a citizen of Montenegro. The foreign FIU identified transactions performed via payment institutions which were suspected to be connected with TF, some of which were remitted to the Montenegrin national. This led the foreign FIU to request intelligence about the Montenegrin person.

Following the receipt of the request the FIU performed an urgent analysis through which it was established that the suspect was already adversely known to the FIU. In fact the same suspect was already the subject of adverse intelligence that was shared with the LEA of the requesting FIU's country.

Within three days (i.e. 18 November 2022) and after carrying out the additional verifications the counterpart FIU was informed about the findings. The foreign FIU was informed that over a period of 5 years the suspect had carried out 124 transactions (inflows and outflows) via a payment institution totaling €17,617.30 with persons with whom he has no logically explicable connection. The foreign FIU was also informed that the Montenegrin FIU had intelligence linking the suspect to organizations and individuals that propagate religious extremism. The counterpart FIU was also provided with intelligence obtained from other FIUs showing that individuals who remitted funds to the suspect were also connected with extremist and radical religious groups and that certain senders were indirectly connected to terrorist activities. The FIU of Montenegro also informed its counterpart that it carried out an analysis of the suspect's bank accounts and transactions which however yielded no indications of TF suspicions.

Following the provision of this intelligence to the counterpart FIU, feedback was provided stating that the FIU Montenegro, provided satisfying and sufficiently detailed information which assisted in confirming known information and also provided new details and facts. This information was useful for the subsequent investigation. The counterpart FIU also commended the Montenegrin FIU for replying promptly to the request for information.

840. The AT is however concerned with the lack of proactiveness by the Montenegrin FIU when it comes to the spontaneous sharing of intelligence. The annual outgoing spontaneous disseminations vary year by year with a noteworthy increase since 2021 which is a positive outcome (see Table 8.24). Nevertheless, when taking into account the low volume of spontaneous intelligence sharing throughout most of the review period and looking into qualitative data, such as cases, the AT is more reserved in assessing the system as effective. At least in one very relevant case, the Montenegrin FIU failed to inform the respective foreign part and supply it with relevant intelligence (see case no. 8.8).

841. The Montenegrin FIU makes use of incoming intelligence provided by foreign FIUs to determine whether any persons are suspected to have used the monetary system of Montenegro, in which cases the FIU would open a separate domestic analysis (or broaden an already ongoing analysis) and inform the Police through an analytical report where it confirms the existence of a ML/TF suspicion. Over the review period the FIU Montenegro forwarded 21 analytical reports to LEAs, which were initiated by the request/ spontaneous information of counterpart FIUs. Moreover, from the incoming requests and spontaneous intelligence shared in respect of TF

suspicions the FIU of Montenegro opened 27 cases within the FIU internal procedure.

Police

842. Police have executed the large majority of incoming requests for police information and have done so in a timely manner especially were such cases related to suspicions of TF (see Table 8.25 below). Requests were refused solely in cases when there was no basis to believe that assets were actually located in Montenegro, or where there was no indication that persons in the request had any links or ties to Montenegro.

Table 8.25: Incoming Police Requests ML/TF

International co-operation	**2022**		**2021**		**2020**		**2019**		**2018**		**2017**	
INCOMING REQUESTS	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF
Foreign requests related to ML/TF	44	0	42	4	106	14	15	12	15	11	9	7
Executed	44	0	38	4	105	14	15	12	15	11	9	7
Refused	0	0	4	0	1	0	0	0	0	0	0	0
Average time of execution (days)	**10**	**0**	**10**	**1-2**	**8**	**1-2**	**22**	**1-2**	**10**	**1-2**	**9**	**1-2**

843. LEAs appear to be active in cross-border cooperation based on bilateral agreements within their operational scope also when it comes to the setting up of Joint Investigative Teams (JITs). The AT was however not presented with granular data (e.g. number of JITs established, who initiated them, the nature of the related criminal activity, and the particular foreign counterparts involved) to analyse this aspect further. The Montenegrin authorities provided a case example demonstrating proactiveness (see case no. 8.9).

Case No. 8.9 – Use of Joint Investigation Teams

In March 2020 the Special State Prosecutor's Office was provided by the Sector for Combating Organized Crime and Corruption (Police Department) with information received from their cooperation with the police services of another European country. This cooperation was connected with acts of money laundering of foreign proceeds of crime allegedly committed on the territory of Montenegro by nationals of this foreign jurisdiction.

Following the initiation of the investigation certain evidentiary actions (secret surveillance measures) were taken, and in this respect on April 9, 2020, an agreement was concluded on the establishment of a joint investigation team between the foreign jurisdiction and Montenegro, with the aim of facilitating international cooperation in procedures that are conducted in Montenegro and the third country.

During the duration of the investigative team, numerous joint activities were undertaken, including joint searches of the defendants' house and apartment in Montenegro (which led to the recovery of material evidence) and presence of prosecutors of the foreign jurisdiction for the interrogation of the suspects. Several online meetings were held, and on February 2022, a joint meeting of members of both teams was held at the headquarters of SELEC, where certain evidence was exchanged, and it was agreed to continue joint activities and further exchange of evidence.

On March 24, 2022, the SPO filed an indictment against the defendants.

844. The ARO Police Unit is also active in providing assistance to foreign counterparts in respect of asset recovery. This is also demonstrated by the significant volume of requests it handles. In 2020 64 incoming requested required checks in respect of 363 natural persons and 44 legal

entities, while in 2021 the 50 incoming requests concerned checks on 254 natural persons and 19 legal entities). All incoming requests were processed and replied to with various levels of depth of checks, based on priority, level of association of persons / entities with Montenegro and amount of details provided.

845. The ARO has access to a wide range of databases that it can use to trace and recover assets upon the request of foreign counterparts. These include the: civil registry database (including information on residents and motor vehicle ownership), border management system database (information on persons and vehicles crossing borders), central registry of criminal records, Cadastral Register (including information on ownership of immovable properties), Transaction Account Database (held by CBM and containing information on holders of Montenegrin bank accounts), CRBE (basic and shareholder information on Montenegrin legal entities) and Tax Directorate Financial Statements (yearly balance and income statements of commercial entities). The ARO can also obtain data upon request including: (i) Police Directorate (detailed intelligence reports on subjects – delivered within 10 days), (ii) Financial Intelligence Reports (including details on bank and other monetary transfers), (iii) Maritime Vessels Database (ownership of maritime vessels registered in Montenegro – reply within 60 days), and (iv) Civil Aviation Database (ownership of aircraft registered in Montenegro – reply within 60 days).

846. In general, AT could confirm that the mechanism and management of work at ARO ensures a high level of participation in international cooperation. The general contribution of this unit and the ability to secure information about the property of suspected persons has been repeatedly confirmed by FIU and also SPO.

Case 8.10 – ARO request on asset tracing

In February 2023 the ARO Montenegro, received a request from the ARO of an EU country via CARIN communication channel to assist in the tracing of assets in Montenegro owned by two persons. These persons were OCG members subject of covert police surveillance. Surveillance revealed that one of the persons travelled to Montenegro with the intention to acquire real estate and allegedly used the bank account of the other person (a Montenegrin national) to purchase real estate. The ARO Montenegro conducted checks in available databases, and established that the person had indeed visited Montenegro, frequently staying at a hotel owned by the other person, and purchased real estate in the coastal area. He was not registered in managerial or ownership structure of any commercial entities in Montenegro and owned no vehicles or aircraft in Montenegro.

Checks in the cadastral register revealed that the property owned was part of a wider building development, and the adjacent land plots and apartments were owned by the owners of the hotel, and other persons who were members of regional OCG. Transaction analysis of bank accounts initiated via FIU Montenegro, showed a clear link between the two persons subject of the request. Checks within the criminal intelligence databases revealed links between one of the subjects other hotel owners and OCG members, and hence also links with the foreign subject who had bought property in Montenegro.

The EU ARO was notified with these findings, via EUROPOL SIENA communication channel.

Table 8.26: Incoming Police Requests (ARO)

ARO Police Unit – Incoming Requests					
	Cases/requests	Channels used			
		Interpol	Siena	Carin	Europol
2020	64	53	7	1	3
2021	50	41	4	3	
2022	44	21	17	3	

Supervisors

847. The CBM received 15 requests however in view of lack of accurate statistics could not provide any further details on these requests. The CMA on the other hand received 12 requests related to assistance in connection with licensing and supervisory processes. The case studies on replies to requests for information received and replied to, show that the CMA is effective in replying to requests for information from foreign supervisors. In 2022, the CMA had a request from German Federal Financial Supervisory Authority (BaFin) seeking assistance in connection with a possible violation of the German Law on Trading of Securities and referred to a particular legal entity registered in Montenegro, in which BaFin sought insight into the ownership structure of a disputed legal entity. In cooperation with the CRBE the CMA collected the requested data and informed BaFin.

848. The ISA received 11 requests from foreign counterparts related to fit and proper assessments for certain board members of insurance companies. One of these requests were refused since the ISA did not have a MoU concluded with this foreign supervisor.

849. No evidence of international cooperation throughout licensing processes or other supervisory cooperation was made available by other supervisory authorities.

8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements

850. Based on discussions held as well as case studies provided the AT noted no obstacles hindering the ability to provide basic and BO information on Montenegrin legal entities or arrangements operating in Montenegro and to use the same powers to obtain such information as available for national proceedings. Nevertheless, the authorities were not able to provide any quantitative data in respect of international exchanges related to legal persons and arrangements for basic and BO information.

851. The content of information held within the commercial register, trade register, BO register, but also from other registers (register of non-profit organizations, register of foundations, etc.) is sent by default to foreign judicial authorities upon request. There are no obstacles to the application of this procedure within the framework of judicial cooperation in criminal matters. If the matter is identified as urgent, the request can be processed even in a few days. BO data is usually requested by foreign partners as part of other related evidence relevant in this area (including bank documents, witness interviews and others).

852. In the context of FIU-FIU exchanges the Montenegrin FIU is also able to obtain basic and BO information from banks, tax authorities, police database in relation to cases under the Police's interest. The AT did not note that any negative information from the international community about the ability to source and provide basic and BO information.

Case 8.11 – FIU-FIU Request – Basic and BO Information

In October 2022 the FIU Montenegro received a request via the ESW from another European FIU requesting intelligence about a Montenegrin company and information on bank accounts it held in Montenegro. The Montenegrin FIU replied in November 2022 and provided information obtained from the CRBE as well as financial intelligence provided by a Montenegrin Bank. The FIU Montengro provided the following intelligence to its foreign counterpart:

- The subject person had opened an account at a Montenegrin bank in April 2020, also indicating the name of the natural person who had requested the opening of the bank account.
- Provided the name, date of birth, residential address, and identity document number of the director of the subject legal person, who was a foreign natural person.
- Provided the name, date of birth, residential address and passport number of the bank account signatory.
- Basic information about the subject company i.e. tax registration number, company registration number, registration date, business activity, details of the shareholder (which was a foreign company), and the personal details of the natural person who was the sole owner of the company shareholder (i.e. the beneficial owner of the subject legal person).
- Bank account transaction data indicating inflows from the jurisdiction of the requesting FIU and outflows to a number of European countries.

853. The most pressing issue remains the veracity and relevance of BO information held within the CRBE and CRBO, by companies themselves and to a lesser extent by REs. The shortcomings, conclusions and recommendations described under IO5 thus have an immediate impact on the level of information provided to foreign partners in the context of IO2.

Overall conclusion on IO.2

854. Montenegro ensures effective judicial cooperation in criminal matters. It is positive to note that the timing to respond to requests for legal assistance has significantly improved. Further enhancing the material and human resources, as well as the prioritisation mechanism at the level of involved courts and prosecutorial bodies, would improve further the system. The type of investigations in relation to which MLA is sought is not fully aligned with the risk profile of Montenegro. Few requests are linked to corruption and tax evasion or intended to detect and freeze proceeds of crime located abroad, and a relatively low number of ML related requests. This mainly results from the low volume of ML investigations/prosecutions (see. IO7), rather than a lack of proactiveness in seeking assistance.

855. Montenegrin authorities demonstrated ability to provide a wide range of legal assistance and make use of incoming evidence and intelligence from foreign counterparts to detect and launch domestic analysis, investigations and prosecutions into serious crimes, though not ML.

856. Police and the FIU actively request and provide other forms of international cooperation with foreign partners, in an appropriate manner and on time, without unnecessary delay. The establishment of the ARO during the evaluated period is a positive fact, and an effective element in providing information to foreign authorities and also for the needs of national proceedings regarding suspicious assets located across borders. The FIU however is not as proactive to share intelligence with its counterparts on a spontaneous basis. Supervisory bodies are less active in the international exchange of information.

857. Authorities provide basic and BO information to foreign partners, however this is impacted by the issues related to the accuracy of BO data.

858. **Montenegro is rated as having a Substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 16 April 2015. This report is available here: https://www.coe.int/en/web/moneyval/jurisdictions/montenegro.

Recommendation 1 – Assessing risks and applying a risk-based approach

3. The requirements on assessment of risks and application of the RBA, were not assessed during the previous rounds of mutual evaluation of Montenegro.

4. ***Criterion 1.1 – (Met)*** The Government is vested with the powers to adopt a National Risk Assessment (NRA), according to Art.5a(2) of the LPMLTF. The identification and assessment of ML/TF risks in Montenegro was carried out within the scope of two NRAs. The first NRA was adopted by the Government in 2015 (2015 NRA) while the second NRA was endorsed in 2020 (2020 NRA). The World Bank's Risk Assessment Tool was used for both NRA iterations.

5. In addition to the NRAs, the Montenegrin authorities further analysed the ML risks associated with OCG through dedicated assessments (the 2017 and 2021 SOCTA). The CBM and the FIU carried out jointly a separate sectorial risk analysis at the end of 2021 on VAs and VASPs, based on a domestically developed methodology. A specific risk assessment on legal persons was conducted in 2019. The analysis was mainly based on data from investigations involving legal entities and did not take into account other information, such as information coming from foreign counterparts and STR data. In February 2023, an NPO risk assessment was initiated, nonetheless, at the end of the on-site visit, the subset of NPOs at risk of being abused for TF purposes has not been identified, nor their types and features.

6. ***Criterion 1.2 – (Met)*** According to the legal framework of Montenegro the Government shall establish a permanent coordinating body that shall assess ML/TF risks, elaborate the report and propose measures to mitigate the identified ML/TF risks (LPMLTF, Art.5a(3)).

7. In order to conduct the 2020 NRA, in November 2018 the Government established a working group (WG) coordinated by the FIU and consisting of 84 representatives of a wide range of public institutions[230] and representatives of the private sector.

8. Since November 2022, the Government established a Permanent Coordinating Body (PCB) tasked with monitoring the implementation of the NRA. The PCB is coordinated by the FIU

[230] Courts (different levels), Prosecution Offices (different levels), Ministry of Finance, Ministry of Interior, Ministry of Defence, Ministry of Justice, Ministry of Foreign Affairs, Police Administration, Customs Administration, Tax Administration, State Property Administration, Inspection Administration, Central Registry of Commercial Courts, National Statistics Agency (MONTSTAT), the CBM, the CMA, Insurance Supervision Agency, Games of Chance Administration, National Security Agency, Bar Association, Chamber of Notaries, Certified Accountants and Auditors Institute, Central Depositary Agency, Chamber of Commerce.

and consists of representatives of seven state authorities[231]. Prior to 2022 the implementation of the action plan was monitored by the FIU.

9. In February 2023 the PCB formed a Working Group for the Analysis of the Risk NGO Abuse for the purposes of Terrorist Financing. It is coordinated by the FIU and consists of representatives of 8 state authorities[232] and two NGOs[233].

10. ***Criterion 1.3 – (Met)*** Montenegro has adopted the first NRA in 2015 and the second NRA in 2020, as well as a number of other specific risk assessments, demonstrating that the assessment of ML/TF risks is conducted regularly. Thus, the country has demonstrated that it keeps risk-assessments up to date over the years.

11. ***Criterion 1.4 – (Mostly met)*** Although there are no legal or regulatory provisions on how the information of the results of the risk assessment(s) shall be provided to relevant competent authorities, FIs and DNFBPs, the 2015 NRA was published on the FIU website[234] while 2020 NRA is published on the Government of Montenegro's and FIU's website. Only the CBM and the CMA provided the respective supervised entities with an overview of the main results of the 2020 NRA.

12. ***Criterion 1.5 – (Mostly met)*** The NRA process is defined as a process that includes the development of appropriate measures on the basis of identified ML/TF risks, and the improvement of the efficiency of resource allocation to prevent and mitigate identified ML/TF risks (LPMLTF, Art 5a(1)).

13. On the basis of both NRAs, Montenegro developed the respective Action Plans, which include measures aimed at mitigating the identified ML/TF risks.

14. The Action Plan from 2015 NRA contains a list of 34 actions, linked goals and indication of the main authorities responsible for their implementation. However, it does not set the priorities and timeline for the implementation of the measures nor indicates the allocation of resources needed to meet the goals indicated.

15. The Action Plan from 2020 NRA is much more structured. It contains information on strategic and operational goals with indication in terms of initial status and expected results. Each operational goal is detailed with a list of activities aimed at implementing it. For each activity, result indicators are identified, deadlines are set, and competent authorities are appointed, as well as the source of funds used (budget or donors). Priorities are however not clearly set in the Action Plan (even though this can be inferred from the urgency attached to the deadlines) which impacts the allocation of resources to implement AML/CFT measures (see IO.1).

16. ***Criterion 1.6 – (Partly met)*** The LPMLTF and sectorial guidelines provide for exemptions. These exemptions are not based on any risk assessment outcomes identifying low

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[231] The Ministry of Interior, Police Directorate, the FIU, National Security Agency, Revenue and Customs Administration, Department for Games on Chance and the CBM.
[232] The FIU, Ministry of Public Administration, Special Prosecutor's Office, National Security Agency, Special Police Department, the CBM, Revenue and Customs Administration, Administration for Inspection Affairs.
[233] Centre for Development of Non-Governmental Organizations and Institute Alternative.
[234] https://www.gov.me/en/administration-for-prevention-of-money-laundering-and-terrorist-financing/national-risk-assessmentof-money-laundering-and-terrorist-financing-2020 Due to a cyberattack the FIU website was not accessible between 26 August and 12 September 2022.

ML/TF risks.

17. Lawyers and notaries are subject to some but not all AML/CFT specific measures under the LPMLTF. Trust Service Providers are not subject to AML/CFT obligations and supervision while not all company services and VASPs are subject to AML/CFT obligations and supervision. A detailed analysis is provided under R.15, R.22 and R.23.

18. In relation to electronic money, REs are permitted not to apply certain CDD requirements based on an entity risk assessment indicating that the risk is low, provided that certain conditions are met (e.g., limited re–loadability, amount and use and lack of anonymity among others) (LPMLTF, Art. 13). Such exemptions do not apply when: (i) purchasing electronic money by cash or withdrawing in cash in amount higher than EUR 100; (ii) there are indication of ML/TF suspicion. Since there are no electronic money issuer licensed in Montenegro this technical requirement has no impact.

19. ***Criterion 1.7 – (Met)*** The authorities shall issue regulations for individual sectors or activities on the basis of identified ML/TF risks in the NRA and guide REs in the assessment of their ML/TF risks (LPMLTF, Art.5b(2)3)). Montenegro meets this criterion through both options (a) and (b). See R.34 for further information on these guidelines.

20. (a) REs are obliged to conduct enhanced customer due diligence (EDD) measures when higher ML/TF risk are established, including pursuant to the results of NRA. This includes application of EDD measures when dealing with correspondent relationships, PEPs, high–risk jurisdictions, high–risk customers, complex and unusual transactions, electronic money transfers, as well as other high ML/TF risk scenarios (LPMLTF, Art-s.7a (2), 30(1, 3-4)).

21. b) REs, within 60 days of establishment, shall prepare their risk assessments, among others, including on the basis of the results of NRA. This risk assessment should be updated regularly, at least once a year and kept it in accordance with LPMLTF (LPMLTF, Art.7(1),(3)).

22. ***Criterion 1.8 – (Met)*** If REs assess that a customer, business relationship, transaction, product, service, distribution channel, state or geographic area present lower risk of ML/TF, they can apply simplified measures for establishing and verifying the identity of the customer, monitoring of business relationships and the control of the transactions (LPMLTF, Art-s.7a(1), 37(1)). Simplified measures can be applied where lower ML/TF risks were identified on the basis of the REs' risk assessment (LPMLTF, Art.37(2)). REs' risk assessment shall be conducted, among others, on the basis of the results of NRA (LPMLTF, Art-s. 7(3), 37(2)). Moreover, as stated under c.10.18, the Guidelines issued by the ISA (point 87) and the CBM (section 4.1.2) applicable to insurance service providers and FIs licensed by the CBM permit the application of SDD in certain specific cases considered to present a negligible/lower risk of ML/TF.

23. ***Criterion 1.9 – (Partly met)*** The LPMLTF determines the supervisory authorities for FIs and DNFBPs (LPMLTF, Art.94(1)). There are gaps identified with respect to supervision of a number of categories of REs, including VASPs, Investment Funds, Voluntary Pension Funds regulated under the Law on Voluntary Pension Funds, trust service providers and some company services envisaged under the FATF Standards.

24. Supervisory authorities are required to supervise the application of the LPMLTF, and regulations passed on its basis (Art.94(1)). This includes the implementation of the REs' obligations under R.1. Significant deficiencies were identified under R.26 and R.28 which apply

to this criterion.

25. ***Criterion 1.10 – (Mostly met)*** REs are required to assess the ML/TF risks of the individual customer, a group of customers, a country or geographic areas, business relationship, transaction or product, services, and delivery channels (LPMLTF, Art.7(1)).

26. (a) *Document their risk assessments* – the legislation requires that the REs "prepare" ML/TF risk assessments (LPMLTF, Art.-s 7(1, 3), 99(1)1)) but does not explicitly require that the risk assessment is documented.

27. (b) *Consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied* – REs shall determine the ML/TF risk of an individual customer, a group of customers, a country or geographic areas, business relationship, transaction or product, services, and distribution channels. REs shall conduct ML/TF risk assessments on the basis of guidelines on risk analysis provided by the supervisory authorities. On the basis of the ML/TF risk assessment the REs shall take adequate measures to mitigate the identified ML/TF risks. (LPMLTF, Art. 7(1-3)).

28. (c) *Keep assessments up to date* – REs should regularly, at least once a year, update their ML/TF risk analysis (LPMLTF, Art. 7(1)).

29. (d) *Have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs* – The powers of the supervisory authorities to receive information from REs upon request, including risk assessment information, are stipulated in sectoral legislation and the LPMLTF (see c.27.3 and c.28.4).

30. ***Criterion 1.11 – (Mostly met)*** The LPMLTF sets forth the following provisions with regard to risk mitigation measures to be taken by REs:

31. a) *Have policies, controls and procedures* – REs shall conduct risk assessment and establish policies, controls and procedures, as well as undertake activities for decreasing the ML/TF risks (LPMLTF, Art. 6(1)). REs which are "a large legal person" are obliged to appoint one of the members of the board of directors or other governing that is responsible for the adoption of such polices, controls and procedures. "A large legal person" is an entity that exceeds any two out of the following criteria (i) has up to 250 employees on average in a business year; (ii) has a total annual income of up to EUR 40M; or (iii) has total assets up to EUR 20M. (Law on Accounting, Art.6)). This, however, does not meet the requirement for approval by senior management for all REs and excludes those that do not satisfy the criteria for "a large legal person".

32. b) *Monitor implementation of controls* – REs should monitor implementation of internal controls, assess the adequacy of those and compliance with the LPMLTF and improve it (LPMLTF, Art 48); Rulebook on manner of work of the compliance officer, the manner of conducting the internal control, data keeping and protection, manner of record keeping and employees professional training, Art.-s 6 and 7).

33. c) *Take enhanced measures* – Reference is made to the analysis for c.1.7 (with regard to FIs and DNFBPs), c.10.17 (with regard to FIs) and c.22.1 (with regard to DNFBPs) on the requirement to take enhanced measures to manage and mitigate the identified higher ML/TF risks.

34. ***Criterion 1.12 – (Met)*** SDD is permissible only when a lower risk of ML/TF is established and so long as there are no suspicions of ML/TF – Art 37(2) of the LPMLTF.

Weighting and Conclusion

35. Montenegro mostly meets criteria under this Recommendation. Minor gaps were identified most notably in relation to: (i) mechanisms to disseminate the results of risk assessments to all relevant competent authorities, FIs and DNFBPs (other than those supervised by CBM and CMA), although both NRA have been published; (ii) the absence of prioritisation of national AML/CFT actions impacts the allocation of resources and implementation of measures to prevent and mitigate ML/TF, although a significant improvement has been noted in between the NRAs; (iii) certain exemptions and simplified measures are not supported by risk assessment findings evidencing low ML/TF risks. Moreover, the gaps identified with respect to supervision of a number of categories of REs inhibit supervisors/SRBs to ensure that REs properly implement their obligations under R.1.The AT considers these shortcomings to be minor in nature given the overall scale of application of requirements under R.1. **Recommendation 1 is rated Largely Compliant.**

Recommendation 2 - National Co-operation and Co-ordination

36. In the 4th round mutual evaluation report (MER) of 2015, Montenegro was rated Partly Compliant (PC) on former R.31. The main shortcomings were insufficient intra-agency co-operation. Since then, Montenegro had taken steps for formalising and improving the national co-operation and co-ordination frameworks.

37. ***Criterion 2.1 – (Met)*** The main policy documents on AML/CFT are the two Strategies for the prevention and suppression of terrorism, ML and TF (respectively, 2015-2018 and 2022-2025) and the two NRAs (2015 NRA and 2020 NRA) and their corresponding action plans. All these documents have been adopted by the Government of Montenegro. As for the Strategies for 2015-2018 and the Strategy for 2022-2025, these are accompanied with biennial actions whose implementation is monitored by the Bureau for Operational Coordination (BOC) and National Inter-institutional Operational Team (i.e. NIOT[235]).

38. While the adoption of the Strategy for 2015-2018 preceded development of the NRA, hence, was based on the overall perception of authorities about the ML/TF risks, the second Strategy for 2022-2025 was adopted in accordance with the priorities of the Government defined within the Government Work Program for 2021, and it was informed by the findings of both NRAs.

39. The Action Plans attached to the NRAs contain list of actions emanating from the identified ML/TF risks, with the action plan of the 2020 NRA being much more comprehensive.

40. While the two Strategies contain more counter terrorism elements rather than AML/CFT elements, the Action Plans attached to both NRAs provide for a list of activities to be taken with the aim to mitigate the vulnerabilities detected as well as to reduce the identified ML/TF risks.

[235] Members of the NIOT are representatives of the Ministry of Education, Science, Culture and Sports, the Ministry public administration, digital society and media, Ministry of Defence, Special State Prosecutor's Office; Police Administration, FIU, National Security Agency, Revenue and Customs Administration, Agency for Electronic Communications and Postal Service, Administration for Execution of Criminal Sanctions, as well as representatives of two non-governmental organizations - NGO Centre for Democratic Transition and NGO Forum MNE.

41. ***Criterion 2.2 – (Met)*** The Government of Montenegro bears the ultimate responsibility for adoption of the two Strategies for the prevention and suppression of terrorism, ML and TF, the two NRAs and the respective Action Plans. To ensure development and further implementation the Government set up a number of mechanisms as further described below.

42. The Government tasked the BOC of the National Security Council to monitor the implementation of the Strategy for 2015-2018 (Gov. Decision No. 08-999 from 04.06.2015). The BOC established the NIOT for the implementation of the Strategy for 2015-2018 and related biennial Action Plans (i.e. the management, coordination and monitoring of the operational activities of the competent authorities for the implementation of these documents).

43. The NIOT is also in change of the monitoring of the implementation of the Strategy for the prevention and suppression of terrorism, ML and TF for 2022 -2025 and related biennial Action Plans.

44. As for the 2015 NRA, the Government of Montenegro tasked the FIU of Montenegro to coordinate, monitor and consolidate reports on the activities of the competent authorities and monitoring the implementation of the related Action Plan.

45. Later, on 11 November 2022, the Government of Montenegro established the PCB by decision No. 133/22. The PCB has been tasked with the preparation of the NRA and the Action Plan, monitoring its implementation, coordinating, and directing the activities of the AML/CFT competent authorities. The PCB is responsible for monitoring the implementation of the 2020 NRA Action Plan.

46. ***Criterion 2.3 – (Met)*** The NIOT, set up by the BOC, ensures coordination of the actions underlying AML/CFT national policies by providing the BOC detailed reports on the realization of the measures envisaged by the biennial action plans attached to the AML/CFT Strategies. As for the NRAs, the FIU of Montenegro was assigned as coordinating body of the 2015 and 2020 NRAs while the PCB has been established by Government for the implementation of the Action Plan related to the 2020 NRA. The PCB carries out its functions by holding meetings with the relevant authorities that shall carry out the measures indicated in the Action Plan.

47. In addition to those bodies, in 2021, the Government of Montenegro established the Inter-Institutional Working Group (IIWG) tasked to coordinate the implementation of international standards in AML/CFT area. The IIWG was formed and is led by the MoI and consists of 21 competent authorities[236].

48. At the operational level, there are provisions governing the co-operation at domestic level, which facilitate the co-operation and the exchange of information between the FIU and other domestic competent authorities namely LEAs, Prosecutors, the RCA, and AML/CFT supervisory authorities (LPMLTF, Art-s. 56(2a), 65-66, 74-77, 94-98).

49. As another method to facilitate domestic co-operation and co-ordination, the authorities

[236] Ministry of Interior, Agency for electronic communication and postal services, Department for postal services Montenegro, National Security Authority, Insurance Supervision Agency, Central bank of Montenegro, Capital Market Authority, Ministry of Finance, Ministry of Public Administration, Ministry of Defence, Ministry of Economic Development and Tourism, Ministry of Justice, Ministry of Foreign Affairs, Tax and Customs Authority, Authority for Inspection Affairs, Supreme Court of Montenegro, Special State Prosecution, Notary Chamber, Lawyer Chamber, and Cadastre and State Property Administration, Division for Management of Forfeited Property.

refer to the common practice of concluding multi-lateral/bilateral MOUs between competent authorities (e.g. the bilateral MOU between RCA and FIU in relation to the access to the cash movement monitoring system and the multilateral MOU signed by the FIU, the CBM, the MoJ, the MoI, the Supreme Court, the Supreme State Prosecutor's Office and the Ministry of Finance on cooperation in combatting organized crime, corruption and other criminal offences (see IO.6 for further details).

50. ***Criterion 2.4 – (Not met)*** There are no co-operation and coordination mechanisms in place to combat the financing of proliferation of WMD.

51. ***Criterion 2.5 – (Mostly Met)*** The Agency for the Protection of Personal Data (APPD) is the central body setup pursuant to the Law on the protection of personal information, which is responsible for conducting supervision and monitoring of implementation of respective measures in Montenegro. The Agency for the Protection of Personal Data is also involved in the legislative procedure and may request assessment of the constitutionality and legality of other regulations and general acts regulating issues of personal data processing. (Law on the protection of personal information, Art.49-50). Authorities indicated that APPD cooperates with other state authorities in developing national legislation related to protection of personal data, however APPD is neither member of NIOT, nor of BOC, nor of PCB and nor of the IIWG.

52. The AML/CFT legislation also contains provisions on the use of personal data and its protection by REs and state authorities (LPMLTF, Art. 88-90, 93a). The Authorities moreover explained that it is normal practice for the APPD to be involved in the process when any AML/CFT laws or guidance are being published to ensure alignment with data protection obligations.

Weighting and Conclusion

53. Montenegro fully meets three criteria under this Recommendation, while minor gaps are noted in relation to the cooperation and coordination between competent authorities and the APPD. Nonetheless, there are no co-operation and coordination mechanisms in place to combat the financing of proliferation of WMD. **Recommendation 2 is rated Largely Compliant.**

Recommendation 3 - Money laundering offence

54. In the 4th round MER of 2015, Montenegro was rated PC on R.1 and Largely Compliant (LC) on R.2. The identified shortcomings were as follows: (i) the conversion or transfer of money or other property was not criminalised when carried out to assist any person who was involved in the commission of the predicate offence to evade the legal consequences of his actions; (ii) not all types of property were covered by the ML offence; (iii) the concealment or disguise of property rights was not covered. Montenegro introduced legislative amendments to Art. 268 of the Criminal Code (CC) that broadly rectified the detected deficiencies.

55. ***Criterion 3.1 – (Mostly Met)*** ML is criminalised under the CC (Art. 268), and largely in line with the physical and material elements of the ML offence set out in the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 United Nations Convention against Transnational Organized Crime (the Palermo Convention).

56. For the purpose of ML criminalisation, the CC (Art. 268(7)) defines "property" as "property rights of every kind, whether tangible or intangible assets, movable or immovable

things, securities or other documents evidencing title to or interest in such assets". This definition falls short of covering the "property" itself but rather only refers to "rights" to property. It is not in line with the criminalisation of ML under the Vienna Convention and the Palermo Convention.

57. There is one more shortcoming, which is relatively minor. The CC Article 268(2) does not cover the action of assisting "any person" who is involved in the commission of the predicate offence to evade the legal consequences of his actions, but only assisting the "perpetrator".

58. ***Criterion 3.2 – (Met)*** The ML offence in the CC applies an "all crimes" approach. Respectively, all crimes provided for by the CC are predicate offences for ML. They cover a range of offences within each of the FATF designated categories of offences.

59. ***Criterion 3.3 – (N/A)*** Montenegro does not apply a threshold approach or a combined approach that includes a threshold approach. Thus, this criterion is not applicable to Montenegro.

60. ***Criterion 3.4 – (Mostly met)*** The CC does not specify that the ML offence extends to the type of property that indirectly represents the proceeds of crime or criminal activity.

61. ***Criterion 3.5 – (Met)*** There is no specific requirement under the ML offence to prove that a person has been convicted of underlying criminal activity. The CC Article 268 (1) refers to "money or other property knowing them to be derived from criminal activity".

62. ***Criterion 3.6 – (Met)*** The CC (Art.268) refers to property derived from criminal activity, which enables a broad application of the ML offence. It does not make a distinction between domestic and foreign predicate offences. Combined with the all-crimes approach, it can be concluded that predicate offences for ML extend to conduct that occurred in another country as envisaged by the standard. This was also demonstrated through the judicial practice.

63. ***Criterion 3.7 – (Met)*** Article 268 (2) explicitly criminalises self-laundering. It stipulates that the sanction for ML is equally applicable to the person, who commits a predicate offence.

64. ***Criterion 3.8 – (Met)*** The CC sets out a punishment for ML committed by a person who could have known or should have known that the money or property was derived from a criminal activity (Art. 268(5)). The legal system of Montenegro allows (though not explicitly) to infer intent and knowledge required to prove the ML offence from objective factual circumstances, since the courts have full discretion to consider all facts. (CPC, Art. 17(1)).

65. ***Criterion 3.9 – (Met)*** The applicable sanction to natural persons for ML without aggravating circumstances is imprisonment from 6 months to 5 years (Article 268 (1)). Self-laundering is subject to the same penalty (Article 268(2)). In aggravating circumstances, when the amount of money or value of property subject to ML exceeds EUR 40,000, the sanction is imprisonment from one to ten years (Article 268(3)), while in case of committing the offence by several persons the applicable punishment is imprisonment from three to twelve years (Article 268(4)). For the negligent ML the sanction is imprisonment for up to three years (Article 268(5)). The sanctions applicable to natural persons for ML offence are proportionate. Comparing the range of sanctions for ML with the ones for other serious criminal offences (such as drug trafficking and trafficking in human beings) it is evident that those for ML are dissuasive.

66. ***Criterion 3.10 – (Mostly Met)*** The Law on Criminal Liability of Legal Entities (LCLLE) provides for the criminal liability of legal persons for ML and relevant sanctions. Legal persons

may be held liable for criminal offences referred to in the special section of the CC (LCLLE, Art.3), which includes ML. Such measures are without prejudice of the criminal liability of natural persons (LCLLE, Art.6).

67. The criminal liability of legal person is limited as it depends on the proof of "gain" for the legal entity. This is a practical impediment to an effective prosecution of legal entities for ML.

68. Legal persons are subject to fine and dissolution as a criminal sanction (LCLLE, Art.12). For ML the fine will be ten-fold to fifteen-fold of amount of caused damage or illicit material gain obtained or within the range of EUR 20,000 – 50,000 (LCLLE, Art.15(3)). In case of dissolving a legal entity, all its assets shall be confiscated for the benefit of the state (LCLLE, Art.22). The envisaged sanctions are proportionate and dissuasive.

69. The criminal legislation does not exclude the possibility to initiate parallel civil or administrative proceedings in the cases of criminal prosecution of legal entity. Furthermore, the CC (Art.114) establishes conditions for the treatment of parallel civil claims related to the committed offence. Regarding administrative proceedings, the principle of ne bis in idem, according to Constitution of Montenegro (Art.36) would apply for cases, where the object and the protected value are identical. There should be, however, no obstacle to initiate administrative proceedings for misdemeanours, as set by sectorial laws for violations for example of the AML/CFT obligations. The authorities confirmed that parallel criminal, civil or administrative proceedings in respect of legal persons are not excluded in Montenegro.

70. ***Criterion 3.11 – (Met)*** The CC provides ancillary offences that are applicable to the ML offence. These offences include association and conspiracy (Art 400 and 401 of the CC), attempt (Art 20 of the CC), aiding and abetting, facilitating, and counselling (Art 23-25 of the CC).

Weighting and Conclusion

71. Montenegro met or mostly met all criteria under R.3. Relatively minor deficiencies were identified, including the definition of property as a property right, and the assisting of persons involved in the commission of the predicate offence to evade the legal consequences being restricted to perpetrators. It is also unclear whether the ML offence extends to type of property that indirectly represents the proceeds of crime while the criminal liability of legal persons is limited, by the requirement to proof "gain" for the legal entity. **Recommendation 3 is rated Largely Compliant.**

Recommendation 4 - Confiscation and provisional measures

72. In the 4th round MER of 2015, Montenegro was rated PC on former R.3. The identified technical deficiencies included: (i) the absence of a definition of property in the CC might have restricted the widest use of the confiscation regime; (ii) the confiscation of proceeds was not adequately covered; (iii) no requirement to confiscate property that was derived or indirectly from the proceeds, including income or profits; (iv) no requirement to confiscate property of corresponding value to laundered property and instrumentalities, and the requirement to confiscate property of corresponding value to proceeds was inadequate; and (v) no power to prevent or void actions, prejudicing the ability to recover property subject to confiscation.

73. ***Criterion 4.1 – (Mostly met)*** Montenegro has three types of confiscation mechanisms, confiscation as a criminal sanction (Art.4 - CC), extended confiscation and non-conviction-based-

confiscation (Art.113 - CC; Art. 2 & 10 - Law on Seizure and Confiscation)). Assets can be confiscated from criminal defendants (CC, Art.112-113), and also when held by third parties (Art.113 – CC, Art.479 – CPC, Art.2 (para.2) Law on Seizure and Confiscation). The Law on Seizure and Confiscation covers a broad range of offences including those designated by the FATF.

74. (a) Property laundered - The CC Art 268 (6) provides for the mandatory confiscation of the laundered property. There are however issues with the definition of property under this article (see c.3.1).

75. (b) Proceeds of (including income or other benefits derived from such proceeds), or instrumentalities used or intended for use in, ML or predicate offences – In Montenegro, the general principle is that no one may retain the proceeds of crime acquired through a criminal offence (Art.112(1) - CC). It is subject to confiscation based on the court decision (Art.112(2) - CC). This includes proceeds of crime derived directly or indirectly, through the commission of an offence and also the income or other benefits from those proceeds (Art 142(12) – CC, Art 3 - Law on Seizure and Confiscation).

76. Instrumentalities used or intended to be used in the commission of an offence are subject to confiscation if owned by the perpetrator (Art.75(1) - CC). If they are not owned by the perpetrator, they are subject to confiscation if: (i) so required for reasons of security of people or property; or (ii) for moral reasons; or (iii) where there is still risk that they may be used for the commission of a criminal offence.

77. (c) Property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations – The general principle that no one may retain the proceeds of crime applies also to TF and any terrorist acts (Art.112(1) - CC). Property procured or raised for the purpose of using them or knowing that they would be used, in whole or in part, to finance the commission of criminal offences set out in Art 164, 337, 340, 341, 342, 343, 447, 447a, 447b, 447c, 447d, 448 and 449 of the CC (covering terrorism and terrorist acts envisaged in the TF convention), or to finance organisations with terrorism motives, members of such organisations, or individual with terrorism motives is subject to confiscation (Art.449(3) - CC). Confiscation of instrumentalities of TF and terrorist acts is regulated under the same provisions as for other criminal offences (see para (b)).

78. (d) Property of corresponding value – Confiscation of property of corresponding value is regulated by the CC (Art. 113) and the Law on Seizure and Confiscation (Art.2). Under the CC, when it is not possible to confiscate the proceeds of crime, the perpetrator is obliged to pay an equivalent amount of money. This provision limits the mechanism of the application of confiscation to property of a corresponding value and the scope of the property on which the measures can be applied strictly to money. No such limitation exists under the provisions of the Law on Seizure and Confiscation (Art.2). Nevertheless, the latter does not extend to all crimes.

79. Confiscation of property of corresponding value does not cover laundered property and instrumentalities of crime.

80. ***Criterion 4.2 – (Mostly met)*** (a) Identification, tracing and evaluating property – The CPC (Art. 75-76, 78-83, 89(1), 158-160, 257-257b, 276-278) and the Law on Seizure and Confiscation (Art. 5, 13-14) set out a range of powers for LEAs and the Prosecutor's Office for identifying and tracing property subject to confiscation. Those are complemented by the powers of the FIU and

the obligation for provision of information by other authorities to the FIU under of the LPMLTF (Chapter V). The LEAs of Montenegro have the power to obtain expert valuation of a property.

81. (b) Provisional measures - The CPC provides for the provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation. These apply to laundered property, proceeds, instrumentalities used or intended for use in the commission of the criminal offence, as well as to property subject to extended confiscation (bearing in mind the deficiencies as indicated in c.4.1). Under the CPC Article 85, "objects which have to be seized according to the Criminal Code or which may be used as evidence in the criminal procedure, shall, at the proposal of a State Prosecutor, and by way of a court ruling, be provisionally seized."

82. The CPC Art 481 provides for imposing provisional security measures when conditions for the confiscation of property gain are met. The court is competent to apply those measures upon the request of a prosecutor.

83. The CPC Art 89 envisages the power of the state prosecutor to request the competent authority or organisation to temporary suspend the payment, issuing suspicious money, securities and objects, at the longest for six months. In matters of urgency, the CPC further enables the application of provisional measures directly by police authorities, subject to the conditions defined under Art 257(2) and 263(1).

84. Art 19-34 of the Law on Seizure and Confiscation provide for additional regulations regarding the provisional measures related to the extended confiscation.

85. The power of the FIU to suspend a transaction for up to 72 hours, stipulated by the LPMLTF Art 61, further strengthens the ability of the competent authorities to prevent any dealing, transfer or disposal of property subject to confiscation.

86. Pursuant to the CPC Art 85, the court is competent to issue an order on seizure of property upon the request of the state prosecutor. There is no obligation for the prior notification of a person, whose property is subject to this measure.

87. (c) prevent or void actions that prejudice the country's ability to freeze, seize or recover property subject to confiscation - Authorities may take several measures in this regard. Proceeds of crime may be confiscated even where these have been transferred to third parties, unless such third party proves that he did not know or could not know that such property was acquired from crime (Art 113 (5) – CC). In terms of the same article proceeds of crime that are transferred to third parties gratuitously are also subject to confiscation. The ability to confiscate property of corresponding value (c.4.1(d)) also mitigates the risk of prejudicing the country's ability to freeze, seize and recover assets subject to confiscation.

88. Furthermore art 89(2) and 481 of the CPC, and 19(1) of the Law on Seizure and Confiscation envisage measures aimed at preserving property subject to confiscation, including: (i) the prohibition to dispose of and use immovables, being also notified to the real estate register; (ii) requiring banks not to move funds that are subject to provisional measures; (iii) the prohibition to dispose of a claim arising from a contractual relation; (iv) prohibition to dispose of and encumber shares in a company, being also registered in the public records, as well as (v) the introduction of interim administration in a company.

89. (d) Appropriate investigative measures - The articles of the CPC referred to above provide the authorities with the necessary investigative measures.

90. ***Criterion 4.3 – (Met)*** Several legal provisions provide protection for third party rights. Injured parties' claims for damages are safeguarded when the confiscation of material benefit is ordered, or injured parties are otherwise given the right to claim damages from the amounts confiscated (Art. 114 – CC). Moreover, the CC Article 113 (5) provides that proceeds of crime may be confiscated from *mala fide* third parties (hence protecting *bona fide* ones) or third parties who have received the property without any consideration. Moreover, the person to whom proceeds of crime were transferred has a right to be heard, present evidence throughout proceedings relating to the confiscation of such property, request retrial regarding the decision on confiscation, and to appeal this decision (Art. 479 and 484 – CPC). Instrumentalities may be confiscated from a third party, if so required: (i) for the reasons of security of people or property, (ii) for moral reasons and (iii) where there is a risk of their use in the commission of a crime, when it does not infringe the rights of third persons to claim damages (CC Article 75 (2)).

91. In the decision on provisional seizure of instrumentalities or property gain, the court may order that the provisional seizure does not apply to objects or property gain that are protected under the rules on *bona fide* third parties. This decision shall be communicated by the court to whom it concerns (CPC Art. 90b (1), (2), (4)). In case of appealing the decision on provisional seizure of instrumentalities or property gain, the court shall schedule a hearing, summoning the person to whom it relates. The summoned person shall be heard at the hearing, but his/her absence does not preclude conducting it (CPC Art. 90v (1), (2)).

92. *Bona fide* third parties may request the court to abolish provisional measures affecting the property, which they are the rightful owners of (Art. 32 – Law on Seizure and Confiscation). They also have the right to be notified about the imposition of such measures, the right to participate in the related hearings and the right to appeal court decisions (Art. 26, 49(3) – Law on Seizure and Confiscation). Article 50 sets out the procedure and rights of third parties to reclaim confiscated assets.

93. ***Criterion 4.4 – (Met)*** The Law on Seizure and Confiscation (Art 53-67) sets the mechanism for managing and disposing of seized and confiscated property. The Cadastre and State Property Administration is the competent authority responsible for asset management.

Weighting and Conclusion

94. Montenegro has largely implemented the required measures for the confiscation of property laundered, proceeds of crime, instrumentalities, and property of corresponding value. However, deficiencies remain, which include as follows: the laundered property is not appropriately defined, which might affect its confiscation; the confiscation of a property of corresponding value does not extend to laundered property and instrumentalities of crime, while not all types of property of equivalent value to the proceeds of crime may be confiscated. In view of the overall factors. **Recommendation 4 is rated Largely Compliant**.

Recommendation 5 - Terrorist financing offence

95. In the 4th round MER of 2015, Montenegro was rated PC on former SR II. The identified deficiencies related to: (i) a limited scope of the TF offence, which did not cover all the acts listed in the Annexed Convention; (ii) the financing of the offences under the Annexed Conventions,

which were partially covered under the terrorism offence, being subject to an additional purposive element, (iii) a restrictive scope of the definition of "individual terrorist" and "terrorist organisation"; (iv) a limited scope of the application of criminal liability of legal entities due to the grounds provided by the LCLLE.

96. ***Criterion 5.1 – (Mostly met)*** Montenegro ratified the International Convention for the Suppression of the Financing of Terrorism in 2006. Terrorism financing is criminalized as a stand-alone offence under Art. 449 of the CC, as follows: procuring, in any manner, or raising assets for the purpose of using them or knowing that they would be used, in whole or in part, to finance the commission of criminal offences set out in the following Articles[237] or financing organisations, members thereof or individuals aiming to the commission of those offences. This definition covers the financing of the offences listed in the Annexed Conventions, except in relation to the financing of acts of theft or robbery of nuclear material, embezzlement or fraudulent obtaining of nuclear material as foreseen by the Convention on the Physical Protection of Nuclear Material (1980). This shortcoming is considered to be minor.

97. ***Criterion 5.2. – (Met)*** As indicated under c.5.1. the TF offence covers any person who wilfully provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are used, in full or in part to finance: 1)the commission of terrorist offences, 2) the organizations and members thereof which have set the commission of these offences as their aim (3) individuals whose aim is to commit such offences. The mental element is tied up only with the assets raised for the purpose of using them or knowing that they would be used for such activities. As the other elements are not required it could be concluded that there is nothing in the wording of Art. 449 CC which suggests that the financing of a terrorist or a terrorist group must be linked to a specific terrorist act. A terrorist association is defined as two or more persons which associate for a longer period to commit criminal offences set forth in Art 447,447(a to d), 448 and 449 of the CC (Art. 449a of the CC).

98. ***Criterion 5.2. bis – (Partly met)*** The financing of traveling of individuals to a State other than Montenegro is incriminated for the purpose of recruitment, enlisting, preparation, organisation, managing, transport or arrangement of transport or training of individuals, however only in relation to joining or taking part in a foreign armed formation (Art. 449b of the CC). The financing of those activities for the purpose of preparation, planning perpetration or participation in terrorist acts is not covered.

99. ***Criterion 5.3 – (Mostly met)*** The TF offence extends to any funds or other assets, whether from a legitimate or illegitimate source under Art. 449(2). A minor shortcoming is noted in relation to the definition of "funds and other assets" which does not explicitly cover "interest, dividends or other income on or value accruing from or generated by funds or other assets" as foreseen by the FATF Glossary.

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[237] Art. 164 (Abduction), 337 (Endangering Safety with Nuclear Substances), 340 (Endangering Traffic by Dangerous Acts or Means), 341(Jeopardising the Security of Aviation Transportation), 342(Jeopardising the Security of Aviation and Maritime Transportation or of Fixed Platforms), 343(Hijacking of Aircraft, Ship or Other Means of Transport), 447(Terrorism), 447a(Public Call for the Commission of Terrorist Acts), 447b(Recruitment and Training for Commission of Terrorist Acts), 447c(Use of a Lethal Implement), 447d(Destruction or Damage of a Nuclear Facility), 448(Endangering Persons under International Protection) and 449(Terrorism Financing)

100. ***Criterion 5.4 – (Met)*** The TF offence does not require that the funds were actually used to carry out or attempt a terrorist act; it also does not require that the funds should be linked to a specific terrorist act.

101. ***Criterion 5.5 - (Met)*** According to the general principles of Montenegrin law, the Courts are not bound by rules setting any particular criteria when deciding upon the existence of the intent and knowledge required to prove an offence (Article 17 of the CPC). Consequently, this means that the Court can rely on objective factual circumstances for all offences, including the TF offence.

102. ***Criterion 5.6 - (Met)*** According to Article 449 (1) of the CC, TF is punished by a prison term from one to ten years as well as the confiscation of all funds. The sanction available for TF offence appears to be proportionate to other terrorism-related crimes and to be proportionate and dissuasive.

103. ***Criterion 5.7 - (Partly met)*** Pursuant to Art. 3 of the LCLLE, legal entities may be held liable for criminal offences referred to in the special section of the CC which also includes TF. Art 5. However, stipulates that a legal entity may be held liable when 1) the criminal offence is committed by a responsible person; 2) when it is demonstrated that the offence was committed with the intention to obtain gain for the legal entity or when the act was contrary to the business policy or orders of the legal entity. According to Art.6, such measures are without prejudice to the criminal liability of the responsible person committing such act.

104. The liability of legal persons, although envisaged in the law, is excluded when the act is committed by other persons who exercise control over the entity and when it cannot be proven that gain was obtained or the act went against the legal person's policy or orders. These shortcomings significantly impact the liability of legal persons for TF.

105. ***Criterion 5.8 - (Mostly Met)*** a) *Attempt to commit the TF offence* - is covered through Article 20 (1) of the CC applicable to the TF offence.

106. b) *In terms of TF participation as an accomplice in a TF offence or attempted TF offence* – is covered through the general part of the CC (Art. 23, para (2) of CC - perpetration and co-perpetration) applicable to the TF offence.

107. c) *In terms of the criminalization of the organization or direct management of others to commit a FT crime (or its attempt)* – covered by Art. 25 of the CC (in terms of direct management of other to commit the TF offence) and by Art. 401 and 401a of the CC with regards to the organisation to commit a TF offence. The attempt is covered through Art. 20(1) of the CC applicable to the TF offence.

108. d) *In regard to contribution to the commission of one or more TF offences (or its attempt) by a group of persons acting with a common purpose* – covered by Art. 26 which covers most of the elements. Nevertheless, the threshold to contribute to the commission of one or more TF offences or attempted offences is higher than required under Rec 5.

109. ***Criterion 5.9 - (Met)*** Montenegro has applied the "all-crime approach" to establish predicate offences to ML, which means that TF is a predicate offence for money laundering.

110. ***Criterion 5.10 – (Met)*** Article 449 of the CC does not contain any reference to territorial

limitations of the scope of the TF offence. It applies regardless of where terrorist or terrorist organizations are located, or the terrorist acts occurred or will occur, or whether it occurs in the same country where the TF offence is committed or where the person, who allegedly committed such offence is located.

Weighting and Conclusion

111. Montenegro meets or mostly meets the majority of criteria under this Recommendation, with the exception of minor shortcomings noted in relation to the (i) criminalization of financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training as required, and (ii) liability of legal persons for TF. **Recommendation 5 is rated as Largely Compliant.**

Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

112. Montenegro was rated NC in the previous evaluation round on SR III. Several deficiencies were identified, including (i) a lack of 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; (ii) no mechanism in place to draw up a domestic list of terrorists; (iii) no procedures to examine and to give effect to actions initiated under freezing mechanisms of other jurisdictions; (iv) no publicly-known procedures for de-listing, unfreezing of funds and other assets, and for authorizing access to funds or other assets.

113. To address the abovementioned deficiencies, Montenegro adopted in 2015 the LIRM constituting the legal framework allowing for the implementation of the UN TF related targeted financial sanctions (TFS). In 2018, and 2019 the LIRM was further amended.

114. ***Criterion 6.1 (Partly met)***– In relation to designations pursuant to UNSCR 1267/1989 and 1988:

115. a) The Government of Montenegro, through the Ministry of Foreign Affairs (MFA), is the competent authority for proposing persons or entities to the 1267/1989 and 1988 UN Committees for designation. Such proposals are conditioned by the designation of a person or entity on the National List (Art. 15 - IRM Law). The National List is defined by the Government, upon proposal by the National Security Council, pursuant to the provisions of the law regulating the basis of the intelligence and security sector and compiled based (i) on information from the MFA on EU designated persons or entities; (ii) on proposals from the National Security Agency, the state administration body for defence affaires, the administrative body for police affairs and the State's Prosecutor's Office, or (iii) a reasoned request from another state (Art. 9 - IRM Law).

116. b) There is no formal procedure in place establishing the process for detection and identification of targets for designation based on the criteria set out in relevant UNSCRs.

117. c) When deciding whether to make a proposal for designation, the Government applies "reasonable doubt" as the evidentiary standard of proof, which is the same as the one required under the Criminal Procedure Code. Thus, the evidentiary standard for proposing a designation appears to be higher than "reasonable grounds" or "reasonable basis".

118. d) The Government is required to follow the procedures established by the relevant UN Sanctions Committees and to use UN standard forms for proposing a designation to a UN Sanctions Committee (Article 15(2)).

119. e) The IRM Law allows for the provision of a wide range of information on the targeted individual or entity as part of the proposal to allow for accurate and positive identification (Art. 15 – IRM Law). There is no provision indicating whether Montenegro may be made known to be the designating state.

120. ***Criterion 6.2 (Mostly met) -*** In relation to designations pursuant to UNSCR 1373:

121. a) The Government of Montenegro is the competent authority for the designation of persons and entities to the national list in accordance with the mechanism envisaged by UNSCR 1373 (Art. 4 and 9 - IRM Law). The Government decides on the above-mentioned in accordance with designation criteria foreseen by Art. 10 of the IRM Law, which reflect criteria set by UNSCR 1373. The Government decides upon the proposal of the National Security Council (Art. 9 of the IRM Law) as well at the reasonable request of another country (Art 11 of the IRM Law). The FIU is also empowered to propose designations to the National List to the National Security Council in accordance with the IRM Law (Article 56 - LPMLTF). The Government submits the designation, as well as any amendment or supplement to this act, to the Ministry of Interior which shall adopt without delay a resolution for imposing the restrictive measure on every person designated on the National List individually (Art. 13 - IRM Law). No such designations have been made. However, this whole mechanism is conditioned upon the existence of a higher standard of proof.

122. b) Montenegro has a formal mechanism for identifying targets for designation. The National List is defined by the Government, upon proposal by the National Security Council, based on information provided by the MFA, the NSA the state administration authority responsible for defence, the state administration body responsible for police-related issues, and the state prosecutor's office (Art. 9 - IRM Law).

123. c) and d) The MFA is required to submit, without delay, to the National Security Council the request received by a competent authority of a foreign state (Article 11 of the IRM Law). When deciding on this, the Government applies "reasonable doubt" as the evidentiary standard of proof. However, this standard is higher than the one required by the FATF. There are no provisions indicating that designations should not be conditional upon the existence of a criminal proceeding.

124. e) The IRM Law requires the Government to provide as much identifying information, and specific information supporting the designation, as possible when requesting another country to give effect to the actions initiated under the freezing mechanisms (Art 14 - IRM Law).

125. ***Criterion 6.3 – (Partly met)*** (a) There is no legal provision enabling the competent authority to collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation. The FIU is empowered to propose to the National Security Council natural and legal persons for designation on the National List in accordance with the IRM Law (Art. 56 - LPMLTF).

126. b) The designation should be made *ex parte*, since there is no legal or judicial requirement to hear or inform the potential person or entity against whom a designation is being considered.

127. ***Criterion 6.4 – (Met)*** In accordance with Art. 7 of the IRM Law, the United Nations Security Council resolutions that define restrictive measures are automatically binding in Montenegro. With regards to UNSCR 1373, Art. 13(3) of the IRM Law foresees that the Government shall submit the national list to the Ministry of Interior which shall adopt, without delay, an order to impose restrictive measures that relevant authorities and entities responsible for the application of the restrictive measure shall be obliged to enforce without delay.

128. ***Criterion 6.5 - (Partly met)*** (a) The freezing obligation is not required to be implemented without prior notice. Moreover, the scope of entities required to implement restrictive measures does not extend to all natural and legal persons but is limited to: (i) state bodies, state administration bodies, local self-government bodies and local government bodies, (ii) banks and other financial organizations, (iii) other legal and natural persons exercising public authority or public service within their jurisdiction. According to Art 16(2) of the IRM Law, all natural and legal persons within Montenegro are required to refrain from any business relation, service provision or assistance to designated persons, as well as to persons connected with them directly or indirectly. Under Art 16(3), all natural and legal persons are required to report, without delay, to the state administration authority responsible for police affairs, any identified assets/property connected with a designated person/entity. Supervision over the implementation of this Law shall be exercised by AML/CFT supervisory authorities in accordance with their competences set under the LPMLTF (Art 31 – IRM Law).

129. b) The obligation to freeze covers funds and other assets that are owned or controlled by the designated person or entity, directly or indirectly (Art.18 - IRM Law). However, this does not fully extend to funds or other assets as specifically referred to under Criteria 6.5(b)ii to 6.5(b)iv.

130. c) According to Art. 16. of the IRM Law, all physical and legal persons must refrain from any business relation, service provision or assistance to designated persons, as well as to persons connected to them directly or indirectly. However, this requirement does not cover all the aspects of making funds or assets available for the benefit of designated persons and entities, entities owned or controlled directly or indirectly or acting on the direction of designated persons and entities.

859. d) According to Art. 7. of the IRM Law, the MFA is required to publish on its website the United Nations Security Council resolutions in original, immediately upon adoption. It is stated that before publication, the MFA informs the responsible authorities referred to in art. 16(1) of the IRM Law, which does not include all DNFBPs. The FIU also uses an automated solution to directly retrieve information on amendments or changes of the UN lists directly from the consolidated UN lists. The automated solution publicly available on the webpage of the FIU and MFA.

131. The CBM has established Guidelines on the implementation of international restrictive measures for credit and financial institutions under its supervision in 2017 (under the previous IRM regime) and in 2022 (two years after the adoption of the IRM Law in December 2019). The CMA also adopted similar Guidelines for its supervised entities in February 2023.

132. There is no mechanism for directly communicating designations to DNFBPs, while guidance is only provided to FIs under the supervision of the CBM and CMA), which excludes other persons or entities, including DNFBPs, that may be holding targeted funds or other assets,

on their obligations in taking action under freezing mechanisms.

133. e) As articulated under c.6.5(a), all natural and legal person are required to report to the state administration authority responsible for police affairs any identified assets and/or other property that are connected to designated persons without delay (Art.16 - IRM Law), failure to report may result in administrative sanctions (Art. 32 - IRM Law). However, it is not clear whether REs are required to report other actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions.

134. f) The rights of *bona fide* third parties are protected (Art. 20 - IRM Law).

135. ***Criterion 6.6 – (Partly met)***

136. a) There are no publicly known procedures to submit de-listing requests to the UN sanctions Committees 1267/1989 and 1988 in the case of persons and entities designated pursuant to the UN Sanctions Regimes, who in the view of Montenegro, do not or no longer meet the criteria for designation[238].

137. b) According to Art. 23 of the IRM Law, when the NSA, the state administration authority responsible for defence, the state administration body responsible for police-related issues and the state prosecutor's office establish that persons and entities designated pursuant to UNSCR 1373 no longer meet the criteria for designation, they shall propose to the National Security Council to delete these persons from the National List. The Government, upon proposal by the National Security Council, shall adopt an act for deleting the designated persons from the National List, which shall be submitted to the MoI, so that they can adopt a resolution for termination of the application of restrictive measures, without delay.

138. c) According to Art. 13 of the IRM Law, the persons designated to the National List, may file a complaint to the Administrative Court against the order for the designation within eight days from the day of submission of the order.

139. d) With regard to designations pursuant to UNSCR 1988, there are no procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730.

140. e) In terms of the designations on the Al-Qaida Sanctions List, there are no procedures for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions.

141. f) There are no publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism, upon verification that the person or entity involved is not a designated person or entity.

142. g) According to Art 21 of the IRM Law, the MFA is required to publish on its internet page the decisions of the United Nations Security Council for lifting the restrictive measures and at the

[238]According to the procedures of the 1267/1989 Committee as set out in UNSCRs 1730, 1735, 1822, 1904, 1989 and 2083 and all successor resolutions or the procedures of the 1988 Committee as set out in UNSCRs 1730, 1735, 1822, 1904, 1988 and 2082 and all successor resolutions, as appropriate.

same time, to inform, without delay, the authorities and entities responsible for the application of restrictive measures. The authorities and entities responsible for the application of restrictive measures are obliged to take measures and activities within their competencies to terminate the application of restrictive measures. The shortcomings related to the communication of designations explained under c.6.5(d) likewise apply to the communication of lifting of restrictive measures.

143. ***Criterion 6.7 – (Partly met)*** Art 19 of the IRM Law foresees authorized access to frozen funds or other assets that is necessary for basic expenses, but not for extraordinary expenses. If the request is made by a person or entity from the UN List, the MFA informs the responsible committee of the United Nations about the request, in compliance with the Guidelines. Furthermore, within five days from the reception of the request, the MoI adopts a resolution for unfreezing a portion of assets and/or property or rejecting the request. The described procedure doesn't reflect the procedure set out in UNSCR 1452 and successor resolutions. However, it establishes the procedure to access frozen funds or other assets for basic expenses, the payment of certain types of fees, expenses, and service charges of entities that have been designated in accordance with the 1373 mechanism.

Weighting and Conclusion

144. Despite the commendable legislative developments, there remain gaps in the legislative framework governing TF-related TFS. Criteria used by the Montenegro authorities for the identification of targets for designation to the relevant UN Security Committee do not reflect designation criteria from all relevant UNSCRs. The government applies the "reasonable doubt" standard of proof, which is the same as required by the Criminal Code, appearing thus to be a higher standard of proof than "reasonable grounds". The freezing mechanism does not cover all natural and legal persons. The procedures for delisting are not carried out in accordance with the procedures of the relevant UN Security Committees. Procedures envisaged by the Law in terms of the authorized access to the frozen funds and other assets necessary for basic and extraordinary expenses of entities that have been designated by the relevant UN Security Committees are not harmonized with the UNSCR 1452. **Recommendation 6 is rated as Partially Compliant**.

Recommendation 7 – Targeted financial sanctions related to proliferation

145. The previous mutual evaluation of Montenegro was conducted prior to the adoption of R.7. PF-related TFS are implemented in Montenegro under the same legal framework as TF-related TFS – the IRM Law.

146. There is a unique framework for the implementation of TF and PF TFS.

147. ***Criterion 7.1 (Met)***– PF-related TFS are automatically implemented in Montenegro under the Law on IRM (see R.6).

148. ***Criterion 7.2 (Partly met)*** – (a) In accordance with Art. 16 of the IRM Law, state authorities, state administration authorities, local self-government authorities, and local administration authorities, banks and other financial organisations, and other legal and physical persons that hold public authority or provide public service are responsible for implementing and enforcing targeted financial sanctions. However, this provision does not clearly identify the

necessary legal authority and other competent authorities responsible for implementing and enforcing TFS. Moreover, the freezing obligation does not extend to all natural and legal persons (see R.6).

149. (b), (c), (d), (e) and (f): The same measures and deficiencies identified above for criteria 6.5(b), 6.5(c), 6.5(d), 6.5(e) and 6.5(f) apply respectively for criteria 7.2(b), 7.2(c), 7.2(d), 7.2(e) and 7.2(f) to UNSCRs 1718 and 1737 (and subsequent resolutions).

150. ***Criterion 7.3 – (Mostly met)*** According to Art. 31 of the IRM Law, the supervision over the enforcement of the above-mentioned law is carried out by the AML/CFT supervisors, in accordance with the LPMLTF. Failure to comply with the IRM Law by REs is subject to fines ranging from 1,000 to 40,000 euros (Art 32 – IRM Law). As noted under c.7.2, not all legal and natural persons are subject to freezing obligation emanating from the IRM Law.

151. ***Criterion 7.4 – (Not met)***

152. a) There are no provisions or measures implementing this criterion.

153. b) There are no provisions or measures implementing this criterion.

154. c) There are no provisions or measures implementing this criterion.

155. d) Mechanisms for communicating de-listings and unfreezing to the financial sector and the DNFBPs are described in the analysis for Criterion 6.6.(g).

156. ***Criterion 7.5 – (Not met)***

157. a) There are no provisions or measures implementing this criterion.

158. b) There are no provisions or measures implementing this criterion.

159. c) There are no provisions or measures implementing this criterion.

Weighting and Conclusion

160. The Law on IRM enables the Government to implement PF-related TFS without delay. However, there are moderate deficiencies remaining as follows: (i) a narrow scope of entities covered by the freezing obligation, which has a cascading effect on the measures for monitoring and ensuring compliance by financial institutions and DNFBPs with the relevant laws or enforceable means governing the obligations under Recommendation 7, and (ii) there are no procedures in the Law on IRM, which would enable the implementation of TFS in Montenegro in accordance with criteria 7.4. and 7.5. **Recommendation 7 is rated as Partially Compliant.**

Recommendation 8 – Non-profit organisations

161. In its 4th MER, Montenegro was rated Partially Compliant with respect to the requirements of the Non-Profit Organisations. The main deficiencies were: (i) no mechanism is in place for conducting comprehensive assessments and periodic reassessments of the NPO sector, (ii) no outreach undertaken to the NPO sector for raising awareness about the potential risk of terrorist abuse and about the available measures to protect against such abuse, and promoting the transparency, accountability, integrity and public confidence in the administration and management of all NPOs, (iii) no supervision in place to sanction violations of the provisions of

the Law on NGO, (iv) no requirement to maintain records of domestic and international transactions; (v) annual financial statements were not required to contain detailed breakdowns of incomes and expenditures of the NGOs.

162. ***Criterion 8.1 – (Not met)***

163. a) Montenegro has not identified the subset of organisations falling within the FATF definition of NPO, nor the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse. The analysis reflected in the NRA concluded on a low level of TF risk in the NPO sector[239]. Montenegro did not conduct a sectoral risk assessment, however a Working Group dedicated to NPOs was established in February 2023. The preliminary conclusions provided at the end of the on-site visit highlighted that the primary challenge for the TF risk analysis of the NPO sector was the limited data available in the NPO register as well as their supervision.

164. b) Montenegro has not identified the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors could abuse those NPOs.

165. c) Montenegro has not reviewed the adequacy of measures, including laws and regulations which relate to the subset of the NPO sector that may be abused for terrorism financing support. However, the preliminary conclusions of the sectoral risk assessment which was still on-going at the time of the on-site have shown the following shortcomings: (i) an inadequate supervisory legal framework, (ii) a lack of adequate guidelines and rules aimed to reduce the risk of abuse for TF, (iii) a lack of oversight on NPO financing, notably given the possibility of cash financing in the NPO sector and within religious communities, (iv) the lack of a functional definition of NPOs, (v) the lack of identification of the subset falling under the FATF definition, (vi) the lack of requirement for NPOs to keep records of domestic and foreign transactions allowing to verify that the funds are received and spent in a manner consistent with the purpose of the organisation.

166. d) There is no process in place to reassess periodically the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure proportionate and effective actions to address the risks identified.

167. ***Criterion 8.2 – (Not met)***

168. a) There are no clear policies to promote accountability, integrity and public confidence in the administration and management of NPOs.

169. b) There were limited activities conducted aimed at raising and deepening awareness among NPOs, nor the donor community about the potential vulnerabilities of NPOs to TF abuse and TF risks, and the measures that NPOs can take to protect themselves against such abuse. In May and September 2022, the FIU organised two workshops where representatives of the NPO sector participated, where the focus was on raising awareness of the vulnerability of certain NPOs to TF, the FATF Standards, the role of banks and other financial service providers in mitigating the risk of NPO abuse for TF purposes.

[239] NRA, page 292.

170. c) A Working Group headed by the Department for financial intelligence affairs consisting of representatives of competent authorities (including the Ministry of Public Administration, the NSA, the Special Police Department, the Special State Prosecutor's Office, the Revenue and Customs Administration, the Central Bank of Montenegro, the Administration for Inspections Affairs) and NPOs was formed in February 2022 for the purposes of assessing the TF risk in the NPO sector. Some preliminary findings have been shared with the AT. However, no other practices are in place to work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse.

171. d) While it is worth noting that, according to Montenegro, most NPOs are financed from projects and donors from the EU, there are no measures in place to encourage NPOs to conduct transactions via regulated financial channels, whenever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.

172. ***Criterion 8.3 - (Not met)–*** No specific steps are taken to promote effective supervision or monitoring such that it could be demonstrated that risk-based measures apply to NPOs at risk of TF abuse.

173. ***Criterion 8.4 – (Not met)***

174. a) No practices are in place monitor the compliance of NPOs with the requirements of Recommendation 8.

175. b) No sanctions are available for violations by NPOs or persons acting on behalf of these NPOs.

176. ***Criterion 8.5 – (Partly met)***

177. a) There is no mechanism or practice in place to ensure effective cooperation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs. A Working Group for the Analysis of the Risk of abuse of NGOs for the purposes of terrorist financing was established on the 13th of February 2023.

178. b) According to Montenegrin authorities, LEAs have a range of powers for the investigation of terrorism-related offences (including TF), including NPOs suspected of either being exploited by or actively supporting terrorist activity or organisations, based on the Special Public Prosecutor's Office Law, on the LPMLTF, the Law on Internal Affairs and the Criminal Procedure Code. The investigation of terrorism-related offences is the responsibility of the Special Public Prosecutor's Office (Article 3, paragraph 4 of the Law on Special Prosecutor's Office). The NSA and the FIU have investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

179. c)According to Art 11 of the Law on NGOs, NPOs are required to keep in their official records the following information: (i) the person authorized for representing associations, foundations, and offices of foreign organisations, (ii) the founders of associations, foundations, and offices of foreign organisations, as well as (iii) the president and members of the board of directors of foundations. However, the aforementioned law is silent on accessibility to

information set out in this sub-criterion.

180. d)According to Art 64 of the LPMLTF, when there is a TF suspicion involving in relation to a certain transaction or person, the FIU may initiate the procedure for collecting and analysing data, information and documentation. However, it remains unclear whether there is a mechanism for information sharing between competent authorities in order to take preventive or investigative action.

181. ***Criterion 8.6 (Partly met)***– Montenegro has not identified specific contact points and procedures to respond to international requests for information regarding particular NPOs suspected of TF or involvement in other forms of terrorist support. Montenegro relies upon existing mechanisms for international co-operation, the Ministry of Justice being a central point for all requests for mutual legal assistance, while other authorities provide various other forms of international cooperation (see R.37 – R. 40).

Weighting and Conclusion

182. There are fundamental or major shortcomings in relation to all requirements for the implementation of R. 8. **Recommendation 8 is rated as Non-Compliant**.

Recommendation 9 – Financial institution secrecy laws

183. In the 4th round MER of 2015, Montenegro was rated LC on R.4. The MER identified a minor shortcoming in relation to the lack of provisions enabling financial institutions to share information on identification/verification information of their clients for the purpose of Recommendations 7, 9 and SR. VII.

184. ***Criterion 9.1 – (Mostly met)*** Sectoral laws provide for the notion of professional secrecy related to the information held with the FIs (Art 203 of the Law on Credit Institutions, Art 143 of the Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit-Guarantee Operations, Art 359 of the Law on Capital Markets, Art 133 of the Law on Investment Funds, Art 41 of the Law on postal Services and Art 189 of the Insurance Law). Where this is the case there are exceptions for disclosing the information to the supervisors, FIU and competent authorities.

185. a) *Access to information by competent authorities*- When providing data, information and documentation to FIU, in accordance with this law, the obligation to protect business secrecy, bank secrecy, professional and official secrecy shall not apply to REs, organizations with public powers, state authorities, courts, lawyers or notaries and their employees (Art 89 - LPMLTF), while the FIU, state authorities and holders of public powers, REs, lawyers or notaries and their employees are obliged to use data, information and documentation, which they have received in accordance with the law, only for those purposes they are obtained for (Art 90 - LPMLTF). In addition, Art 204 of the Law on Credit Institutions further provides that information considered to be banking secrecy can be made available to the CBM, competent court, competent state prosecutor and the administration authority competent for police affairs for the purpose of pursuing perpetrators of crimes. As for the insurance sector, the confidentiality obligations and exceptions thereto are set out under Art. 189a of the Insurance Law, which prescribes that such obligations do not apply where information is needed in conjunction with a criminal proceeding or if the disclosure of such data is ordered by court or a State Prosecutor (Art 189a(2)), or if such

data is required in terms of LPMLTF (Art 189a(3)) or required for supervisory purposes (Art 189a(9)). Similar provisions apply for investment firms (Art 268 of the Law on Capital Markets), while for investment fund managers and pension fund managers there are no explicit provisions exempting them from confidentiality obligations for the purposes of giving access to LEAs.

186. b) *Sharing of information between competent authorities* - Supervisory bodies are obliged to mutually exchange information and to, at the request of the other competent authority or a foreign competent supervisory authority, submit the required data and documentation which such authorities need for supervision (Art 94 - LPMLTF). Art 31 of the Law on Central Bank ensures sharing of information with its domestic and foreign counterparts. Art 128 of the Law on Insurance also stipulates that the ISA should cooperate and exchange information with other regulatory and supervisory authorities. The Capital Markets Commission may conclude an agreement only if the exchange of information is carried out for the performance of activities of regulatory authorities, and if a level of data protection and information equivalent to the level of data protection and information established by the Capital Markets Law is ensured. No such information is provided on sharing information with the LEAs.

187. c) *Sharing of information between financial institutions* - The obligation to protect business secrecy, bank secrecy, professional and official secrecy shall not apply to a reporting entity who is a member of financial group when exchanging data and information with other members of financial group in accordance with the conditions prescribed by Art 42 of the LPMLTF.

188. Client data may be made available to the credit institution used to perform international payment transactions (correspondent bank) needed to perform mandatory identification and verification of clients in accordance with the LPMLTF (Clause 12, Part 3, Art 204 of the Law on credit Institutions). As provided under R.13 there is no clear and unequivocal obligation to ensure that all CDD information may be provided by the respondent institution upon request.

Weighting and Conclusion

189. Minor shortcomings have been noted in relation to (i) the lack of explicit provisions exempting investment fund managers and pension fund managers from confidentiality obligations for the purposes of sharing information with LEAs, (ii) shortcomings under R.13 apply in relation to the lack of an explicit obligation to ensure that all CDD information is to be provided by the responded institution upon request. **Recommendation 9 is rated Largely Compliant.**

Recommendation 10 – Customer due diligence

190. In the 4th round MER of 2015, Montenegro was rated PC on former R.5. The MER noted that not all FIs were subject to AML/CFT obligations. REs were not required: (i) carry out full CDD measures in case of wire transfers, (ii) to verify the authorisation of representatives of, and obtain other information on foreign legal persons, limited partnerships and legal arrangements (iii) to verify the identity of representatives of legal persons and (iv) to understand the ownership and control structure of limited partnerships or legal arrangements, and determine their BOs. SDD was permitted where the ML/TF risk was not low and was not limited to countries compliant with the FATF Recommendations. REs were not required to implement all CDD measures when applying SDD. It was not an offence to establish a business relationship when CDD could not be applied and there was no requirement to terminate a business relationship in such cases. Deficiencies were broadly remedied. A new LPMLTF was adopted in July 2021, and the FATF

Standards for CDD changed. A new assessment of R.10 is being undertaken.

191. FIs identified under the FATF Recommendations are designated as REs under the LPMLTF, with some exclusions. Investment and Voluntary Pension Funds are not designated as REs and not subject to AML/CFT obligations. At the end of 2022 there were six investment funds holding EUR 34M in assets, and no voluntary pension funds. All funds have to be managed by Investment Fund Management Companies licensed under the Law on Investment Funds which are REs and subject to AML/CFT obligations – Art 7(1) and 68(1) of the Law on Investment Funds.

192. ***Criterion 10.1 – (Met)*** REs are prohibited from opening or keeping anonymous accounts, coded or bearer passbooks and providing other services enabling the concealment of customer identity (Art 39 - LPMLTF). This prohibits the keeping of accounts in obviously fictitious names.

193. ***Criterion 10.2 – (Mostly Met)*** REs shall conduct CDD measures: (i) when establishing a business relationship, (ii) when executing one or several linked occasional transactions of €15,000 or more, (iii) in respect of transfer of funds of €1,000 or more, (iv) when there are reasons for suspicion of ML/TF, and (v) when there is suspicion about the accuracy or veracity of obtained customer and beneficial owner identification data - Art 9(1) items 1-5 of the LPMLTF. It is not explicitly specified that in cases of suspicions of ML/TF, CDD should be performed irrespective of any exemptions or thresholds.

194. ***Criterion 10.3 – (Mostly Met)*** REs shall establish and verify the identity of the customer based on documents, data and information from reliable, independent and objective sources (Art 8(1) item 1 – LPMLTF). A customer may be a natural person, legal person, foreign trust or entity equivalent thereto, establishing a business relation or carrying out transactions (Article 5(5)).

195. Regarding legal persons or business organisations where REs doubt the accuracy of obtained CDD data and documents they may rely on a written statement of the representative attesting the accuracy of CDD data (Art 15(7) – LPMLTF). The obtainment of such statements is not an independent verification measure.

196. ***Criterion 10.4 – (Mostly Met)*** REs have to check that any person acting on behalf of a customer is authorised to do so and establish and verify the identity such person - Art 8(2).

197. In case of foreign trusts (and similar entities) REs have to obtain documents certifying the powers of protectors and authorised persons (Art 18(1) item 2 - LPMLTF). The term "authorised person" is not defined, and in the case of legal persons it covers the persons acting on behalf of the representatives (not the representatives themselves). Thus, it is questionable whether REs must verify the authorisation of trustees, being the ones representing the beneficiaries.

198. ***Criterion 10.5 – (Partly Met)*** The term BO is defined under Art 20 of the LPMLTF. Deficiencies within this definition are identified including material ones relating to legal persons (see c.10.10 and 10.11). REs have to identify the customer's BO and verify his identify (Art 8(1) item 2 - LPMLTF). Art 18 and 21 provide more specific details.

199. The wording of Art 18 and 21 (particularly Art 18(5) and 21(1-4)) allow REs to determine who the BOs of foreign trusts and legal persons are by consulting official documents available at the Central Business Registry or other appropriate public registers. Public registers may not hold the BOs' identity details (especially given that the CRBO is not fully populated see c.24.6) and information on BOs of all types of legal persons and especially legal arrangements. Registers could

also hold data which is not accurate and reliable240. Nonetheless with regards to legal persons REs are explicitly required to verify BO's data to the extent that ensures complete and clear insight into the beneficial ownership of the customer. Thus, they are expected to go beyond relying on registers to determine who the BO is (Article 21(4)). There is no similar requirement for foreign trusts and equivalent entities.

200. ***Criterion 10.6 – (Met)*** REs shall obtain data on the purpose and nature of a business relationship – (Art 8(1) item (3) LPMLTF). REs shall take into consideration (i) the purpose of the conclusion and the nature of the business relationship, (ii) the amount of funds, the value of the property or the volume of the transaction; (iii) the duration of the business relationship; and (iv) alignment of business with the original purpose - Art 8(4). This equates to understanding the business relationship.

201. ***Criterion 10.7 – (Mostly Met)*** (a) REs shall apply measures to monitor the customer's business activities including (i) the control of transactions (in line with the customer's risk); (ii) monitoring and verifying that the customer's business is aligned with the usual scope of the customer's affairs and the nature and purpose of the contractual relationship; and (iii) checking the source of funds used to operate the business. Art 27(1) and (2) - LPMLTF.

202. (b) Art 27(2) item 5 and 27(3) require REs to monitor and regularly update the customer's identification documents and data in line with risk. In case of foreign legal persons, Montenegrin legal persons with foreign share capital of at least 25%, and branches of foreign legal persons, REs have to carry out annual control. This includes gathering identity data on the legal person, representatives, and BOs, and obtaining the powers of attorney of representatives - Art 28.

203. These requirements do not comply with c.10.7(b), which requires FIs to revise and keep up-to date and relevant all CDD documents, data and information and not just customer identity data and in some cases the BO's. Chapter 4 of the CBM Guidelines require FIs licensed by the CBM to "update all data" which is wider, though could benefit from more clarity.

204. ***Criterion 10.8 – (Mostly Met)*** When establishing and verifying the customer's identity REs shall obtain the data referred to in Article 79(6) (amongst other data) - see Art 26(1). This includes information on the customer's business activity. This obligation (under article 26(1)) however only applies to business relationships, and not occasional transactions.

205. REs must also take measures to determine the ownership and control structure of a customer (Art 8(1) item 2 – LPMLTF), which includes legal persons, business organisations, foreign trusts and entities equivalent thereto – see c.10.3.

206. ***Criterion 10.9 – (Mostly Met)*** REs must establish and verify the identity of customers that are legal persons, foreign trusts and entities equal thereto (see c.10.3).

207. (a) Name, legal form and proof of existence - REs must obtain the name, address, registered office and ID number of a legal person or business organisation, by checking an original or certified copy document obtained from the Central Business Registry, or another appropriate public, court or business register (for foreign legal persons) – Art 15(1) LPMLTF. Proof of

240 As set out under Rec. 24 and IO5 the measures undertaken to verify basic and beneficial ownership information that is registered are not appropriate.

existence is verified by reference to official documents held at the registers, which would also hold information on the legal form of the legal person. In case of foreign trusts or equivalent entities REs must obtain the name of the trust or similar entity (Art 18 (2) and Art 79(15)). REs are not required to determine the legal form and proof of existence for foreign trusts.

208. (b) The powers that regulate and bind the legal person or arrangement, and names of senior management - Some of the documents (e.g. M&As and trust deeds) which may be collected to verify the powers of representatives of legal persons, foreign trusts and similar entities (Art 16(5) and 18(1) item 2) include information on the powers that regulate and bind the legal person or arrangement, however there is no explicit and clear obligation to obtain this information.

209. REs shall obtain the name, and other personal details of representatives of legal persons and all directors – Art 16(1) LMPLTF. REs are not bound to collect the names of other senior management officials, which is particularly relevant where legal entities do not have boards of directors and where senior management do not have representative powers (hence not subject to identification as per these articles).

210. In case of foreign trusts REs shall collect the name, and other personal details of settlors, trustees and protectors (among others) and representatives – Art 18(3) and (4), and Art 79 (1) and (4). Although those having representative powers are covered, it is unclear whether entities similar to trusts that do not have settlors, trustees or protectors, are required to identify their equivalents.

211. (c) Address of the registered office, and, if different, a principal place of business - REs shall obtain the address and registered office of a legal person (see c.10.9(a)) but are not required to obtain the principal place of business address if different. For trusts and similar entities REs shall obtain the address, registered office or residential address of trustees and other representatives (Art 18(2) and (4), and Art 79 (1), (2) and (4)). There is no obligation to obtain the country of establishment of the foreign trust or similar entity.

212. ***Criterion 10.10 – (Partly Met)*** The customer identification and verification obligation is set out under Art 8(1) item 2 of the LMPLTF. Art 21(1) by reference to Art 79(14) requires that REs obtain the name, address, date and place of birth of BOs There are deficiencies concerning the obligation to verify such information (see c.10.5).

213. In case of legal persons that receive, manage and allocate assets (asset management companies), Art 21(1) cross-referencing to Art 79(14) only requires the collection of information on the category of persons in whose interest the legal person is established and operating. Identifying only a category of persons (without any risk-based motivation) falls short of the obligation set out under c.10.10 requiring the identification and verification of identity of every BO of a legal person. The BO definition for legal persons is set out in Art 20(1) – (5) of the LMPLTF.

214. (a) Natural person(s) who ultimately has a controlling ownership interest - In the case of a business organisation or legal person the BO is any natural person that ultimately exercises control over a legal person, including those who indirectly or directly owns at least 25% of the shares, voting rights and other rights which give him/her management powers, or else owns more than 25% of the share capital - Art 20(1) and (2) item (1). Formal ownership of a legal person is defined strictly as the ownership of more than 25% of its share capital, excluding legal

persons which do not have ownership interests organised in share capital. For asset management companies the BO is defined as that person who directly or indirectly controls at least 25% of the legal person's assets or who is a beneficiary of at least 25% of the income from the property being managed by the legal person.

215. (b) where there are doubts or there is no beneficial owner in terms of (a); the natural person(s) exercising control through other means - Natural persons who: (i) have a dominating influence over the management of the legal person's assets, or (ii) fund the legal person and retain significant decision-making power, are considered BOs, and shall be identified and verified irrespective of whether a person under c.10.10(a) was identified - Art 20(2) items 1 and 2.

216. The definition of "control through other means" is confined to the two mentioned instances and excludes other cases of control through non-formal means. In the case of asset management companies, there is no requirement to identify the natural person who controls the legal person through other means besides those stipulated in c.10.10(a).

217. (c) where no natural person is identified under (a) or (b); the natural person(s) holding the position of senior managing officials - where it is not possible to identify the BO as per points (a) and (b) above or there is suspicion that the persons outlined therein are the BOs, the BO shall be any natural person who holds a managerial position within the legal person – Art 20(3). The fact that managers can be identified as BOs even where "it is not possible" to identify BOs in terms of points (a) and (b) leaves room for abuse. C.10.10(c) is applicable only where no natural person can be found under points (a) and (b), and not when such persons exist but it is not possible to identify them for whatever reason.

218. ***Criterion 10.11 – (Mostly Met)*** Montenegrin Law does not cater for the setting up of trusts or similar legal arrangements, however foreign arrangements may do business in Montenegro.

219. (a) In respect of foreign trusts REs are obliged to determine and verify the identity of the: (i) settlor, (ii) trustee(s), (iii) protector, (iv) beneficiary or group of beneficiaries that are determined or can be determined and who manage property, and (v) other natural persons that directly or indirectly have ultimate control over the trust – Art 18(3) of the LPMLTF. Art 20(6) provides a definition of BO in the case of foreign trusts which to a large extent captures all the natural persons listed in Article 18(3). The definition of beneficiaries, as those who manage property, is somewhat misleading and may give rise to misinterpretation as to who the beneficiaries are.

220. (b) Art 18(3) and 20(6) are applicable to foreign trusts and similar entities. It is doubtful whether in the case of similar entities all the persons equivalent to the trust parties mentioned in point (a) are covered. This because both Art 18(3) and 20(6) make explicit reference to officials (e.g., settlor, trustees or founders) that are only involved in trusts or foundations to the exclusion of other similar type of legal arrangements.

221. ***Criterion 10.12 – (Met)*** Life insurance service providers, shall, identify the user of the policy by: (a) obtaining the beneficiary's name, where he is named; and (b) where the beneficiary/ies are designated by characteristics, by class or other means, obtain sufficient information to establish the identity of the beneficiary at the time of payout – Art 8(5) of the LPMLTF. Verification of the beneficiary's identity shall occur at the time of payout or not later

than when the beneficiary can exercise his rights.

222. ***Criterion 10.13 – (Not Met)*** FIs are not required to include the beneficiary of a life insurance policy as a relevant risk factor when determining whether EDD is applicable. While EDD is required whenever there are higher risks of ML/TF (point 85(1) of the ISA Guidelines), there is no specific obligation to conduct EDD where the beneficiary (who is a legal person / arrangement) presents a higher risk.

223. ***Criterion 10.14 – (Mostly Met)*** Identification and verification (of customers and BOs) and the obtainment of information on the purpose and nature of the relationship or transaction should occur prior to establishing the business relationship or executing an occasional transaction – Art 10(1) and 11(1) of the LPMLTF. This obligation does not apply to occasional transactions between €1,000 and €14,999 that are wire transfers.

224. REs may not verify the identity of the customer and BO after the establishment of a business relationship or execution of an occasional transaction (€15k or more) but may do so during the establishment of the business relationship where necessary not to interrupt the business and the risk of ML/TF is insignificant. REs must not establish a business relationship or carry out an occasional transaction (€15k or more) when onboarding CDD measures cannot be carried - Art 10(4) and 11(2).

225. ***Criterion 10.15 – (n/a)*** REs are required to carry out verification of identity before or during the establishment of a business relationship or occasional transaction (see 10.14).

226. ***Criterion 10.16 – (Mostly Met)*** CDD measures are applicable to existent customers irrespective of risk (Art 9(2) - LPMLTF). CDD must be carried out when executing the first transaction after the coming into force of the LPMLTF (Art 104). There are no provisions requiring REs to apply CDD measures to existing customers at an appropriate time considering the timing and adequacy of previous CDD.

227. ***Criterion 10.17 – (Met)*** EDD measures apply (i) in case of higher risk factors, (ii) when higher risks of ML/TF are identified through the RE's risk assessment, and (iii) in respect of higher risk cases set out in the NRA (Art 7a(2), 30(3) and 30(4) of the LMPLTF).

228. ***Criterion 10.18 – (Partly Met)*** SDD is permissible only in case of lower risk of ML/TF and when there are no suspicions of ML/TF – Art 37(2). There is no explicit provision banning SDD in cases of higher risks of ML/TF, however this is implied in the wording of Art 37(2).

229. The ISA Guidelines (point 87) and the CBM Guidelines (section 4.1.2) applicable to insurance service providers and FIs licensed by the CBM permit the application of SDD in certain specific cases considered to present a negligible/lower risk of ML/TF. These concessions are not backed up by any national or RE's analysis of risk. Moreover, except for FIs licensed by the CBM (see CBM Guidelines - section 4.1.2), there is no obligation to ensure that SDD measures are commensurate to the lower risk factors identified.

230. ***Criterion 10.19 – (Partly Met)*** REs shall not establish or continue a business relationship nor carry out an occasional transaction (€15,000 or more), if they cannot conduct the CDD measures set out in Art 8(1) items 1-3 (Art 10(4) and 11(2) - LPMLTF).

231. This obligation does not apply (i) where REs are unable to conduct on-going monitoring;

and (ii) in respect of wire transfer occasional transactions between €1,000 to €14,999. In cases of inability to conduct CDD REs may submit a STR to the FIU, which is not equivalent to an explicit obligation to consider submitting a STR (Art 12).

232. ***Criterion 10.20 – (Not Met)*** Where REs suspect ML/TF and reasonably believe that the conduct of CDD will tip-off the customer, they are not allowed to desist from pursuing the CDD process.

Weighting and Conclusion

233. Some deficiencies within the CDD framework are considered significant, particularly in light of Montenegro's exposure to ML/TF risks associated with legal persons and real estate transactions. These deficiencies are outlined hereunder: In case of doubts on the accuracy of CDD data on legal persons REs may rely on a written statement by the customer rather than on independent and reliable sources (c.10.3); The obligation to obtain data on the customer's business activity (inc. legal persons) is not applicable in the case of occasional transactions (c.10.8); Beneficial ownership via "control through other means" is interpreted very narrowly and not applicable for asset management companies (c.10.10b); Senior managing officials of legal persons may be identified as BOs where "it is not possible" to identify BOs in terms of c.10.10(a) and (b) rather than when no such natural persons exist. (c.10.10c). Moreover, Banks and other FIs licensed by the CBM and ISA, are permitted to apply SDD in specific circumstances not backed by a risk analysis (c.10.18). There are also some deficiencies concerning CDD in relation to foreign trusts and similar foreign entities which although serious in nature, are not considered material given the limited use of foreign trusts in Montenegro (see Chapter 1). Other minor shortcomings were also identified. **Recommendation 10 is rated Partially Compliant.**

Recommendation 11 – Record-keeping

234. In the 4th round MER of 2015, Montenegro was rated C on R.10.

235. ***Criterion 11.1 – (Mostly met)*** REs are required to maintain all necessary records on transactions both domestic and international, for at least ten years after the termination of business relationship or executed transaction (Art 91 and 78 - LPMLTF). As regards insurance companies, those are obliged to safekeep data on the insured or insurance beneficiaries, and other data of importance for exercising rights to indemnity, or payment of contracted amounts ten years upon expiry of the insurance contract (Art 189b - Insurance law). It is not clear that this extends to all the records on transactions both domestic and international.

236. ***Criterion 11.2 – (Mostly met)*** REs shall keep data records on customers, business relationships, accounts and transactions. This extends to transaction related documentation, data on identification number of each customer's account, data and documentation on wire transfers, documentation on business correspondence and reports for at least ten years after the termination of business relationship, executed transaction. While there is no explicit requirement to keep the results of any analysis undertaken as part of the CDD measures, it is considered that these are covered by the general obligation to keep records on data obtained through the implementation of record-keeping requirements (Art. 94(1) of the LPMLTF). Same applies to insurance sector, whereas the wording of article 189b does not clearly imply application of record keeping requirements to any analysis undertaken.

237. ***Criterion 11.3 - (Mostly met)*** Records should be kept in a manner that will ensure the reconstruction of individual transactions (including the amounts and currency) that could be used as evidence in the process of detecting customer's criminal activities (Art 78(2) LPMLTF).

238. In respect to life insurance brokers and agents there is no specific requirement under the Insurance Law to require record-keeping of transactions in a sufficient manner to allow reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

239. ***Criterion 11.4 – (Mostly met)*** REs are obliged to establish and monitor a system that enables complete and timely response to the requests of the FIU and competent state authorities in accordance with the LPMLTF (Art 6(8) LPMLTF). OGM 22/19 further specifies that AML/CFT activities in financial institutions (this does not cover insurance and life insurance companies and intermediaries) need to be organized in a manner which will ensure a fast, high-quality and timely performance of all tasks defined by the LPMLTF and regulations passed thereof. As regards the insurance sector, articles 121 and 125 of the Insurance law provide a set of information, which should be made available to the authorized authority by the insurance companies. This does not include obligation to make the information swiftly available.

Weighting and Conclusion

240. While there is no explicit requirement to keep the results of any analysis undertaken as part of the CDD measures, it is considered that these are covered by the general obligation to keep records on data obtained through the implementation of record-keeping requirements. With regards to insurance brokers and agents, there is no specific requirement under the Insurance Law to require record-keeping of transactions in a sufficient manner to allow reconstruction of individual transactions. There is no obligation to make the information swiftly available by the insurance sector. **Recommendation 11 is rated Largely Compliant.**

Recommendation 12 – Politically exposed persons

241. In the 4th round MER of 2015, Montenegro was rated PC on R.6. REs were not required to have appropriate risk management systems to determine PEP status of potential customers and BOs. Senior management approval was not required to continue business relationships with customers that become a PEP; no explicit requirement to establish the source of wealth and source of funds of BOs who were PEPs, while the requirement to establish the source of wealth of PEPs was not clearly set out. A new LPMLTF, which includes measures on PEPs, was adopted in July 2021, an analysis of which is undertaken.

242. Investment and Voluntary Pension Funds are not designated as REs (see R.10).

243. ***Criterion 12.1 – (Mostly Met)*** REs are required to conduct EDD in respect of customers or BOs who are foreign or domestic PEPs - Art 30(1) item (2) and 30(2a) LPMLTF. The term foreign PEP is defined under Art 32(2) and broadly in line with the FATF terminology. The term "heads of state/ governments" covers only presidents and prime ministers to the exclusion of heads of states / governments with other type of designations. The EDD measures set out under Art 33 apply to PEPs, family members and close associates for until 12 months after the PEP ceases to hold office, or beyond if ML/TF risks are still perceived (see Art 32(6)). This risk–based approach is broadly in line with the requirements of Rec. 12.

244. (a) *Risk Management Systems* – REs shall adopt risk-based internal acts and apply them when identifying customers or BOs who are PEPs (Art 33(2) – LPMLTF). This is not an explicit requirement to have systems in place to determine whether a customer or BO is a PEP. FIs licensed by the CBM and life insurance companies are explicitly obliged (Section 4.1.1.2 – CBM Guidelines and Art 14 - ISA Guidelines on Risk Analysis) to establish if a customer or BO is a PEP.

245. (b) *Senior Management Approval* - Is required to establish or continue business relationships with PEPs - Art 33(1) items 2 and 3.

246. (c) *Source of Wealth and Funds* – REs shall undertake appropriate measures and determine the customer's and BO's source of property (wealth) and funds – Art 33(1) item 1 & 3.

247. (d) *Enhanced ongoing monitoring* – transactions and activities undertaken through business relationships with PEPs (customers/BOs) shall be monitored with special attention - Art. 33(1) item 4.

248. ***Criterion 12.2 – (Mostly Met)*** The EDD measures described in c.12.1 apply to domestic and foreign PEPs, and those fulfilling a prominent public function in an international organisation (Art 30(2a) and 32(1) and (2) - LPMLTF). The wording of Art 32(1) and (2) makes these EDD measures applicable only to domestic PEPs being Montenegrin citizens (excluding non-citizens).

249. (a) Some FIs are not explicitly obliged to establish if a customer or BO is a PEP (see c. 12.1).

250. (b) The EDD measures under c.12.1 (b)-(d) apply to domestic PEPs and persons fulfilling a prominent public function in an international organisation in the same manner.

251. ***Criterion 12.3 – (Mostly Met)*** The measures under c.12.1 and 12.2 apply similarly to close family members and close associates of all PEPs as defined under the FATF standards - Art 32(3).

252. ***Criterion 12.4 – (Mostly Met)*** REs shall establish reasonable measures to determine if beneficiaries of life insurance and/or BOs of users of life insurance are PEPs. (Art 32a(1) & (5) - LPMLTF). These measures shall be adopted no later than the time of pay out, or transfer of the policy (Art 32a(2)). In case of higher risk, additional measures are required such as: (i) notifying senior management prior to the pay out; and (ii) enhanced verification and monitoring of the business of the owner of the policy, and submission of STRs in cases of suspicions – Art 32a (3).

253. REs are however required to conduct enhanced monitoring of the business of the policy owner and not of the whole business relationship. Moreover, it is not explicitly clear that REs should submit STRs in case of suspicions of proceeds of crime, this since Art 32a (3) does not cover this requirement while Art 41(3) does.

Weighting and Conclusion

254. The identified shortcomings are either minor in nature or of minor materiality since they do not impact important FIs. These include: The definition of foreign PEPs is not wide enough to capture all types of heads of states / governments; There is no clear obligation for some less material FIs to have systems in place to determine whether a customer or BO is a PEP; The applicability of EDD to domestic PEPs is limited to Montenegrin citizens. There is no clear requirement to conduct enhanced monitoring of the whole business relationship in case of higher

risk life insurance policies, and it is not clear whether life insurance entities should consider submitting a STR in case of suspicions of proceeds of crime. **Recommendation 12 is rated Largely Compliant.**

Recommendation 13 – Correspondent banking

255. In the 4th round MER of 2015, Montenegro was not evaluated against the former R.7, having received a LC rating in the previous assessment.

256. ***Criterion 13.1 – (Partly Met)*** When establishing correspondent relationships with credit institutions located outside the EU or in countries which do not have equivalent AML/CFT standards, Montenegrin FIs shall carry out EDD (Art 31(1) - LPMLTF). For respondent institutions located in other countries EDD measures apply when (following the carrying out of an obligatory risk assessment of the correspondent relationship) a high risk of ML/TF is identified (see Part III Section 1.2 – CBM Guidelines).

257. This is not in line with Rec. 13 as EDD (i) is not mandated for all correspondent relationships, but applicable to EU and equivalent respondent credit institutions only on a risk-sensitive basis with the CBM Guidelines (see Part III Section 1.2.3.) indicating that the risk is reduced if the respondent institution is in the EU or an equivalent country and (ii) are only applicable to correspondent relationships established with credit institutions, excluding other types of financial institutions. The impact of the first shortcoming is limited considering that it affects seven correspondent relationships with EU Banks (established by two banks) and which form part of the same financial group and subject to common AML/CFT group policies.

258. (a) FIs shall obtain the date of issuance of the respondent bank's license, the name and address of the licensing authority, information on the main business activities of the respondent institution (Art 31(1) item 1 – LPMLTF / Part III Section 1.2.1. - CBM Guidelines. There is no explicit requirement to understand fully the nature of the respondent's business.

259. FIs shall also obtain: (i) information on the AML/CFT regime applicable to the respondent institution, (ii) a description of the AML/CFT supervision (Art 31(1) item 4 / Section 1.2 of the CBM Guidelines) and (iii) a written statement by the respondent on the adequacy of its AML/CFT measures and whether it is subject to any ML/TF investigation or other measures imposed by competent authorities (Art 31(1) item 5). These obligations are not in line with c.13.1 which require FIs to determine the reputation of the institution. FIs are also not required to determine if the respondent institution is subject to any ML/TF investigations or other action, and the quality of supervision from publicly available sources, but rather from self-declarations made by the respondent institution itself. Moreover, FIs are not obliged to obtain information on whether a respondent institution has been subject to ML/TF investigations but only if it is currently under such an investigation or action.

260. (b) FIs are bound to obtain information on the internal AML/CFT procedures and controls and on any evaluation of such procedures (Art 31(1) items 2 and 3).

261. (c) FIs are required to obtain a written consent from senior management before establishing a correspondent relationship (Art 31(1) item 8).

262. (d) There is no explicit obligation to clearly understand the respective AML/CFT

responsibilities of each institution.

263. ***Criterion 13.2 – (Partly Met)*** (a) FIs shall obtain a written statement by the respondent institution attesting that with respect to payable through accounts it has verified the identify of, and carries out ongoing procedures on, customers having direct access to the accounts of the FI as correspondent (Art 31(1) item 9). This article does not cover all CDD obligations, and moreover, obtaining a written statement is not equivalent to taking measure to be satisfied about the execution of CDD as envisaged in c.13.2.

264. (b) FIs shall obtain a written statement ensuring that the respondent institution is able to provide data resulting from CDD procedures (Art 31(1) item 9). This is not a clear and unequivocal obligation to ensure that all CDD information is provided upon request.

265. These measures are applicable to respondent institutions situated in the EU or equivalent jurisdictions only where a high risk of ML/TF is identified (see introduction).

266. ***Criterion 13.3 – (Mostly Met)*** FIs must not establish or continue business relationships with Banks (wherever located) that operate or could operate as shell banks or which allow shell banks to use their accounts (Art 40 - LPMLTF / Part III Section 1.2 of the CBM Guidelines). FIs shall obtain a written statement that the respondent bank (i) does not operate a shell bank, and (ii) has not established and does not establish business relationships or executes transactions with shell banks - Art 31(1) items 6 and 7. Obtaining a written statement is not equivalent to the obligation of being satisfied that the respondent institution does not provide services to shell banks as per c.13.3.

Weighting and Conclusion

267. Some significant deficiencies are identified. The EDD measures only apply to correspondent relationships with credit institutions to the exclusion of other FIs. The correspondent is not required to determine the reputation of the respondent institution and may identify whether it's subject to any ML/TF investigation or other action through self-declarations made by that respondent institution. Similarly correspondent banks may obtain a written statement (i) to determine the execution of some CDD measures (rather than all) undertaken by the respondent on customers that have direct access the correspondent's accounts, (ii) attesting that the respondent does not provide services to shell banks. These requirements fall short of the expectations of c.13.2 and c.13.3 requiring the correspondent bank to be satisfied rather than relying on self-declarations. There is no clear obligation to ensure that all CDD information may be provided by the respondent institution upon request, and to understand the respective AML/CFT responsibilities of each institution. The EDD measures are also not applicable to all respondent institutions (wherever these are located), since they apply to those situated in the EU or equivalent jurisdictions only in case of high risk. This is not considered as material since all correspondent relationships with EU institutions are established with institutions forming part of the same group. Other minor deficiencies were also identified. **Recommendation 13 is rated Partially Compliant.**

Recommendation 14 – Money or value transfer services

268. In the 4th round MER of 2015, Montenegro was rated NC on SRVI, as there was no supervisory mechanism for some MVT operations; no fitness and properness requirements for

managers and owners of MVTSs; and the CBM was not empowered to impose proportional and dissuasive AML/CFT sanctions on MVTSs. A new analysis of Rec. 14 is being undertaken.

269. ***Criterion 14.1 – (Mostly Met)*** Payment services in Montenegro may only be provided by: (i) credit institutions, (ii) payment institutions, (iii) electronic money institutions, (iv) branches of foreign credit institutions, the CBM, the State of Montenegro and local authorities – Art 4(1) and (2) - Payment System Law. Financial postal services (i.e. including disbursement or transfer of money for the purpose of disbursement) may be provided under the Postal Services Act.

270. Credit institutions, and branches of foreign credit institutions require an authorisation to provide banking services (including payment services) in Montenegro (Art 62 - Law on Credit Institutions). The CBM needs to be notified about EU Credit institutions that intend to operate via a branch or directly in Montenegro before operations commence (Art 86 and 87). Payment and Electronic Money Institutions require an authorisation in terms of the Payment System Law (Art 72 and 113). Commercial postal services (inc. financial postal services – see Art 10 Postal Services Act) may be provided following entry into the register kept by EKIP - Art 75 of the same Act.

271. Payment services include money remittance (Art 2(1) - Payment System Law) defined in Art 9(7). The term "funds" within the definition of "money remittance" includes cash (banknotes and coins), funds in accounts, and electronic money, but does not cover cheques (which are however not provided in Montenegro), other money instruments and stores of value.

272. ***Criterion 14.2 – (Partly Met)*** MVTSs need to be authorised or registered (see c14.1). Persons operating without a credit institution license are subject to sanctions of: (i) 1% to 10% of net income (legal persons), (ii) €1,000 - €10,000 (responsible and natural persons) and (iii) €1,500 - €30,000 (entrepreneurs). In the case of legal persons and responsible persons the pecuniary fine can increase by twofold where property gain is made (Art 375(1) items 6 and 7, Art 375 (4)-(7) – Law on Credit Institutions). The CBM would liaise with the respective EU authority where EU Banks operate in Montenegro without prior notification.

273. Unauthorised payment or electronic money institutions are subject to a pecuniary sanction between €2,500 - €20,000 (Art 184(1) item 1 and 186(1) item 1 - Payment System Law). The provision of commercial postal services without registration is subject to a pecuniary sanction between €2,500 - €20,000 or €200 - €2,000 in case of natural persons – Art 112(13) of the Postal Services Act.

274. Unauthorised activity is also a criminal offence punishable by three months - five years imprisonment and a fine of between EUR200 – EUR20,000 (or EUR100,000 if committed out of greed) - Art 266 and 39(1) of the Criminal Code. Such sanction may also be imposed on the responsible officer of the respective legal entity. These sanctions are considered to be proportionate and dissuasive.

275. The CBM relies on the general public to report suspected unlicensed activities through its website, or on supervisory inspections for already licensed entities. The CBM has internal procedures setting out how it should review the operations of entities suspected to be providing payment services without a license. The Directorate for Inspection Affairs carries out inspections on persons suspected to provide financial postal services without registration. The Directorate is closely assisted by EKIP which notifies it when unregulated activities are identified through its ongoing supervision or monitoring of media or social networks.

276. ***Criterion 14.3 – (Mostly Met)*** Credit Institutions, branches of foreign banks, PSPs, e-money institutions and the Post of Montenegro are RE and subject to AML/CFT obligations (Art 4 – LPMLTF). Entities (other than the Post of Montenegro) offering financial postal services would not be reporting entities, however the Post of Montenegro was the only entity providing such services and hence this shortcoming is not material.

277. Credit Institutions, branches of foreign banks, PSPs and e-money institutions are supervised for AML/CFT compliance by the CBM - Art 94(1) item 1 - LPMLTF. The Post of Montenegro is supervised by EKIP - Art 94(1) item 2.

278. ***Criterion 14.4 – (Met)*** PSPs may provide services through agents (Art 5(1) - Payment System Law). Agents may commence their operations once listed by the payment service provider in the register of payment institutions (https://www.cbcg.me/en/core-functions/payment-system/registers/register-of-payment-institutions and https://www.cbcg.me/en/core-functions/payment-system/registers/register-of-emoney-institutions) maintained by the CBM – Art 77(2) and (3) - Payment System Law. The obligation to register agents applies to all payment service providers. The Post of Montenegro has more than 150 units of the postal network (post offices), which are an integral part of the Post of Montenegro and not third-party agents.

279. ***Criterion 14.5 – (Mostly Met)*** PSPs providing services through an agent are liable for all their agents' actions and failures (Art 5(3) - Payment System Law). This is considered to cover also responsibility for AML/CFT shortcomings.

280. Together with the request for registration of an agent (see c.14.4), PSPs shall provide a description of the AML/CFT internal controls. Furthermore, Part III Section 5.6. of the CBM Guidelines (which only applies to payment institutions) stipulate that payment institutions providing services through an agent shall adopt AML/CFT policies and procedures which should ensure that the agent`s AML/CFT internal controls are proportionate to the risk level. Where the payment institution establishes that the agent's AML/CFT internal controls differ from the payment institution's controls, it is obliged to assess the risk level and take measures to mitigate it. Payment institutions are required to conduct regular AML/CFT training for agent's employees. While not explicitly mandating the inclusion of agents within the AML/CFT program of the payment institution, these provisions achieve the aim of ensuring that agents have equivalent AML/CFT controls. This meets the expectations of c.14.5. Requirements are less clear for other entities (namely Banks, given that there are no electronic money institutions currently licensed in Montenegro) providing payment services.

281. There is no explicit obligation for PSPs to monitor their agents' compliance with the PSPs AML/CFT program, however this is indirectly induced by rendering PSPs liable for all AML/CFT shortcomings that may be committed by their agents.

Weighting and Conclusion

282. The deficiencies identified are of minor nature or materiality. The definition of money remittance covers the most material stores of value in Montenegro (i.e. cash and funds in accounts) and electronic money, but excludes other money instruments or stores of value. The CBM relies mainly on reports from the public and supervisory examinations to identify unauthorised MVTSs. While PSPs are not bound to monitor their agents' compliance with the PSPs AML/CFT program, they are accountable for their actions. **Recommendation 14 is rated**

Largely Compliant.

Recommendation 15 – New technologies

283. In the 4th round MER of 2015, Montenegro was rated C on R.8. The revised R.15 focuses on assessing risks related to the use of new technologies, in general, and imposes a comprehensive set of requirements in relation to VASPs. A new assessment of R.15 is being undertaken.

284. The definition of virtual currency (Art. 5(35) – LPMLTF) does not correspond to the definition of VA under the FATF Standards as it only covers VAs that may be used as a means of payment, to the exclusion of those that can be used for investment purposes. The VASP Sector is unregulated, while some VASPs are designated as REs subject to AML/CFT obligations (Art. 4(2)(12) - LPMLTF. The definition of VASPs is not aligned with the FATF Standards and does not cover the: (i) exchange between one or more forms of VAs, (ii) transfer of VAs, (iii) safekeeping of VAs or instruments enabling control over VAs, (iv) provision of financial services related to an issuer's offer, and (iv) participation and provision of financial services related to sale of VAs.

285. ***Criterion 15.1 – (Partly Met)*** The Government of Montenegro is obliged to set up a permanent coordinating body for the purposes of conducting the National Risk Assessment, and provide for the scope, purpose, and deliverables of the NRA (Art 5a and 5b – LPMLTF). There exist no legal obligations for the country to identify and assess the ML/TF risk implications of new products and business practices. The latest 2020 NRA does undertake an analysis (even though a limited one) of the vulnerability to ML/TF of products and services provided within some sectors (i.e. namely the Banking and Life Insurance Sector), however it: (i) does not cover products and services provided by all sectors (including the most vulnerable sectors such as the Real Estate Sector, Organiser of Games of Chance, Lawyers and the Capital Markets Sector); and (ii) does not identify and assess the ML/TF risks posed by new products and new business practices with the exception of VAs (see c.15.3).

286. REs shall assess the impact that important changes to business processes can have on ML/TF risk exposure. Important changes to business processes include: introduction of new products, new practices including new distribution channels, introduction of new technologies for new and existing products and other services or organisational changes (Art 7(5)).

287. ***Criterion 15.2 – (Met)*** (a) REs must undertake the risk assessment set out in c.15.1 before the introduction of changes to business practices (Art 7(6)).

288. (b) REs shall adopt measures to (i) reduce the identified ML/TF risks relating to changes in business practices – Art 7(6) and (ii) eliminate and prevent the misuse of new technologies for ML/TF purposes (Article 7c).

289. ***Criterion 15.3 – (Partly Met)*** (a) Montenegro carried out a VA/VASPs risk analysis in 2021. Since the VASP sector is unregulated and hence valuable data on VA activity was not available, the risk analysis and connected action plan constitute a positive step to understand and mitigate the legal vulnerabilities, potential VA activity ongoing in the country, and ML typologies. The analysis should however undertake a more in-depth analysis of the use of VAs in Montenegro in particular by OCGs and for the purpose of acquiring real estate.

290. (b) VASPs are unregulated. Some VASPs are subject to AML/CFT obligations, but most of the ones envisaged under the FATF Standards are not (see introduction to R.15). The 2022-2025 AML/CFT Strategy and the VA/VASP risk analysis of 2021 include actions and recommendations entailing the regulation of the field of virtual property, legal amendments to ensure conformity with R.15 and upskilling of various competent authorities in the field of VA amongst others. Other than the AML/CFT regulation of some VASPs and these prospective plans Montenegro took no risk-based measures to prevent and mitigate ML/TF risks within this area.

291. (c) Some VASPs are designated as REs. Hence the analysis and deficiencies identified under c.1.10 and c.1.11 applies in their respect.

292. ***Criteria 15.4 & 15.5 (Not met)*** – (a) VASPs are not regulated or subject to any market entry requirements.

293. ***Criteria 15.6 (Not met)*** – (a) The CBM is the designated AML/CFT supervisor for covered VASPs, however it may only exercise supervisory powers in regard to those REs which it licenses or approves (Art 94(1) item 1). This does not apply to covered VASPs.

294. (b) The CBM's AML/CFT supervisory powers emerge from sectorial laws (see R.27). There are no sectorial laws regulating the VASP sector and providing adequate powers to the CBM to supervise the sector for AML/CFT compliance.

295. ***Criteria 15.7 (Not met)–*** No specific AML/CFT guidance, red flags or typologies have been issued in respect of VAs or VASPs by Montenegrin authorities. The CBM has on occasions cautioned Banks about ML/TF risks associated with VASPs and circulated a list of unauthorised VASPs identified by foreign authorities. The FIU is empowered to provide feedback to REs on STRs (Art. 67 of the LPMLTF) see R.34. Such feedback is not provided to VASPs given the lack of STRs from this sector.

296. ***Criteria 15.8 (Partly met)*** –The shortcomings within the AML/CFT sanctioning regime envisaged under R.35 apply also to covered VASPs.

297. ***Criterion 15.9 – (Not met)*** Most VASPs set out under the FATF Standards are not subject to AML/CFT obligations (see introduction to R.15). The shortcomings identified in R.10-21 are similarly applicable to covered VASPs. With respect to this limited scope of VASPs:

298. (a) CDD obligations under R.10 apply to occasional transactions of €15,000 or more, but not to occasional transactions of €1,000 or over.

299. (b) There are no legal provisions regulating VA transfers, and thus no obligations relating to information accompanying VA transfers as envisaged under c.15.9b.

300. ***Criterion 15.10 – (Partly Met)*** The analysis of c.6.5(d), 6.5(e), 6.6(g), 7.2(d), 7.2(e), 7.3 and 7.4(d) and the respective deficiencies are likewise applicable to covered VASPs.

301. ***Criterion 15.11 – (Mostly Met)*** The FIU may provide data, information and documentation to foreign counterparts upon request as well as spontaneously in connection with suspicions of ML, related predicate offences and TF (Art. 70 & 71 - LPMLTF. Police is empowered to exchange data at their own initiative or upon request of foreign international organizations, under conditions of reciprocity and where this exchange is necessary for the fulfilment of police tasks. The powers afforded to the FIU and Police apply irrespective of the nature of the suspicious

cases or data, and thus would include cases where VAs are involved.

302. The CBM (the AML/CFT supervisor of VASPs) may cooperate and exchange information with other central banks, international financial institutions, and organizations, have similar objectives and functions (hence including supervision of VASPs) and it may be a member of international institutions and participate in their work (Art 9 - Law on the CBM).

303. Montenegrin authorities are able to provide mutual legal assistance (including cases in which VAs/VASPs feature) in the manner outlined under R.37-39.

304. The minor deficiencies identified under R.37-39, and the deficiencies applicable to the FIU, Police and CBM under R.40 are likewise applicable to c.15.11.

Weighting and Conclusion

305. In the area of new technologies significant deficiencies have been identified. There are no legal obligations to identify and assess the ML/TF risks of new products and business practices, and no such assessment was undertaken (except for VASPs/VAs). Risk assessments carried out did not study the risks of products and services in some vulnerable sectors or did not do so to the expected level of detail. Numerous significant shortcomings were likewise identified in the field of VA/VASPs. There are no market entry requirements for VASPs, and most VASPs set out under the FATF Standards are not subject to AML/CFT obligations. The CBM does not seem to have legal basis and powers to supervise covered VASPs. CDD obligations for covered VASPs do not apply to occasional transactions of €1,000 to €14,999, and there are no provisions regulating the transfer of VAs and information accompanying VA transfers. A VA/VASP risk analysis was carried out, however this is not sufficiently comprehensive, and no ensuing risk-based mitigating measures were taken. The deficiencies related to sanctions identified under R.35 also impact covered VASPs. There is legal uncertainty whether VASPs are subject to TFS obligations. **Recommendation 15 is rated Partially Compliant.**

Recommendation 16 – Wire transfers

306. In the 4th round MER of 2015, Montenegro was rated PC on SRVII. The main shortcomings included the following: Record-keeping requirements did not apply to wire transfers; there was no requirement to verify an originator's identity using reliable and independent documentation; no legal powers to supervise entities carrying out payment transactions; and it was unclear whether the Agency for Telecommunication and Postal Services was empowered to monitor compliance by post offices (agents for Western Union) with wire transfer requirements and what sanctions applied in case of breaches. A new analysis of Rec. 16 is being undertaken.

307. Art 34 of the LPMLTF and the Rulebook on Electronic Funds Transfers ("EFT Rulebook") set out the requirements on information that should accompany wire transfers. These apply to REs that are payment services providers ("PSPs") – see c.14.1.

308. ***Criterion 16.1 – (Partly Met)*** PSPs shall obtain accurate and complete data on a payer and enter them into a form or message accompanying a wire transfer (Art 34(1) – LPMLTF). The content and type of payer data is set out in the EFT Rulebook. This applies to wire transfers in any currency (Art 34(1)) and to both domestic and international wire transfers (Art2 - EFT Rulebook).

309. PSPs shall establish and verify the identity of customers, including those that have no

account and carry out occasional transfers of funds of €1,000 or more (Art 8 and 9 – LPMLTF). PSPs are obliged to have procedures in place to verify that the stipulated payer information is complete (Art 4(5) - EFT Rulebook). When transferring funds, PSPs shall collect: (i) the name (legal person) or name and surname (natural person) of the payer; (ii) head office address (legal person) or residential address (natural person) of payer; and (iii) the account number (Art 4). Where the address cannot be obtained the PSP shall obtain and enter into the form or message accompanying electronic funds transfer the: (i) the date and place of birth and (ii) identification number or registration number of the payer (Art. 4(2). Where the payer has no account, the PSP shall substitute the account number with the unique identifier (i.e. registration number for legal persons or identification number for natural persons) – Art 4(3)EFT Rulebook.

310. There are inconsistencies between Art 34(1) of the LPMLTF and Art 4(2) of the EFT Rule book. The former requires payer information to accompany all cross-border wire transfers, while according to Art 4(2) this obligation (illogically) applies only when the PSP cannot obtain information on the payer's legal or residential address. This creates legal uncertainty, however the authorities explained that the LPMLTF prevails over the Rulebook and thus the obligation applies to all wire transfers. This was the case in practice (see. IO4). There is no obligation on PSPs(payer) to obtain and transmit information on the payee (unless he is a customer).

311. ***Criterion 16.2 – (Partly Met)*** In case of batch file transfers from a single payer, the provisions of Art. 4(1) (see c.16.1) do not apply to the individual transfers (Art 4(4) - EFT Rulebook). The batch file needs to contain the information set out in c.16.1 and the individual transfers shall include the account number of the payer or a unique identifier. There is no obligation to ensure that the batch file contains full payee information, and no specific requirement to ensure that the information contained within the batch file is fully traceable within the beneficiary country.

312. ***Criterion 16.3 – (N/A)*** There is no de minimis threshold for the requirements of c.16.1. These apply to all wire transfers irrespective of the amount. There are no requirements in respect to payee information (see c.16.1).

313. ***Criterion 16.4 – (Partly Met)*** In case of transfer of funds not made from an account, the PSP (payer) shall verify the payer information only where the amount exceeds €1,000 (Art 5(3) - EFT Rulebook). Verification is required when there are ML/TF suspicions irrespective of the amount - Art 5(4). These verification requirements do not cover the payee information.

314. ***Criterion 16.5 & 16.6 – (Mostly Met)*** The requirements explained in c.16.1 apply to all domestic and international electronic funds transfers (Art 2 - EFT Rulebook). A minor deficiency was noted under c.16.1 in respect of originator information.

315. All REs are bound to provide without delay (i.e. not later than eight days) information requested by the FIU. This may include customer and transaction information (Art 58(1) – LPMLTF). The Post of Montenegro is required to submit data relating to postal services (including financial postal services covering wire transfers) - Art 69 Law on Postal Services. Provisions enabling the sourcing of information by the CBM are explained under c.27.3, and by the State Prosecutor's Office under c.31.1(a)

316. ***Criterion 16.7 – (Partly Met)*** All records obtained in terms of the LPMLTF (covering also those obtained in terms of wire transfer rules – Art 34) shall be kept for at least 10 years - Art

91(1) - LPMLTF. This does not cover payee information (unless the payee is also a customer of the PSP (payer)) – see c.16.1.

317. ***Criterion 16.8 – (Partly Met)*** Section 4.1.1.4 of the CBM Guidelines for developing risk analysis (applicable to REs supervised by the CBM), states that where REs are unable to obtain all the required data and information, they shall not execute the wire transfer. This is not in-line with c.16.8 prohibiting wire transfers unless all requirements envisaged under c.16.1 – 16.7 are fulfilled. By way of example c.16.1 requires not only the obtainment of the data on the payer but also its verification. Moreover, there is no requirement to obtain and transmit payee information (see c.16.1 analysis). There are no prohibitions (as per c.16.8) for persons or entities providing money transfer services (i.e. financial postal services) in accordance with the Postal Services Act.

318. ***Criterion 16.9 – (Partly Met)*** Intermediary PSPs shall not execute transfers of funds with incomplete payer data or shall supplement that data in the shortest time possible - Art 34(3) LPMLTF. Article 34(2) requiring wire transfers to be accompanied with information on the payer throughout the payment chain have the effect (though not explicitly) of requiring intermediary PSPs to ensure that wire transfers are accompanied with the required payer information. These obligations do not cover information on the payee (see c.16.1).

319. ***Criterion 16.10 – (N/A)*** Intermediary PSPs are not allowed to execute transfers of funds with incomplete payer data (see c.16.9). This applies to all types of wire transfers be they domestic or cross-border, and irrespective of whether there may be certain technical limitations preventing the transmission of payer information.

320. ***Criterion 16.11 & 16.12 – (Partly Met)*** There are no specific obligations for intermediary PSPs to (i) take reasonable measures to identify cross-border transfers of funds with missing payer / payee information, nor to (ii) have risk-based procedures to determine the steps to be taken where such transfers are identified. Nonetheless as set out under c.16.9 there is a requirement for intermediary PSPs not to execute transfers of funds with incomplete payer data (or to supplement that data in the shortest time possible). This obligation however does not apply to transfers of funds with missing payee information.

321. ***Criterion 16.13 – (Partly Met)*** The PSP (payee) is required to detect whether all payer information accompanies the electronic funds transfers – (Art 6(1) EFT Rulebook). No detailed guidance or recommendations are provided as to what reasonable measures (e.g. post-transaction monitoring or real-time monitoring) may be adopted to detect funds transfers with missing information. There is no obligation to detect missing payee information.

322. ***Criterion 16.14 – (Partly Met)*** The PSP (payee) is required to carry out CDD measures including identity verification where a business relationship is established with the payee (see Art 8(1) item 1 and Art 9(1) item 1 - LPMLTF). Art 9(1) item 3 requires the application of CDD measures (including identity verification) when occasional transfers of funds are carried out. This verification requirement however applies where the occasional transfer of funds is being executed in the name of the sender (i.e. by the PSP (payer)). Hence the obligation to verify the payee's (customer's) identity in the case of occasional transfers of funds is applicable to the PSP (payee) only when it is also the PSP of the payer.

323. ***Criterion 16.15 – (Partly Met)*** As set out under c.16.13 PSPs (payee) shall detect whether funds transfers are accompanied with payer information. There are however no specific

obligations to have risk-based policies to determine the steps to be taken were transfers of funds with missing payer / payee information are identified. The PSP (payee) is moreover required to refuse funds transfers with missing payer information, or else require the PSP of the payer to include such information within 3 days – (Art 6(2) and (3) - EFT Rulebook). If the payer information remains missing Article 6(3) requires the PSP (payee) not to execute the transfer or terminate the business relationship with the PSP (payer).

324. These obligations however do not apply to wire transfers with missing payee information.

325. ***Criterion 16.16 – (Partly Met)*** The EFT Rulebook applies to funds transfers executed within the country or internationally (Art. 2). Art 5(3) of the Payment System Law stipulates that PSPs are liable for all agents' actions and failures, which also covers the responsibility and liability for the implementation of transfer of funds obligations by agents. The Post of Montenegro does not operate through agents but via postal branches that are an integral part of the Post (see c. 14.4). Moreover, the deficiencies identified under Rec.16 impact the implementation of this criterion.

326. ***Criterion 16.17 – (Not met)*** PSPs, as REs, shall report suspicions that funds are proceeds of crime or TF (Art 41(3) - LPMLTF). Moreover, PSPs (payee) shall report without undue delay when they evaluate that due to the lack of accurate or complete payer information there are suspicions of ML/TF (Art 6(4) - EFT Rulebook). There are no specific requirements for PSPs controlling the ordering and beneficiary side of a wire transfer to take into account all information from both sides when deciding whether to file an STR, and to report in all affected countries.

327. ***Criterion 16.18 – (Not Met)*** With the exception of freezing obligations, all TFS obligations and deficiencies outlined under rec. 6 and 7 apply to PSPs. It is unclear whether PSPs other than banks are subject to the freezing obligations envisaged under c.6.5(a) and c.7.2(a). Art 16(1) of the Law on Restrictive Measures applies to (i) authorities, (ii) entities offering public services or holding public authority, and (iii) banks and other financial organisations, and it is not clear whether the term "financial organisations" would cover PSPs.

Weighting and Conclusion

328. Major deficiencies have been identified. There are no obligations regarding payee information which effects the implementation of c.16.2, 16.4 – 16.9, 16.11 - 16.13 & 16.15. In case of occasional funds transfers, the PSP (payee) should to verify the identity of payees only where the PSP (payee) is also the PSP of the payer (c.16.14). PSPs (payer) are prohibited from executing wire transfers where the required information couldn't be obtained, rather than when all the requirements envisaged under c.16.1 – 16.7 are not fulfilled. No prohibition for entities providing money transfer services under the Postal Services Act to withhold transactions not complying with c.16.1-16.7 requirements (c.16.18). There are no specific obligations for PSPs controlling the ordering and beneficiary side of wire transfers to take into account all information from both sides when determining whether to file a STR, and to report STRs in all affected countries (c.16.17). Deficiencies relating to TFS obligations (other than freezing) outlined under R.6 and 7 apply to PSPs, while it is unclear whether PSPs other than banks are subject to the freezing obligations envisaged under c.6.5(a) and c.7.2(a). Other minor shortcomings exist. **Recommendation 16 is rated Partially Compliant.**

Recommendation 17 – Reliance on third parties

329. In the 4th round MER of 2015, R.9 was not applicable. The new LPMLTF adopted in July 2021 permits the placing of reliance on third parties.

330. ***Criterion 17.1 – (Partly Met)*** When establishing business relationships REs may entrust the implementation of CDD measures from Art 8(1) items 1-3 (i.e. mirroring measures (a – c) under R.10) to a third party – Art. 22(1) LPMLTF. The third party has to be a FI (listed in Art 22(2)) established in Montenegro, the EU or another state applying equivalent AML/CFT standards. The RE is ultimately responsible for the implementation of customer identification and verification measures (Art 22(4)), but not for identifying and verifying the identity of the BO and for obtaining data on the purpose and nature of the business relationship or transaction.

331. (a) The third party relied upon is required to deliver the obtained data and documents on the customer (Article 24(1)). There is no requirement for the data to be provided and obtained immediately.

332. (b) Upon request the third party shall provide, without delay, copies of documents used to identify and verify the customer and obtained data and documents – Art 25(1). It is unclear whether the wording "obtained data and documents" covers documentation relating to the application of CDD measures set out in Rec. 10 (b) and (c). The RE placing reliance is however not required to satisfy itself that the relevant CDD documentation would be made available without delay upon request.

333. (c) REs may not rely on third parties from countries which do not apply AML/CFT standards or do not apply standards equivalent to those in Montenegro (Art 21(7) and 23(2) - LPMLTF. This equivalency criteria is affected by the deficiencies identified under Recs. 10 and 11. Moreover these restrictions do not tantamount to an obligation on the RE placing reliance to satisfy itself that the third party is regulated, supervised, and has measures in place to comply with CDD and record keeping requirements set out in Recs. 10 and 11.

334. ***Criterion 17.2 – (Mostly Met)*** REs may not rely on third parties from countries that do not apply AML/CFT standards or standards equivalent to those in Montenegro (see c. 17.1). This equivalency assessment is entirely based on adherence to AML/CFT standards determination and does not take into consideration the country's ML/TF risk.

335. ***Criterion 17.3 – (N/A)*** The requirements set out under c.17.1 and 17.2 apply to all reliance relationships. No different treatment is envisaged for reliance on financial group entities.

Weighting and Conclusion

336. Montenegro meets some of the criteria under this Recommendation. However, some significant deficiencies were identified. REs placing reliance are not retained responsible for the implementation of all the CDD measures. There is no specific obligation on the RE placing reliance to (i) satisfy itself that all the relevant CDD documentation would be made available by the third party without delay upon request; and (ii) satisfy itself that the third party being relied upon is regulated, supervised and has measures in place to comply with CDD and record keeping requirements. Some other minor shortcomings were noted. **Recommendation 17 is rated Partially Compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

337. In the 4th round MER of 2015, Montenegro was not evaluated on R.15 and R.22, having been rated LC and C respectively during the 3rd Round MER.

338. ***Criterion 18.1 – (Mostly Met)*** REs are required to establish policies, controls and procedures to manage ML/TF risk that are proportionate to the RE's activities, size, type of customers it deals with and products offered (Art 7b(1)). Art 48(1) states that REs shall adopt and implement programmes for preventing ML/TF.

339. (a) Compliance Management Arrangements - REs are required to have internal controls in the area of detection and prevention of ML/TF and risk management models - Art 7b(2). REs are required to ensure regular internal control of the implementation of the programme for preventing ML/TF – Art 48(2). Furthermore, REs are required to designate a compliance officer and, REs having more than 3 employees, a deputy thereto - Art 43(3). The compliance officer shall be accountable to management (Art 45(2)) but not a management level officer himself, and his role covers various compliance management functions (see Art 45). Only large REs (see para. d) are bound to appoint a member of the board of directors or other governing body to oversee the implementation of the RE's policies, controls and procedures (Article 7b(3)).

340. (b) Employee Screening - REs shall adopt policies and procedures regarding employee security checks (Art 7b(2) item 1 LPMLTF). There are specific professional skills and integrity requirements for the compliance officer (Art 44(2 and (3))

341. (c) Ongoing Training - REs shall ensure regular professional training and improvement of employees involved in detection and prevention of ML/TF - Art 6(5) and 47.

342. (d) Independent Audit Function – Large REs shall establish an independent audit department or nominate a person to review the internal AML/CFT policies, controls and procedures (Art 7b(2) item 2). A large entity is defined under Art 6 of the Law on Accounting as an entity that exceeds any two out of the following criteria (i) has up to 250 employees on average in a business year; (ii) has a total annual income of up to €40M; or (iii) has total assets up to €20M. Insurance Companies are required to have an internal audit unit which (among other functions) on an annual basis evaluates the RE's ability to fulfil AML/CFT obligations, the adequacy and efficiency of the internal control system, and compliance with regulations and established policies and practices – (Art. 108 Insurance Law & ISA Guidelines (Item 106)).

343. These obligations do not apply to other REs. The CBM indicated that currently only four of the 11 licensed Banks classify as large entities.

344. ***Criterion 18.2 – (Partly Met)*** REs having business units or majority owned subsidiaries in other countries must ensure that they implement AML/CFT measures equivalent to those set out under the LPMLTF (Art 42(1)). Art 43(1) requires REs to establish procedures for preventing ML/TF and ensure they are applied by branches and majority owned subsidiaries in other countries. This obligation is however limited to groups having branches and/or subsidiaries outside Montenegro and does not specify explicitly what the AML/CFT procedure should entail. Moreover, REs that form part of a financial group are not required to implement the group's AML/CFT policies and procedures.

345. (a) There is no explicit requirement for AML/CFT group-wide procedures to include

policies and procedures on information sharing for the purpose of CDD and/or ML/TF risk management. REs forming part of a group are however allowed to exchange information on customers and transactions within the group (in Montenegro, the EU or other countries applying equivalent AML/CFT standards for the purpose of preventing ML/TF (Art 42(3)).

346. (b) Group REs are allowed to exchange customer and transaction information with group members (see para (a)). This is considered to enable (but not require) group REs to share customer and transaction data with group-level compliance, audit and or AML/CFT function. There is no requirement to be able to receive such information from these group-level functions for risk management purposes. When such information relates to cases reported to the FIU, information may be exchanged unless the FIU orders otherwise (Art 42(4)). While it is not entirely clear whether group REs may share account information and analysis of unusual transactions, the authorities signalled that this is covered under the obligation to "exchange data on a customer and/or transaction, obtained in accordance with the LPMLTF" set out under Art 42(3).

347. (c) Group REs shall protect the secrecy of data/information that is shared within the group. There is no requirement to implement group-wide safeguards on data confidentiality and to prevent tipping-off.

348. ***Criterion 18.3 – (Partly Met)*** REs must ensure that business units and majority owned companies in foreign countries apply AML/CFT measures equivalent to those in the LPMLTF (Art 42(1)). This applies when the laws of the host country are equivalent to or more stringent than the AML/CFT standards within EU member states. This is not in line with c. 18.3. which requires foreign branches and majority-owned subsidiaries to implement AML/CFT measures equivalent to those of the home country, when in the host country the standards are lower, and not higher. Art 42(2) somehow compensates for this shortcoming by requiring that where the AML/CFT laws of the host country are not equivalent to those in Montenegro, the RE shall inform the FIU and the respective AML/CFT supervisor and undertake measures to eliminate ML/TF risks.

Weighting and Conclusion

349. Several significant deficiencies were identified with this Recommendation. Only large entities (which includes only four of the 11 banks) and Insurance Companies are required to have a compliance officer at management level and to establish an independent audit function. REs that are part of a financial group are not required to implement the group's AML/CFT policies and procedures. There is no obligation for REs forming part of a financial group to share customer, account and transaction data with group-level compliance, audit and or AML/CFT function and nor a requirement to be able to receive such information from these group-level functions for risk management purposes. There are no clear obligations for REs to require foreign branches and majority-owned subsidiaries to implement AML/CFT measures consistent to those of the LPMLTF, when in the host country the standards are lower. Other deficiencies (which are minor considering Montenegro's context) were identified including that REs are only obliged to monitor that business units or majority owned subsidiaries apply the procedures for preventing ML/TF when these are situated outside Montenegro, while it is not specified what these procedures should entail. **Recommendation 18 is rated Partially Compliant.**

Recommendation 19 – Higher-risk countries

350. In the 4th round MER of 2015, Montenegro was rated NC on R.21.

351. ***Criterion 19.1 – (Mostly met)*** FIs are required to apply EDD measures when having links to a state or geographic area presenting a higher ML/TF risk, which although not explicitly, is interpreted to cover countries for which EDD is called for by the FATF (Art 7a (2) & 35a - LPMLTF). The FIU publishes the list of countries that do not or insufficiently apply the AML/CFT standards, based on international organisations' data. While not specifically stated in law, this list is public and includes the countries for which EDD is called for by the FATF (Art 35a (4))241.

352. The additional measures include: (i) obtaining senior management approval before establishing such business relationships, (ii) closely monitoring transactions and other business activities performed by customers from a high-risk country and carrying out additional CDD measures (Art 35a (2) and 3, Art 35(4)). Such measures are risk-based (Art 35a(5)).

353. ***Criterion 19.2 – (Partly met)*** For countries subject to FATF calls for countermeasures, REs shall apply the above-mentioned EDD measures. They are also prohibited from relying on third parties located in countries not applying adequate AML/CFT standards (see c.17.1). Other than that, Montenegrin law does not allow authorities to require the application of proportionate countermeasures for countries subject to a FATF call or independently of such call.

354. ***Criterion 19.3 – (Met)*** The FIU is required to and publishes the high-risk countries list on its website (Art 35a - LPMLTF). Moreover, the CBM, CMA, EKIP & ISA disseminate this information to FIs under their supervision. In addition, compliance with higher risk third countries obligations is incorporated into the CBM's supervision.

Weighting and Conclusion

355. Montenegrin authorities have no legal basis to require the application of countermeasures when called upon by the FATF or independently. Other minor deficiencies were identified. **Recommendation 19 is rated Partially Compliant.**

Recommendation 20 – Reporting of suspicious transactions

356. In the 4th round MER of 2015, Montenegro was rated PC on both R.13 and SRIV. This since not all FI activities or operations covered under the FATF's definition of FI were subject to preventive measures and supervision. Moreover, the reporting requirements did not cover "suspicions of funds that are proceeds of crime" and applied to suspicious "transactions" rather than "funds". The TF reporting obligation did not cover funds related or linked to terrorist organisations and those who finance terrorism, and funds used by those who finance terrorism. These deficiencies have been addressed. A new assessment of R.20 is being undertaken.

357. ***Criterion 20.1 - (Mostly Met)*** – REs are required to provide, without delay, to the FIU, CDD and other records retained in accordance with Art 79 of the LPMLTF (which also includes information on the formulated suspicion) where the RE knows or suspects that funds are the

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proceeds of criminal activity or related to TF - Art 41(2) and 41(3) – LPMLTF.

358. REs shall refrain from carrying out suspicious transactions until they report them to the FIU and a decision on the temporary suspension is made by the FIU (Art 41(2) and (4)). REs may be exempted from this obligation for justifiable reasons and would be bound to report and submit the required information as soon as possible after the execution of the transaction.

359. ML is defined for the purposes of the LPMLTF under Art. 2. Although "criminal activity" from which ML may subsist is not defined, this is interpreted to be non-restrictive and applicable to any proceeds generating crime. The definition is in line with R.3.

360. The LPMLTF also specifically defines TF (Art. 3). This definition covers: (i) the provision or collection (or attempt thereof) of funds or property, directly or indirectly, with the intention or knowledge that they may be used, in their entirety or in part, for preparing or committing a terrorist act, by terrorists or terrorist organisations; and (ii) the encouragement or assistance to provide or collect such funds or property. The definition does not explicitly cover the financing of travel for the purposes of perpetrating, planning, preparing for or participating in terrorist acts, or providing or receiving training in terrorism, hence, not fully compliant with R.5, and consequentially c.20.1.

361. The term suspicious transaction is defined (Art 5(12)) as a transaction of funds (i) which based on indicators of suspicious transactions and customers formulated by the authorities or REs, or other facts, is deemed to represent material gain from crime or (ii) in relation to which there are reasons to suspect that, such transaction, funds, property or person are related to ML/TF. In terms of this latter definition, REs are thus obliged to submit STRs also where there exist objective and reasonable grounds for suspicion.

362. REs are also obliged to report cash transactions of €15,000 or more to the FIU (Art 41(1)).

363. ***Criterion 20.2 – (Met)*** The reporting obligation (Art 41(8), (2) and (5)) applies to attempted transactions. REs shall refrain from carrying out any suspicious transaction (irrespective of the amount), and to report suspicious transactions to the FIU - Art 41(2).

Weighting and Conclusion

364. Montenegro largely conforms with R.20 with only one minor deficiency being identified. The reporting obligation does not cover the financing of travel for the purposes of perpetrating, planning, preparing for or participating in terrorist acts, or providing or receiving training in terrorism. **Recommendation 20 is rated Largely Compliant.**

Recommendation 21 – Tipping-off and confidentiality

365. In the 4th round MER of 2015, Montenegro was not evaluated against the former R.14, having received a C rating in the previous assessment.

366. ***Criterion 21.1 - (Mostly Met)*** REs and their employees are not liable for damage caused to customers or third persons when in line with the LPMLTF they provide data, information or documentation on their customers to the FIU (including through STRs) - Art 89(3). The authorities explained that the term "employees" covers directors and other officials of REs. The AT however believes that it is unclear whether directors and other officials are offered such

protection, given that the law does not explicitly mention them, while it does so in other parts of the LPMLTF when it wants to include them (e.g. Art. 88(1)). Employees of REs are also exempted from disciplinary or criminal proceedings for breaching secrecy obligations when they provide data, information or documentation to the FIU - Art 89(4). Although it is not explicitly stated, the protection from liability applies to all breaches of non-disclosure obligations imposed by contract, law, regulatory or administrative provision, since there are no limitations as to the source of the secrecy obligation,

367. While not explicitly specified, the protection from liability is considered to apply even when the RE, or employee reporting a STR to the FIU would not be aware of the precise underlying criminal activity or whether illegal activity occurred. This since the reporting obligations (see. R.20) apply irrespective of whether the RE knows the underlying criminal activity or whether illegal activity occurred.

368. ***Criterion 21.2 - (Mostly Met)*** REs, their employees, members of the administrative, supervisory or other managing bodies, or any other person, must not disclose to the customer or a third person the fact that: (i) information (including STRs) related to the customer or customer's transaction has been forwarded to the FIU, (ii) a transaction has been temporarily suspended, (iii) the FIU is monitoring the customer's business or (iv) an investigation has been or may be commenced into suspected ML/TF - Art 88(1) LPMLTF.

369. This prohibition applies to those persons to whom customer data (as per Art 79) is available. This qualification restricts the application of the prohibition and consequentially does not cover all employees or other officials in all circumstances envisaged by c.21.2. Nonetheless the uncovered circumstances are minimal and remote. There are no clear provisions to ensure that the prohibitions under Art 88 do not restrict information sharing (in particular on suspicious transactions) with other entities within a group.

Weighting and Conclusion

370. Deficiencies identified are considered minor in nature. The protection from liability when disclosing information to the FIU, does not clearly cover directors or other officials of REs. The prohibition from disclosing the fact that a STR or other information has been provided to the FIU is unduly restricted to some employees, although the uncovered cases are considered minimal and remote. Moreover, there are no clear provisions to ensure that group-wide information sharing is not inhibited. **Recommendation 21 is rated Largely Compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

371. In the 4th round MER of 2015, Montenegro was rated NC on R.12. Technical deficiencies cascaded from R.5. The legal framework did not cover TCSPs. CDD and record keeping obligations did not apply to online casinos and were limited in scope for lawyers and notaries. DNFBPs were not obliged to determine the BOs of legal arrangements. Lawyers and notaries were not required to: (i) satisfy themselves that they know who the BO is; (ii) establish whether a customer is a PEP; (iii) pay special attention to risks associated with new technologies in their activities; (iv) undertake obligations with respect to unusual transactions and analyse all complex transactions or unusual patters of transactions. The obligation to analyse all unusual and complex transactions was not in line with FATF requirements. Montenegro addressed the cascading deficiencies from R.5. A new analysis of Rec. 22 is being undertaken.

372. The CDD measures set out under R.10 apply to all REs (i.e. FIs and DNFBPs). The term "reporting entity" (Art 4 - LPMLTF) covers most DNFBPs set out in the FATF Recommendations. It does not cover the provision of (i) trust services; (ii) company services except the founding of legal persons and fiduciary services (which is undefined); and (iii) lawyers and notaries. Lawyers and notaries are however subject to specific AML/CFT measures under the LPMLTF.

373. ***Criterion 22.1 – (Partly Met)*** The analysis and deficiencies for R.10 apply to those DNFBPs defined as REs (see introduction). Other specific findings are outlined hereunder. An analysis of the specific CDD obligations set out for lawyers and notaries is undertaken.

374. (a) Casinos – Organisers of lottery and special games of chance, including those provided on-line or through other telecommunications means, are REs. The definition of "special games of chance" includes casino games (Art 3 and 4(11) - Law on Games of Chance). The authorities explained that there is no specific licensing regime for ship casinos, and that casino games may only be provided by legal entities having their head offices in Montenegro and that are authorised to operate (see. R.28). Organisers of lottery and games of changes shall obtain and verify customer identities in respect of one or linked transactions of at least €2,000 (Art 9(3) - LPMLTF). The provisions of Art 9(3) seem to exclude the application of other CDD measures from Art 8(1) mirroring the measures set out in paras (b), (c) and (d) of Rec. 10. The term "transaction" under Art 9(3) includes all transactions and not only those involving chips and tokens (see Art 5(10)). There are no provisions requiring casinos to link CDD information for a customer to the transactions that the customer conducts in the casino.

375. (b) Real Estate Agents – There are no legal provisions specifying that real estate agents should apply CDD to both purchasers and vendors of immovable property.

376. (c) Dealers in precious metals and stones – persons (legal or natural) trading in precious metals and stones are considered REs when they make or receive cash payments of €10,000 or more through a single or several linked transactions - Art4(2) item 13 point 10. This same provision also applies to traders in works of art and other goods.

377. (d) Lawyers, notaries and other independent legal professionals - Lawyers and notaries are required to implement the AML/CFT measures under the LPMLTF when they assist a client in the planning or execution of specific transactions mirroring those set out under c.22.1(d), and when they execute financial or real estate transactions on behalf and for a client - Art 49(1).

378. While the provisions of Art 49(1) imply that lawyers and notaries should apply the AML/CFT measures (implied to include CDD) under the LPMLTF as other REs, there are serious doubts whether this obligation holds ground. This since the CDD provisions in the LPMLTF are according to the wording of the LPMLTF itself applicable to REs (and lawyers and notaries are not defined as such). Moreover, where the LPMLTF wants to apply specific provisions to lawyers and notaries it explicitly states so (see e.g. Art 47 and 53 - LPMLTF) and for the CDD provisions set out under R.10 it does not do so. Art 49(2) then implies that lawyers and notaries are expected to implement the CDD measures set out in Article 8 of the LPMLTF. These conflicting provisions create serious doubts whether lawyers and notaries are bound to implement the LPMLTF's CDD measures analysed under R.10, and in particular those within articles other than Article 8.

379. To further complicate the interpretation, Art 49(2) and 50 set out a number of specific EDD measures and customer verification measures (covering some of the CDD obligations set out

in paras (a), (b) and (c) of Rec. 10) which lawyers and notaries are bound to apply. A number of deficiencies related to Art 49(2) and 50 are noted:

380. (i) In terms of Art 49(2) the obligation to carry out EDD in the case of complex and unusual transactions is mandatory when there are ML/TF suspicions and not for all complex and unusual transactions.

381. (ii) According to Art 50(3), when there are suspicions regarding customer and beneficial owner identification data or suspicions of ML/TF the lawyer or notary shall obtain the name, date and place of birth, the permanent residential address or registered office of the customer (on whom there are suspicions of ML/TF), data on the suspicious transactions and the suspicion itself. This is not in line with c.10(2)(d) and (e) requiring the carrying out of all CDD measures.

382. (iii) Art 50(7) states that were CDD data cannot be obtained and checked (using the methods prescribed in para (1)-(6)) the lawyer and notary may rely on a written statement of the customer to obtain and verify such data. This is not line with c.10.3 and 10.5 requiring the verification of the customer's and BO's identity using information obtained from independent and reliable sources.

383. (iv) when dealing with legal persons, lawyers and notaries shall establish and verify their identity and that of their representatives by obtaining the name, registered office, address and tax identification number – Art 50(4); and establish and verify the identity of the BOs – Art 50(5). Lawyers and notaries are not required to apply the other measures outlined in c.10.8, 10.9 and 10.10. It is also unclear what data should be obtained to identify BOs of legal persons (see Art 50(5), 81(1) item 4 and Art 9)

384. (v) there are no specific provisions in respect of identification and verification measures for foreign trusts and similar foreign entities as envisaged in terms of c.10.11.

385. Given the serious doubts whether the LPMLTF's CDD measures applicable to REs are extended to lawyers and notaries, the requirements of c.10.14 to 10.20 do not seem to be applied for lawyers and notaries.

386. Accountants and auditors – Natural or legal persons providing audit, accountancy and tax counselling are REs and subject to CDD obligations as per R.10 measures (Art 4(2) item 13 point 2). They are considered REs when carrying any of their professional activities as auditors, accountants and tax counsellors, and not only those set out under c.22.1(d).

387. Trust and Company Services Providers – Trust services as set out under c.22.1(e) do not render their provider a reporting entity under the LPMLTF and hence are not covered for CDD purposes. Moreover, only persons providing legal entity formation and fiduciary services are considered REs, to the exclusion of other company services envisaged under c.22.1(e).

388. ***Criterion 22.2 – (Partly Met)*** Trust service providers and some company service providers are not subject to AML/CFT obligations including record-keeping (see c.22.1).

389. Lawyers and notaries – For the same rationale explained under c.22.1 it is doubtful whether the record-keeping obligations applicable to REs (R.11) are applicable to lawyers and notaries. Moreso given that Art 80 and 81 provide specific record keeping obligations for lawyers and notaries. The obligations under Art 80 and 81 are analysed for compliance with R.11:

390. (i) c.11.1 – lawyers and notaries are required to keep information on transactions – Art 80(1). The term "transactions" (see Art 80(1) and Art 9) seems to exclude transactions occurring within the context of a business relationship. It is not clear what record-keeping timeframe applies for transactions records as this is not provided for.

391. (ii) c.11.2 – Article 80(1) sets a general obligation for lawyers and notaries to keep records on customers, business relationships and transactions. This is not tantamount to an explicit obligation to retain all CDD records, account files, business correspondence, and results of any analysis undertaken. A 10-year retention period is applicable for a sub-set of CDD records. For all other records set out under c.11.2 there is no applicable record-keeping time frame.

392. (iii) c.11.3 - There is no specific obligation to retain all necessary records on transactions as may be sufficient to permit reconstruction of individual transactions.

393. (iv) c. 11.4 – Lawyers and notaries need to ensure that CDD and transaction records are made available to the FIU without delay, and not later than eight days following the request, which is not considered swift (Art. 59(3) and 58(5)). There is no explicit obligation for lawyers to make CDD and transaction records available swiftly to other domestic competent authorities.

394. Other DNFBPs (see c.22.1) are subject to record-keeping requirements in the same manner as FIs. Hence the analysis and deficiencies of R.11 are also relevant for these DNFBPs.

395. ***Criterion 22.3 – (Partly Met)*** Trust service providers and some company service providers are not subject to AML/CFT obligations including PEP requirements (see c.22.1)

396. Lawyers and notaries – PEP requirements under Art 33 apply only when there are suspicions of ML/TF (see art 49(2)).

397. Other DNFBPs (see c.22.1) are subject to PEP requirements in the same manner as FIs. The analysis of R.12 and the respective deficiencies are thus relevant for these DNFBPs.

398. ***Criterion 22.4 – (Mostly Met)*** Trust service providers, and some company service providers are not subject to AML/CFT obligations (see c.22.1) including requirements in relation to new technologies.

399. Lawyers and notaries – The provisions of Art 7(5) and (6) requiring REs to assess the impact that important changes to business processes would have on the RE's risk exposure, before such changes are introduced, are not applicable to lawyers and notaries which are not defined as REs (see rationale under c.22.1). Lawyers and notaries are however expected to take measures and adopt internal procedures to preventing new technologies to be misused for ML/TF purposes. This does not cover the mitigation of risks arising from new products and business practices.

400. Other DNFBPs (see c.22.1) are subject to requirements in relation to new technologies in the same manner as FIs. Hence the analysis and deficiencies of R.15 apply.

401. ***Criterion 22.5 – (Partly Met)*** Third party reliance requirements do not apply to trust service providers, some company service providers, lawyers and notaries which are not considered to be REs (see c.22.1).

402. Other DNFBPs (see c.22.1) are subject to the requirements on reliance on third parties in

the same manner as FIs. Hence the analysis and deficiencies of R.17 apply.

Weighting and Conclusion

403. Several significant deficiencies, concerning high-risk sectors such as lawyers, notaries, TCSPs and organisers of games of chance have been identified across most criteria. The most important are the following: (i) Trust services set out under c.22.1(e) and a number of company services are not subject to the requirements of R.10, 11, 12, 15 and 17; (ii) It is doubtful whether lawyers and notaries are bound to implement the LPMLTF's CDD measures applicable to REs (analysed under R.10), while the customer verification measures specifically set out for lawyers and notaries under Art 49(2) and 50 demonstrated various serious deficiencies (see c.22.1(d)). (iii) Several other important deficiencies with the application of R. 11, 12 and 15 by lawyers and notaries are also noted including: (a) lack of clarity whether they should retain records of transactions occurring within business relationships, and sufficient records on transactions to permit the reconstruction of individual transactions; (b) no time-frame for the retention of records on transactions and a number of other CDD records; (c) no explicit obligation to retain all CDD records, account files, business correspondence, and results of any analysis undertaken; (d) the time-frame for providing information to the FIU is lengthy and there are no obligations to ensure that records are available swiftly to other domestic competent authorities; and (e) PEP requirements apply only when there are ML/TF suspicions. Organisers of games of chance do not appear to be subject to the measures set out in paras (b), (c) and (d) of Rec. 10. With respect to DNFBPs (other than trust service providers, certain company service providers, lawyers and notaries) the analysis of R.10, 11, 12, 15 and 17 and the respective technical deficiencies identified also apply. **Recommendation 22 is rated Partially Compliant.**

Recommendation 23 – DNFBPs: Other measures

404. In the 4th round MER of 2015, Montenegro was rated PC on R.16. This in view of R. 13 deficiencies cascaded to casinos and real estate agents. The reporting obligation for lawyers and notaries was unduly restricted and were not required to submit STRs without delay. Poor implementation of requirements regarding transactions with countries which do not or insufficiently apply FATF recommendations was noted, and there was poor guidance to assist the DNFBP sector in ensuring that it is aware about AML/CFT weaknesses of other countries. A new analysis of Rec. 23 is being undertaken.

405. The term "reporting entity" includes most of the DNFBPs envisaged under the FATF Recommendations (see R.22). It does not cover the provision of (i) trust services; (ii) company services except the founding of legal persons and fiduciary services; and (iii) lawyers and notaries. Lawyers and notaries are subject to specific AML/CFT measures under the LPMLTF.

406. ***Criterion 23.1 – (Partly Met)*** The reporting requirements (see R.20) apply to those DNFBPs considered to be REs under the LPMLTF, and hence the R. 20 analysis and deficiencies apply in their respect.

407. (a) Lawyers and notaries – Art 49(1) of the LPMLTF indicates that lawyers and notaries shall apply the AML/CFT measures set out in the LPMLTF. There are however serious doubts whether this obligation holds ground (see introduction to c.22.1). Moreover, lawyers and notaries are subject to specific reporting obligations under Art 51. This reaffirms the interpretation that lawyers and notaries are not bound to implement all the AML/CFT obligations set out for REs

under the LPMLTF, but only those which the LPMLTF specifically renders applicable to them. Thus, it appears that the reporting obligations applicable for lawyers are the ones set out under Art 51, which are being analysed hereunder.

408. Lawyers and notaries shall inform the FIU where they suspect ML/TF in relation to a transaction or a customer. Reports shall be submitted before the execution of the transaction indicating the deadline by when the transaction is to be executed (Art 51(1)). The reporting obligation applies also to planned (i.e. attempted) transactions – Art 51(3). The term transaction (defined in Art 5(10)) includes transactions involving money and other property irrespective of the amount. Several deficiencies are identified in respect of this reporting obligation:

409. (i) Lawyers and notaries are required to report suspicions of ML rather than suspicions that funds are "proceeds of criminal activity";

410. (ii) They are bound to report where they formulate a suspicion and not also when there are reasonable grounds to suspect. The latter is an objective criterion and not dependent on the discretion of the lawyer / notary.

411. (iii) Lawyers and notaries are only obliged to report suspicions when they are acting on behalf and for a customer in a financial or real estate transaction, and not also when they carry out all other services envisaged under c.22.1(d).

412. (iv) The wording of Art 51(1) suggests that lawyers and notaries are only expected to report suspicions that arise in connection with prospective transactions, to the exclusion of transactions that have been executed.

413. (v) There is no time frame to report, and hence to report promptly.

414. In addition, lawyers and notaries are obliged to notify the FIU without delay, when a customer asks for advice on ML/TF (Article 51(5)). Notaries shall provide to the FIU (on a weekly basis) certified copies of property contracts exceeding €15,000. Lawyers are not bound to inform the FIU about suspicious transactions when they are establishing the legal position of customers or representing them in court proceedings or providing related advice (Article 52(1)).

415. (b) DPMSs carrying out cash transactions are considered REs (see c.22.1(c). The analysis of R.20 is applicable in their respect.

416. (b) TCSPs - Trust service providers are not subject to AML/CFT obligations including reporting obligations. Not all company services are covered for AML/CFT obligations and reporting obligations (see introductory paragraph).

417. ***Criterion 23.2 – (Partly Met)*** The internal controls requirements analysed under R.18 are applicable to those DNFBPs considered to be REs and hence the analysis and deficiencies identified apply in their respect.

418. As explained under c.22.1 and given that there are no specific internal controls provisions applicable for lawyers and notaries, it is concluded that lawyers and notaries are not subject to any internal controls requirements as required in terms of c.23.2.

419. Persons providing trust services and most company services set out under 22.1(e) are not subject to AML/CFT preventive measures including internal controls requirements.

420. ***Criterion 23.3 – (Partly Met)*** The higher-risk countries requirements analysed under R.19 are applicable to those DNFBPs considered to be REs and hence the analysis and deficiencies identified apply in their respect.

421. As explained under c.22.1 and given that there are no specific higher-risk countries requirements applicable for lawyers and notaries, it is concluded that lawyers and notaries are not subject to any higher-risk countries requirements as required in terms of c.23.3.

422. Persons providing trust services and most company services set out under 22.1(e) are not subject to AML/CFT preventive measures including higher-risk countries requirements.

423. ***Criterion 23.4 – (Partly Met)*** The tipping-off and confidentiality requirements analysed under R.21 are applicable to those DNFBPs considered to be REs and hence the analysis and deficiencies identified apply in their respect.

424. The provisions of Art 89 protecting REs from liability when reporting suspicious transactions specifically apply to lawyers and notaries. Hence the analysis of c.21.1 and the respective deficiencies apply to lawyers and notaries.

425. It is doubtful whether the provisions of Art 88 (prohibiting the disclosure of information provided to the FIU) applies to lawyers and notaries. This since the provisions of Art 88(1) posing this prohibition apply to lawyers and notaries when they receive data from Article 79. It transpires that lawyers and notaries are not subject to the provisions of Article 79, but rather subject to Art 81. Hence lawyers and notaries do not appear to be subject to the prohibitions envisaged under c.21.2.

426. Persons providing trust services and most company services set out under 22.1(e) are not subject to AML/CFT preventive measures including tipping-off and confidentiality requirements.

Weighting and Conclusion

427. Significant shortcomings are noted across all criteria, and impact high risk sectors such as lawyers, notaries and TCSPs. The most important and material ones being the following: (i) Trust service providers and some company service providers (apart from foundation of legal persons and fiduciary services) are not subject to AML/CFT obligations including the ones set out in R.23; (ii) Lawyers and notaries are subject to specific reporting obligations under the LPMLTF which demonstrated serious deficiencies (see. 23.1(a). Lawyers and notaries do not appear to be subject to the prohibition from disclosing of information provided to the FIU (mirroring the requirements of c.21.2). **Recommendation 23 is rated Partially Compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

428. In the 4th round MER of 2015, Montenegro was rated PC on R.33. The main deficiencies were the following: (i) banks not required to establish the BO of the limited partnership companies; (ii) no explanation as to the basis for monitoring and enforcing compliance with the requirement placed on business organisations to open a bank account in Montenegro; (iii) a limited liability company not committing an offence when it fails to keep a list of its shareholders, nor an entry in such a list stated in legislation as being conclusive proof of ownership.

429. The most prominent types of legal persons are regulated by the Law on Companies in case

of commercial entities and the Law on NGOs for NPOs. The following types of legal persons are defined as companies and can pursue economic activities: (i) general partnership (GP), (ii) limited partnership (LP); (iii) joint stock company (JSC), (iv) limited liability company (LLC). Commercial activities may also be performed by entrepreneurs (natural persons) and foreign company branches (which do not have legal status according to Art 5(4)). According to Art. 5(1), 62(1) and 318(3) of the aforementioned law, legal persons, entrepreneurs and foreign branches are subject to registration in the CRBE.

430. Non-governmental associations and foundations carrying out voluntary activities (NPOs) acquire legal personality upon registration with the state administration body responsible for administrative affairs – Art 6 of the NGO Law. These foundations and associations may also carry out limited economic activities and when they intend to do so they are required to also register with the CRBE. Other types of legal persons including chamber and business associations, religious communities, political parties and trade unions may be formed under various special laws (see section 1.4.5).

431. ***Criterion 24.1 – (Met)*** a) *Types, forms and features of legal persons* – The different types, basic features and processes for the creation of legal persons that can be formed under Montenegrin law are specified in the legal instruments referred to in the general section above.

432. The provisions on creating companies, are stipulated under the Law on Companies, namely Art. 66 to 91 (for GPs), Art. 92 to 94 (for LPs), Art. 104 to 116 (for JSCs) and Art. 264 to 273 (for LLCs). The aforementioned provisions include identification and description of the different types, forms and basic features.

433. With regard to the non-profit sector, the Law on NGOs provides for the types, forms and basic features of associations and foundations. Other legal persons are covered under other specific laws.

434. b) Process for creation of legal persons and obtaining basic and beneficial ownership information – The processes for creation of legal persons, as well as for obtaining basic information are provided in the Company Law for companies and in the NGO Law for associations and foundations. Companies acquire the status of a legal entity upon registration in the CRBE.

435. Information held with the Register is publicly available (Art 5 and 324, Company Law). Information on associations and foundations is kept with the Register administered by the Ministry for Public Administration, which is publicly available (Art 14 and 16 of the NGO Law).

436. According to Art. 21a of the LPMLTF, beneficial ownership information must be filed with the CRBO by business organisations, legal persons, associations, institutions, political parties, religious communities, artistic organizations, chambers, trade unions, employers' associations, foundations or other business organizations, a legal person that receives, manages or allocates the funds for certain purposes, foreign trust, foreign institution or similar foreign legal entity that receives, manages or allocates the funds for certain purposes (excluding entrepreneurs, one-member LLCs, direct and indirect budget user). The process is set out under Article 21b.

437. ***Criterion 24.2 – (Mostly met)-*** The Montenegrin authorities have assessed elements of ML/TF risks associated with legal persons through: (i) the 2020 NRA (containing some general descriptions of risks associated with legal persons and focuses on LLCs), (ii) the 2021 SOCTA and (iii) a separate specific risk assessment conducted in 2019. The misuse of legal entities (in

particular through the carrying out of fictitious transactions), and the misuse of offshore companies to launder the proceeds of tax evasion and OCG activities have been identified as threats of ML. Nevertheless, a more comprehensive and detailed assessment is necessary for Montenegrin authorities and the private sector to understand ML/TF risks and vulnerabilities of all legal entities, and the adequacy of the control framework (see section 7.2.2).

438. ***Criterion 24.3 – (Met)*** *Companies* **-** Companies acquire the status of a legal entity upon registration in the CRBE (Art 5 of the Law on Companies).

439. JSCs should present the founding documents, charter, the list and information on the Board of Directors and the Executive Director, as well as a list of other accompanying information as specified under the Law (Art 115 of the Company Law). In addition, data on the company's registered name and the registered office, names of managing bodies' members and members of other company's bodies registered with the CRBE, of the auditor and Company Secretary if any in the company, the date of passing the instrument of incorporation, of adoption of Article of Association and registration of a joint stock company shall be published in the Official Gazette of Montenegro.

440. LLCs, may have maximum of 30 members. It shall be registered with the CRBE and present the list of information specified under Art 272 of the Company Law in this regard. As in case of JSCs, information on the company's registered name and the registered office, names of managing bodies' members and members of other company's bodies registered with the CRBE, auditor and Company Secretary if any in the company, the date of passing the instrument of incorporation, adoption of Article of Association and registration of a limited liability company shall be published in the Official Gazette of Montenegro. Provisions related to JSCs may similarly apply to LLCs provided that in case of contradiction the rules on LLC would prevail.

441. GPs should register with the CRBE by presenting the Memorandum of Association along with proof of identity of each founder, which need not be authenticated; names of company representatives and his or their signatures authenticated in accordance with law; address for receiving electronic mail and special address for receiving mail, if there are any (Art 67 - Company Law).

442. LPs register with the CRBE by presenting Memorandum of Association of limited partnership; proof of identity of each founder; certificate of entering contributions in the company, individually for each limited partner; an appraisal of authorized appraiser with regard to contributions in kind of limited partners; an act on nominating a company representative with his authenticated signature, in accordance with law; address for receiving electronic mail and special address for receiving mail, if there are any (Article 94 of the Company Law).

443. Information to be kept in the CRBE is also provided under the Rulebook, which includes name of the business entity and, if necessary, abbreviated name; designation of the business entity; headquarters and, if necessary, a special address for receiving mail; email address; predominant activity; contact information. The CRBE also publishes on its website: (i) the founding decision and statute, as well as their amendments; (ii) appointments, termination of functions and changes in information about persons in the company; (iii) whether the authorization for representation is individual or collective; (iv) the amount of the registered share capital, if the approved share capital is determined by the founding decision or statute; (v) accounting documents for each financial year; (vi) changes in the seat of the business entity; (vii)

liquidation of the business entity; (viii) any court decision establishing the nullity of a business entity; (ix) appointment of liquidators, information about them and their powers; (x) ending of the liquidation procedure.

444. The CRBE is managed in electronic form as a single database, and all data entered in this register are public.

445. *Associations and foundations* - As regards associations and foundations, those are not required to be registered in the CRBE (unless they wish to conduct limited economic activities) and the registration is voluntary. Nonetheless, non-government organisations acquire the status of a legal entity on the day of entry into the register of associations, the register of foundations or the register of foreign organisations (Art 6 of the NGO Law). The Law on NGOs provides that the content and manner of keeping the registers, as well as application forms for registration in the registers shall be prescribed by the Ministry of Public Administration (Art 14 of the Law). The Rulebook on the Content and Manner of keeping register of NGOs sets the list of data to be kept with the register, including the name, registration number, tax identification number, telephone number, mail address, main activity.

446. ***Criterion 24.4 – (Partly met)*** *Companies* **-** The CRBE is responsible for maintaining and retention of basic information.

447. A status of a member of a GP, LP, and LLC shall be acquired on the day of registration of the ownership of a share in the CRBE, in accordance with the Company Law, while it shall cease on the date of registration of the termination of the company member status in the CRBE. Art 303 of Company law states that the company shall keep documentation based on which the ownership and other property rights of the company is proved. The company shall keep the documentation at its registered office or at other place known and accessible to all company members. Art 303 requires LLCs to keep documents on Articles of association, where the following information should be reflected (Art. 270): Names of founders, description of contribution; Equity interest of each company member in the aggregate equity capital, expressed in percentages.

448. As for partnerships no information was found on the obligation to keep relevant records, apart from CRBE.

449. There is, also, no obligation to notify and keep the registry updated with information on the value of the contribution of each member (for limited partnerships), nor there is an explicit obligation to notify the registry whenever members cease to be involved in a general partnership or limited partnership.

450. In the case of JSCs, a natural person or legal entity acquires the status of a shareholder on the day of registration of the share(s) of the company with the Central Clearing Depositary Company, in accordance with law regulating the capital market, and maintains this status as long as they remain registered. According to Art 202 of Company Law, shares are issued, acquired, and transferred in dematerialized form and registered in the Central Clearing Depository Company's securities register. Shares of a joint-stock company are issued in registered name and must be registered with the Commission for the Capital Market and Central Clearing Depository Company. Shares are classified according to the rights they confer on the basis of the law, statute or company decision made in the process of their issuance.

451. There is, however, no obligation for the JSCs to retain information on the categories of

shares, and there is no explicit obligation for JSCs or their management board to retain the register of shares for any period of time, and no specific obligation to retain it within Montenegro and to notify the CRBE as to where such information is held.

452. *Associations and foundations* - NGOs provide information on their founders to the Register, as well as any changes to the list of founders and members of the executive body thereof (Art 14 and 19 of the NGO Law). Information on the changes should be submitted within 30 days from when changes occur.

453. ***Criterion 24.5 – (Partly met)*** *Companies* **-** According to Art 323 of Company Law, the competent authority for registration is required to ensure that the data registered in the CRBE is identical to the data from the registration application. However, this does not amount to ensuring that information is accurate and held up-to-date. Companies are obliged to inform the Register of changes to the information specified above within 7 days from the moment the changes occur, non-informing of changes is subject to penalty based on the Company Law. Art 326 (3(1)) prescribes a fine of EUR 750 for a company or another form of organisation pursuing economic activity for failure to make duly submission of the written instrument of incorporation and the Articles of Association or it fails to enter in these acts the data prescribed by the law. However, there are no penalties applicable for the submission of false /wrongful information.

454. Meanwhile, Art 323 on Liability for Registered Data Authenticity stipulates that Persons that conclude legal transactions with registered companies and entrepreneurs shall bear the risk of determining the accuracy of the data contained in the registry for their needs, unless otherwise provided by this Law. According to Art 389 of Law on Capital Market, Central Clearing Depository Company is liable to the issuer and the legal holder of financial instruments registered in the Central Clearing Depository Company, for damage caused by non-execution, i.e. improper execution of orders for transfer or violation of other obligations established by this law, as well as for damage caused by inaccurate data or loss of data.

455. *Associations and foundations* - Penalties can be imposed on NGOs for failing to report on changes within 30 days from the moment those occurred to the Registry (Art. 42(1) of the NGO Law). Inspection supervisions may be conducted by authorities to ensure implementation of the Law (art. 41 of the NGO Law). However, deficiencies identified under c.8.3 have an impact here.

456. ***Criterion 24.6 – (Partly met)*** (a) The manner of collection and provision of information to the CRBO is provided under Articles 21-21b of the LPMLTF. The Register is kept by the Tax Administration, whereas access to information is provided to REs, FIU, supervisory and other competent authorities, as well as legal and natural persons who prove the legal interest. Companies, business organisations and non-government organisations, as well as other types of legal entities are obliged to enter in the Register the data on beneficial owners and changes of owners eight days since the changes occur. The following are exempt from filing BO information at the CRBO: (i) Entrepreneurs (individuals), (ii) single member LLCs, (iii) direct and indirect budget user, and (iv) legal persons and business organisations whose shares are traded on the regulated securities market where they are obliged to disclose data and information on beneficial ownership in accordance with law governing rights and obligations of the subjects on the securities market and other law. As set out under section 7.2. the majority of LLCs (thus including single member ones) are owned solely by natural persons (51,992 out of 54,666 as of December 2022), who would be registered as shareholders within the CRBE. The risk of use of strawmen or

undeclared representatives (the extent of which not assessed and unknown) impacts the availability of BO data for single-member LLCs.

457. The mentioned entities must deliver to the Register the data on: (1)business organisation or legal person (name, address, registered office, registered number, identification number, registration date and date of deleting the business organisation for legal entities registered in CRBE; name, address, registered office, tax identification number, registration date and date of deleting persons from Article 21a Paragraph 4 from the tax register for subjects registered in the tax register); (2) beneficial owner (personal name, resident or temporary address, birth date, tax identification number, nationality, ownership interest or other type of control, registration date and date of deleting the beneficial owner from the Register); (3) category of persons with an interest for establishing foreign trust, foreign institution or similar foreign legal entity when individuals who benefit from foreign trust, foreign institution or similar foreign legal entity are to be determined. As at the date of the on-site mission only 34 companies out of 37608 legal persons filed BO information with the CRBO.

458. b) In addition, Article 21 of the LPMLTF obliges the REs to identify and verify the BOs of the business organisations, legal persons and foreign legal persons. The RE shall verify the data on beneficial owner of a legal person, business organisation or foreign legal person to the extent that ensures complete and clear insight into the beneficial ownership and managing authority of a customer in accordance with risk-degree assessment. If there are doubts on the authenticity of information, the reporting entity should also obtain a written statement from the representative of the client (see R.10 for detailed analysis). Article 7 of the Rulebook on BO information provides that in case a RE entity finds any difference between the information in the BO register and the data it holds it makes changes to the register, which is further provided to the FIU by the Tax Administration. Nonetheless, as analysed under R.10 there are issues in relation to the interpretation of "control through other means", as well as the possibility to identify managers as BOs where it is not possible to identify such person rather than when no such natural persons exist.

459. ***Criterion 24.7 – (Partly met)*** - As provided under c24.6 the companies, legal persons and NGOs are obliged to enter in the CRBO on BOs and changes of owners eight days since the changes on owner have been made. The procedures for submitting the updated information are provided under the Rulebook on BO information. In addition, the responsibility of the accuracy of information also rests with these entities (Art 21a - LPMLTF). Penalties for failing to comply with these obligations are provided under Art 99(1) item 3 of the LPMLTF. While the Law provides the obligations for the legal persons, companies and NGOs, no information was provided as to what supervisory measures are undertaken to ensure the accuracy and up-to-datedness of information. No procedures are provided to test or verify the accuracy of the BO information in the BO Register or after the information has been changed.

460. The REs are obliged under the LPMLTF to establish and verify the BO of the legal persons, business organisation or a foreign legal person (see R. 10 and 22). The Rulebook on BO information stipulates a mechanism for reporting identified inconsistencies between the information held with the BO Register and the data obtained by the REs. At that, in such cases the RE should make subsequent changes to the Register, which is then notified to the FIU by the Tax Authority. No specific timeframe is set for complying with these rules. In addition, the verification should be performed on the basis of materiality and risk, hence, in the absence of such criteria

the timeliness of updating the information on existing customer by the RE cannot be ensured.

461. ***Criterion 24.8 – (Partly met)*** Article 3 of the Rulebook on BO information defines that the person authorized to enter data in the CRBO enters or updates the data via the Internet application established by the Tax Administration, using a certificate for qualified electronic signature, in accordance with the law regulating electronic identification and electronic signature. However, there is no requirement under Montenegrin Law for the members of the management board or other responsible persons to be resident in Montenegro and be accountable to competent authorities for it.

462. As regards the DNFBPs, apart from the obligations set out for the reporting entities on identification and verification of BO information, no specific legal provision requires that a DNFBP be authorised by the company, and accountable to authorities, for providing all basic and BO information, as well as providing further assistance.

463. ***Criterion 24.9 – (Mostly met)*** Art 91 of the LPMLTF requires REs to keep records obtained in accordance with the Law, related documentation, data on identification number of each customer's account, data and documentation on wire transfers, documentation on business correspondence and reports at least ten years after the termination of business relationship, executed transaction, unless a specific law prescribes longer period for data keeping. No information is provided on the obligation to keep basic information after the dissolution of companies or NGOs by the companies/ NGOs themselves or by the Registers.

464. ***Criterion 24.10 – (Met)*** The FIU, supervisors and other competent authorities may access BO data held in the CRBO and may also request the delivery of excerpts from the said register through submitting an application, which shall be submitted to them immediately upon receipt of the application (Art 8 Rulebook on the manner of keeping the register of Bos). Exceptionally, if there are problems in the functioning of the system that make it impossible to deliver information, it is submitted no later than two days from the date of receipt of the application. Information from other Registers is publicly available. Access is also provided to the REs and third parties, if proven a legal interest.

465. ***Criterion 24.11 – (Met)*** There is no explicit provision under Montenegrin law prohibiting companies from issuing bearer shares. Nonetheless companies are required to obtain and provide upon registration the names and details of the initial founders and to provide information on any changes in shareholders throughout the lifetime of the company (see c. 24.4). According to these provisions company shareholders are required to be known and registered by name which thus indirectly means that shares may not be held by bearers.

466. ***Criterion 24.12 – (Partly met)*** Art 382 of Law on Capital Market prescribes types of accounts that are opened and maintained at Central Clearing Depository Company, and one of them are nominal accounts. Article 107 of the Law on Capital Market defines Procedures on the notification and disclosure of major holdings, which shall include, inter alia, the chain of controlled undertakings through which voting rights are effectively held, if applicable; the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights and of a natural or legal person entitled to exercise voting rights on behalf of that shareholder.

467. Apart from this, no explanation has been provided as to how nominee shareholders and directors are required to disclose the identity of their nominator to the company and to any

relevant registry, and for this information to be included in the relevant register. While there are some restrictions related to the appointment of the Board of Directors' member, it is not clear that nominee shareholders and directors are required to be licensed, for their nominee status to be recorded in company registries, and for them to maintain information identifying their nominator, and make this information available to the competent authorities upon request.

468. ***Criterion 24.13 – (Mostly met)*** A company or another form shall commit an offence if it fails to timely submit for registration the data prescribed by this Law, or any changes of such data that it is obliged to submit in accordance with the Law on Companies (Art 236 of the Company Law). In that case a fine from EUR 750 to 7,500 may be imposed on the company, while a fine of EUR 150 to 1,500 may be imposed on a person within the company responsible for those activities. These fines are not considered to be sufficiently dissuasive and proportionate.

469. A fine from EUR 5,000 to 40,000 can be imposed on a legal person if it fails to publish on its website and provide to the Register information related to the notification as specified under the Law on Capital Market (Article 407 of the Law on Capital Market).

470. A fine from EUR 500 to 800 for a misdemeanour will be imposed to the non-governmental organisation, if it does not report to the competent authority changes in facts and data to be entered in the register within 30 days (Article 42 of the Law on NGOs).

471. As regards the BO information, a legal person may be fined from EUR 3000 to 20,000 in case when it fails to comply with the obligations specified under articles 20 and 21 of the LPMLTF (Clause 33-34b, Part 1, Article 99 of the LPMLTF). The mechanism of calculation of penalties to ensure dissuasiveness and proportionality is not clear.

472. Sanctions may also be imposed on REs who fail to comply with their CDD obligations including those relative to BOs under the LPMLTF (see R.35). These are not considered to be dissuasive and proportionate.

473. ***Criterion 24.14 – (Mostly Met)*** As set out under c24.3 all the basic information held with the registers is publicly available, hence also to foreign authorities. As regards the information held with the BO register, this is also accessible to competent authorities (see c. 24.10). Moreover, as set out under R.37, 38 and 40 competent authorities are able to use their domestic powers to obtain basic and BO information from companies and REs also to assist foreign counterparts. Nonetheless, minor deficiencies related to international cooperation of these authorities are identified under R.37-40.

474. ***Criterion 24.15 – (Partly Met)*** Revenue and Tax Administration is authorized to exchange information externally with countries with which Agreements on double taxation are signed. Apart from this, no information has been provided on monitoring and keeping records on the quality of assistance received from counterparts in other countries in response to requests for basic and BO information or requests for assistance in locating BO residing abroad.

Weighting and Conclusion

475. The following significant deficiencies have been noted: (1) a lack of comprehensive analysis conducted on how all types of legal persons and arrangements could be used for ML/TF purposes; (2) there are no supervisory measures or procedures envisaged to ensure the accuracy and up-to-datedness of BO information, (3) the unpopulated CRBO and CDD shortcomings (see

R.10 and R.22) put into question the availability and accuracy of BO information; (3) partnerships are not obliged to keep relevant records set out in c.24.4; (4) there is no obligation for JSCs to retain information on the categories of shares, and there is no explicit obligation for JSCs or their management board to retain the register of shares; (5) obligation to keep basic information after the dissolution of companies or NGOs by the companies/ NGOs themselves or by the Registers; (5) there is no requirement under Montenegrin Law for persons authorised by the companies to be resident in Montenegro and be accountable for the provision of basic and BO information and provide further assistance to the authorities, nor there are similar obligations on DNFBPs authorised by the company (6) there are no mechanisms to prevent the misuse of nominees (4) some of the sanctions for non-compliance with the obligations under this recommendation do not seem to be fully proportionate and dissuasive; and (5) no mechanism to monitor the quality of assistance. **Recommendation 24 is rated Partially Compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

476. In the 4th round MER of 2015, R.34 was not applicable to Montenegro, since there were no provisions under Montenegrin legislation that permit the formation of trusts. Although the Montenegrin Law still does not provide for the creation of trusts or similar legal arrangements, Montenegrin residents are not prevented from setting up trusts in foreign jurisdictions. Moreover, trusts and similar legal arrangements created under foreign laws are not precluded from entering into business relationships or carrying out transactions with Montenegro REs. Legal and natural persons in Montenegro may also act as trustees and provide other trust-related services.

477. Under the revised FATF 2012 Standards, R.25 includes a number of elements that are applicable to all jurisdictions and not only those which provide for the creation of trusts under their laws.

478. ***Criterion 25.1 – (Partly Met)*** Montenegro is not a signatory to the Hague Convention on Laws Applicable to Trusts and on their Recognition. Montenegrin law does not provide for the creation of trusts and similar legal arrangements. Thus, sub-criteria (a) and (b) are not applicable.

479. (c) Trusts and similar legal arrangements set up under foreign laws may still carry out financial and other activities in Montenegro. Trustees are not recognized as REs and the setting up of trusts in a foreign jurisdiction and provision of trust services is not subject to AML/CFT obligations (see c.22.1(e)). Furthermore, lawyers and notaries which may be involved in the setting up of foreign trusts or that provide other services to foreign trusts such as property acquisition are not obliged to carry out CDD in respect of foreign trusts (see c.22.1(d)).

480. ***Criterion 25.2- (Partly met)*** This criterion is not applicable to Montenegro as regards trusts governed under domestic law, which are non-existent. Deficiencies under c.25.1(c) impact the fulfilment of this criterion.

481. ***Criterion 25.3- (Partly met)*** Article 18 of the LPMLTF provides that REs having a foreign trust as their client, shall establish and verify the identity of the representative, authorised person and the beneficial owner (Article 20 of the LPMLTF), as well as determine the settlor, all trustees, protector, beneficiary or the person with ultimate control. If there are doubts on the accuracy and authenticity of the documents provided, the RE shall obtain a written statement from the client. Some minor deficiencies were identified in respect of these CDD obligations (see c.10.11)

482. While RE are obliged to check that any person acting in the name of a customer has the right to represent and is authorised by the customer, and to establish and verify the identity such person, there are no specific obligations for trustees of foreign trust to disclose their status to REs (see c.10.4).

483. ***Criterion 25.4- (Partly met)*** While there are no legal provisions under the LPMLTF or other enforceable means preventing trustees of foreign trusts from providing BO information or other information on trusts and legal arrangements, the deficiencies set out under c.25.1 (c) impede availability of CDD and other information by trustees of foreign trusts. There also deficiencies set with regards to record keeping and provision of information to the authorities in respect of lawyers and notaries under c.22.2. Given that lawyers and notaries are exposed to dealing with foreign trusts, this impacts the implementation of this criteria.

484. ***Criterion 25.5- (Partly Met)*** LEAs, and other competent authorities are empowered to access information on foreign trusts from FIs and DNFBPs providing services thereto (see c.31.1(a), c.27.3 and c.29.3). REs are bound to carry out CDD and keep relevant records and make them available to competent authorities (see c.11.4 and c.22.2). However as explained under c.25.1, persons/entities providing trustee services in relation to foreign trusts and lawyers and notaries providing other services to foreign trusts or similar legal arrangements are not obliged to carry out CDD.

485. ***Criterion 25.6- (Partly Met)*** The analysis on provision of international cooperation with competent authorities from other countries also covers the provision of BO information on foreign trusts and other legal arrangements operating in Montenegro (see R.37-40). The deficiencies outlined under c.25.1 however impeded the obtainment of BO information on foreign trusts from Montenegrin trustees and lawyers/notaries providing services to such trusts, which hampers the provision of such information to foreign counterparts.

486. ***Criterion 25.7and 25.8 - (Partly met)*** Liability and sanctions for non-compliance with the obligations are provided under R.35 for the REs, which are not considered dissuasive and proporptionate.

Weighting and Conclusion

487. Montenegro does not allow for trusts or similar legal arrangements to be established under its law and it has not ratified the Hague Convention on the Law applicable to Trusts and on their Recognition. Trustees are not recognized as REs and the setting up of trusts in a foreign jurisdiction and the provision of other trust services are not subject to AML/CFT obligations. Lawyers and notaries which may be involved in the setting up of foreign trusts or that provide other services to foreign trusts are not obliged to carry out CDD in respect of foreign trusts. These deficiencies have a cascading effect on the implementation of c.25.2, c.25.5, c.25.6. Concerns in relation to the proportionality, dissuasiveness and effectiveness of the sanctioning regimes for REs are also applicable here. **Recommendation 25 is rated Partially Compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

488. In the 4th round MER of 2015, Montenegro was rated PC on R.23. This since (i) not all FI activities under the FATF standards were subject to AML/CFT obligations and supervision; (ii) the Securities and Exchange Commission could not take measures to prevent criminals or their

associates from being involved in FIs; and (iii) not all MVTSs were subject to market entry requirements and effective monitoring. Most shortcomings were addressed.

489. ***Criterion 26.1 – (Mostly Met)*** Art 4 of the LPMLTF defines the FIs that are REs. Credit institutions and other FIs (authorised by the CBM) are supervised for AML/CFT purposes by the CBM. Investment services firms' supervision is assigned to the CMA, while life insurance entities are supervised by the ISA. The supervision of the Post of Montenegro for AML/CFT purposes is vested with the Agency for Electronic Communications and Postal Services ("EKIP") – Art 94(1).

490. Investment and Voluntary Pension Funds (envisaged under the Law on Investment Funds and the Law on Voluntary Pension Funds) are not subject to AML/CFT obligations. Their materiality is however minimal, while these funds have to be managed by investment management companies licensed in Montenegro (see R.10 introduction).

491. ***Criterion 26.2 – (Mostly Met)*** Credit institutions and branches of foreign banks (excluding EU ones[242]) are subject to authorisation by the CBM (Art 62 and 63 - Law on Credit Institutions). Investment services firms are subject to authorisation by the CMA (Art 205 - Law on Capital Markets, Art 87(1) - Law on Investment Funds and Art 18(1) - Law on Voluntary Pension Funds). No information was provided on license or registration requirements for investment funds. Insurance companies, agents and brokers are authorised by ISA (Art 4 - Insurance Law).

492. Payment and Electronic Money Institutions are authorised in terms of the Payment System Law (Art 72 and 113). Commercial postal services (including financial postal services covering money transfers – see c14.1) may be provided following an application for entry into the register maintained by EKIP (Art 75 of the Postal Services Act). Other FIs are licensed in terms of the Law on Financial Leasing, Factoring, Purchase of Receivables, (Financial Leasing – Art 43-44, Factoring Companies – Art 74-75, Purchase of Receivables - Art 81-82, MFIs – Art 90/91 and Credit-Guarantee Funds – Art 97-98). Bureau de change dealers are subject to registration in terms of the Decision on detailed requirements and manner of performing bureau de change operations. These dealers may only operate on behalf of banks and fall under the responsibility of the Bank for the conduct of operations (see Art 2 of the Decision).

493. The LPMLTF and the CBM Guidelines (see c.13.3) prohibit FIs from establishing or continuing business relationships with shell banks or banks that allow shell banks to use their accounts. Shell banks are not explicitly prohibiting from establishing or operating in Montenegro; however, Montenegrin Banks and branches of foreign banks are required (Art 62 - Law on Credit Institutions) to have physical presence in Montenegro or the EU (in case of EU Banks directly operating in Montenegro). This prevents the establishment of shell banks in Montenegro.

494. ***Criterion 26.3 – (Partly Met)*** *Credit Institutions* – Prospective members of the supervisory and management boards of credit institutions are subject to a fitness and probity assessment by the CBM (Art 44 and 52 - Law on Credit Institutions). The CBM has the power to refuse the approval where the individual is not of good repute and/or demonstrates a lack of integrity (Art 43 and 44). According to the Decision for the Selection and Appointment of Members of the Management Body and Holders of Core Functions ("the Decision"), an applicant

[242] Subject to notification requirements (see c.14.1)

for the Supervisory or Management Board shall not be of good repute if he is convicted (final or on-going proceedings) for any offence against property, the payment system or the economy or other offence that puts their repute in doubt or where there are grounds for suspicion on one's reputation. Reputation is defined widely to include both criminals and their associates. (Art 3(1) and (2)). Credit institutions must also identify all core function holders243 and these individuals must demonstrate that they are of good repute and integrity (Art 59 - Law on Credit Institutions and Art 13(2) - Decision). The concept of good repute and integrity for core function holders is interpreted in the same manner as explained above. (Art 13(4) of the Decision).

495. Qualifying holding in a credit institution is defined as a direct/indirect investment of 10% or more in the capital or voting rights or which gives significant influence over the management (Art 16 - Law on Credit Institution). When assessing the suitability of the proposed acquirer (or shareholders or indirect acquirers in case of acquirers that are legal entities), the CBM will have regard to (i) the reputation of the acquirer, (ii) whether the acquisition gives rise to reasonable grounds of suspicion of ML/TF or increases the risk of ML/TF (Art 31). An acquirer is not of good repute if he is convicted of a criminal offence, if there are proceedings against them for violating any regulations which cast doubt on their repute, or if there is any other credible information that casts doubt on their repute and suitability (Art 3 - Decision for assessing the suitability of the acquirer). This definition is wide enough to bar not only criminals but also their associates.

496. The CBM may obtain data on misdemeanour and penal convictions on acquirers of qualifying holdings, and candidates for banks' supervisory boards. (see Art 26(2-3), Art 44(6-7) and Art 53(10-11) - Law on Credit Institutions). The CBM may also obtain data from the European Criminal Records Information System and EBA records on imposed sanctions.

497. Banks shall regularly (at least annually), assess and verify that members of the supervisory and management boards meet the suitability criteria (Art 22(1) of the Decision). The results of this assessment are to be notified to the CBM while any concerns on suitability are to be notified within eight days (Art 22(5) and (6) – Decision). The CBM relies on examinations, public complaints, and the media for on-going monitoring of fitness and probity of qualifying holders.

498. *Other FIs licensed by the CBM* – Financial Service Providers - Art 107(3) item 6 and Art 108 of the Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit Guarantee Operations ("Law on Other FIs") provide that an individual may not be appointed to the board of directors or as an executive director of a financial service providers (i.e. leasing, factoring, receivables, micro-lending and credit guarantee operations company) if he is convicted of a criminal offence. Each legal and natural person acquiring a qualifying holding (10% of the capital or voting rights) in a financial service provider will not be deemed suitable if there are valid suspicions that the acquirer carries out or intends to carry out ML/TF or that the acquisition may increase the risk of ML/TF. (see Art 51, 52, 79, 87, 95 and 99 - Law on Other FIs). There is no express provision stipulating that applicants for a qualifying holding shall be reputable and must provide evidence that they are not subject to criminal convictions. The prerequisites for qualifying holders and members of the board of directors and executive directors set out above

243 Core functions in the credit institution are those functions which enable one to exert significant influence on the management of the credit institution. They are however not members of management board or supervisory boards – Art 59(2) of the Law on Credit Institutions.

are restrictive and would not capture criminal associates.

499. *Payment and Electronic Money Institutions* - A payment institution authorisation application must be accompanied by information on the board of directors, the executive director and the individuals managing the institution which demonstrates that they are of good repute and have not been subject to criminal convictions that make them unworthy (Art 72 - Law on Payment Services). The application must also contain details on the qualifying holders but there are no requirements for them to be of good repute. Qualifying holding is defined as direct/indirect holding of 10% or more of the capital or voting rights or capital holding/rights giving significant influence over the management - Art 9(24). These provisions apply to Electronic Money Providers (Art 113). The term reputation is not defined wide enough to also ban criminal associates.

500. The CBM relies exclusively on examinations and publicly available information to monitor the continued suitability of owners and managers of all other FIs besides Banks.

501. *Investment Services Firms* - Persons managing an investment firm shall be of good repute. Directors would not be approved if they are convicted of an offence punishable by more than six months imprisonment. Approvals may be withdrawn if a person no longer meets the eligibility criteria or violates the LPMLTF (Art 211 and 212 - Law on Capital Markets). Prospective qualifying holders (i.e. direct/indirect holding of 10% of capital or voting rights – Art 23(13)) in an investment firm must be pre-approved by CMA, which shall regard the reputation of the acquirer and whether the acquisition gives rise to ML/TF (Art 158 and 159). Applicants for a qualifying holding are not however required to provide evidence that they are not subject to criminal convictions. No information was provided on market entry requirements for investment funds and pension funds.

502. *Investment and Pension Fund Managers* - Appointments to the Board of Directors and the Executive Director of fund managers are pre-approved by CMA, and the respective individuals must be of good repute. Individuals convicted of a criminal offence or subject to pending criminal proceedings are excluded. Approvals can be withdrawn by CMA if these conditions are no longer met (see Art 93(a), (b) and (d) - Law on Investment Funds and Art 13(a), (b) - Law on Voluntary Pension Funds).

503. Prospective holders of a qualifying holding (i.e. direct/indirect holding of 10% or more of the capital or of the voting rights, or of rights enabling influence over the management company) may not be subject to criminal convictions. An application for a qualifying holding would be withheld if the acquisition facilitates ML/TF or increases the risk of ML/TF (Art 92a and 92(c) - Law on Investment Funds and Art 19(b)) - Law on Voluntary Pension Funds). In the case of pension fund management companies these restrictions apply only those seeking to increasing their current holding beyond the threshold. Moreover, applicants for a qualifying holding in a pension fund management company are not required to provide evidence showing they are not subject to criminal convictions.

504. The term reputation under the various laws regulating the investment services sector, is not defined wide enough to also ban criminal associates. In terms of the Procedure On The Continuous Verification Of The Management And Ownership Structures Of Supervised Subjects, the CMA shall, at least once every six months, collect data from credible sources on whether the persons in the management and ownership structures of supervised subjects (including all investment sector firms other than funds) are not subject to criminal proceedings. Where it

transpires that an individual no longer fulfils the conditions prescribed by law, the CMA will revoke the individual's authorisation (see Art 2 and 3).

505. *Insurance Companies* – Applications for insurance company licence must be accompanied by information on the persons proposed to be members of the Board of Directors and the Executive Director together with evidence of their good reputation and that they are not subject to criminal convictions. Applications shall also include information on persons intending to acquire a qualifying holding[244] together with evidence on their reputation and that they do have convictions for a series of criminal offences (which does not include all the designated categories of offences envisaged under the FATF Recommendations) (Art 30 - Insurance Law and Art 2(1)(3) and 2(1)(4) - ISA Rulebook on detailed requirements for licensing insurance business activities). The eligibility of a qualifying holding shall be assessed based on the business reputation of the applicant, the reputation of persons holding a management position (in case of potential acquirers that are legal entities) and whether the acquirer of the qualifying holding will make ML/TF possible (Art 26 - Insurance Law). ISA will reject the application to acquire a qualifying holding in circumstances where the acquisition would make ML/TF possible (Art 26(2) item 4).

506. An application can be refused if the above requirements are not met or evidence of eligibility is not provided – (Art 36(2) and (4) - Insurance Law). The authorities have advised that the evidence of lack of criminal conviction is provided through official documents issued by the Court, the Ministry for Justice, or a foreign authority. The ISA may liaise with the Ministry for Justice or an international authority (in case of foreign issued documents) were a deeper analysis of the authenticity of the document is warranted.

507. *Insurance Brokers and Agents* - The reputability pre-requisites of qualifying holders and persons responsible for the management of Insurance Companies are also applicable to Insurance Brokerage and Agency Companies (see Art 56 and 69 - Insurance Law). These are accompanied by more detailed requirements under the Decision on closer evidence for issuing a permit for insurance mediation or representation (see Art. 5-7). Insurance Agent Entrepreneurs[245](i.e. natural persons) may provide agency services on condition that they were not found guilty for criminal offences against property, official duty or payment operations and economic operations and sentenced to an imprisonment exceeding 3 months (Art 72(3) item 4 of the Insurance Law). This does not cover all designated offences in FATF Recommendations.

508. The provisions of Art 36 and 37 (setting out the basis on which an application for an insurance company may be refused) are likewise applicable to Insurance Brokerage Companies (Art 64). The fact that the notion of reputability is not defined in the case of insurance entities, raises doubts whether the notion is wide enough to include criminal associates.

509. In the case of insurance companies, the ISA relies on self-declarations to identify management officials who cease to fulfil the eligibility criteria (Art 49(3) and 50(3) of the Insurance Law). No information was provided on ongoing fitness and probity for qualifying holders of insurance companies and qualifying holders and management of other life insurance

[244] The Insurance Law defines a qualifying holding as a direct or indirect holding of a minimum 10% of the capital or voting shares, or, irrespective of the share or capital holding, the ability to exercise significant influence over the management of the entity – Article 2(6).

[245] Only insurance agency operations may be provided by natural persons. Brokerage services may only be provided by companies (see Article 52 of the Insurance Law)

entities.

510. ***Criterion 26.4 – (Partly Met)*** (a) *Core Principle Institutions*: During the period under review there was no evaluation for compliance with the core principles for the banking and securities sectors. The ISA conducted self-assessments on compliance with Insurance Core Principles in 2019, 2020 and 2022 assessing itself as largely or fully compliant. The CBM and CMA provided no information to demonstrate their current level of compliance with the core principles.

511. The majority of Core Principles Institutions are regulated and supervised for AML/CFT purposes, which is to be conducted on a risk-sensitive basis (Art 94(5) - LPMLTF). Investment and Voluntary Pension Funds are not subject to AML/CFT obligations. The materiality of this gap is however minimal (– see c.26.1).

512. The Montenegrin authorities provided no information on the application of consolidated group supervision, however advised that at the time of the on-site mission there were no FIs that had branches or subsidiary FIs operating in or outside Montenegro.

513. (b) *Other Financial institutions are subject to AML/CFT obligations and supervision by the CBM and EKIP (for the Post of Montenegro)* – see c.26.1. The LPMLTF obliges all supervisory bodies mentioned above to carry out risk-based AML/CFT supervision (Art 94(5)).

514. ***Criterion 26.5 – (Partly Met)*** *General* - AML/CFT compliance should be conducted on a risk sensitive basis. When planning the frequency and scope of AML/CFT supervision supervisory bodies are required to take into consideration: (i) ML/TF risks identified through the NRA, (ii) risks associated with customers, products and services, (iii) risk data derived from the RE; and (iv) changes in business activity within REs and their management – Art 94(5) & (6) - LPMLTF. Supervisory bodies are not required to take into account the policies, procedures and internal controls of the RE (however most of them cover this aspect through the collection of information on the RE's control framework) nor the degree of discretion afforded to REs in applying AML/CFT preventive measures.

515. *CBM regulated entities* - The CBM's Risk-Based Supervisory Manual provides more detail on risk-based supervision of banks and other FIs supervised by the CBM. This sets out the process for the risk rating of individual REs, which is mainly based on inherent risks and control framework information sourced through annual AML/CFT Questionnaires (which banks and MFIs are bound to submit annually in terms of Art 35(2) of the Law on CBM), and other information from previous supervisory examinations. The manual also sets out how supervisory engagements (i.e. the frequency and scope) are to be adapted according to the ML/TF risks posed by REs. It remains however unclear how the degree of discretion afforded to RE in applying AML/CFT measures is factored in when the CBM carries out AML/CFT supervision. This manual and the risk-based supervisory approach is currently only being applied in respect to banks, however the other FIs are far less material and limited in numbers (14 FIs at the end of 2022).

516. *CMA and EKIP supervised entities* – The CMA in 2022 put in place a risk matrix (considered to be rudimentary and which was being enhanced) to risk rate REs through information collected via yearly questionnaires. The CMA does not have any polices or procedures on and does not carry out risk-based AML/CFT supervision. The Post of Montenegro upon the requirement of EKIP (which it needs to comply with - Art 2 of the Rulebook on the type and method of submitting

information by postal operators) submits semi-annual and, when necessary, quarterly reports on activities undertaken to prevent ML/TF, including financial information and information on locations were financial postal services are offered. This information enables EKIP to formulate annual supervisory plans.

517. *ISA supervised entities* - According to the Rulebook on the content of reports and other notification and data submitted to ISA life insurance companies shall submit annual reports on ML/TF risks. There are no such requirements for insurance intermediaries. These however mainly intermediate for Montenegrin Insurance Companies and thus the ML/TF risk is determined by the Insurance Company. The ISA uses various other sources to understand risk such as: statistics, intelligence, results of NRAs, interviews with relevant authorities or market participants, reports by international organizations, government/civil society organizations/private institutions, media/internet and other sources of public information. There is currently no established processes to assess specific RE risks and carry out risk-based supervision for life insurance entities, however the ISA advised that such rulebook is currently being drafted.

518. ***Criterion 26.6 – (Mostly Met).*** Supervisors are required to take into account significant changes in the management of REs and other business changes when planning the frequency and scope of supervisory measures (see 26.5).

519. *The CBM supervised entities* – The CBM's supervisory manual (Section 2.4. – Annual Examination Plan) stipulates that the off-site control service reviews the information collected through annual AML/CFT questionnaires issued for Banks and MFIs and other information to derive a risk score for each RE. This risk scoring helps determine the annual plan which takes place at least at the end of each year. The manual also states that the annual examination plan should follow the Multi-Annual Plan (set for a maximum of 3 years), however other REs may be included following the yearly risk level assessment, or the receipt of a specific request from other authorities to undertake a specific examination. The CBM may also start an incident AML/CFT examination, changing the plan of controls (Section 2.5.3) whenever it identifies major changes or developments. Section 2.3. of the Manual also stipulates that multi-annual examination plans need to be adaptable to unexpected events that may occur, which apart from the annual risk rating updates also covers other changes in circumstances, such as changes in management or business activities. This manual has so far only been applied to Banks, while annual risk information started being collected for MFIs in 2022 which will permit the annual review of risk.

520. Other supervisors do not have any procedures for reviewing the assessment of ML/TF risk of FIs periodically or upon trigger events. Nonetheless as explained under c.25.5 the CMA & EKIP collect risk questionnaires or information on an annual or periodical basis which enables the periodical revision of risk assessments. ISA, while collecting risk-relevant information, has no established process to assess and review ML/TF risks for supervised FIs.

Weighting and Conclusion

521. Almost all FIs in Montenegro are supervised for AML/CFT purposes to the exception of funds and pension funds which gap is not material. Adequate market entry and on-going checks are in place for Banks. Deficiencies were noted in respect of other FIs. The significant ones impacting the most material FIs are the following: Concerning the acquisition of qualifying holdings in investment firms, and other FIs (listed in the Law on other FIs) there are no express

provisions requiring evidence on absence of criminal convictions. In respect of payment institutions there are no fit and properness criteria for those acquiring qualifying holding. Except for Banks, there are doubts whether criminal associates can be barred from infiltrating FIs. The CBM relies exclusively on examinations and public information to monitor the continued suitability of owners and managers of all other FIs besides Banks. Supervisors (except for the CBM) do not have established processes to carry out risk-based supervision. **Recommendation 26 is rated Partially Compliant.**

Recommendation 27 – Powers of supervisors

522. In the 4th round MER of 2015, Montenegro was rated LC on R.29. The outstanding shortcomings included the inability of the Agency for Telecommunication and Postal Services to monitor and ensure compliance for financial postal services; and the lack of authority of the SEC to conduct examinations of stockbrokers for AML/CFT purposes. A new analysis of Rec. 27 is being undertaken.

523. ***Criterion 27.1 – (Mostly Met)*** The CBM is empowered to supervise compliance with AML/CFT obligations by credit institutions, other FIs and payment service providers. The CMA is responsible to supervise investment sector entities, insurance entities are supervised by the ISA, while EKIP is empowered to supervise the Post of Montenegro for AML/CFT purposes (Art 94(1)(1-4) - LPMLTF). Investment and Voluntary Pension Funds (envisaged under the Law on Investment Funds and the Law on Voluntary Pension Funds) are not subject to AML/CFT obligations. The materiality of this gap is however minimal (see R.10 introduction).

524. ***Criterion 27.2 – (Met)*** The CBM has the power to conduct on-site and off-site inspections of FIs it supervises (Art 240(1-2)) - Law on Credit Institutions, Art 129 - Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit-Guarantee Operations ("Law on Other FIs"), and Art 92 - Payment System Law). EKIP is empowered to conduct inspections on the premises of registered postal service providers (Art 107 - Law on Postal Services).

525. Regarding fund managers and funds the CMA has the power to examine documents, business books, records, and other documents (Art 141(3) - Law on Investment Funds) and to request reports and information on the operations of pension funds and fund management companies. Entities are obliged to provide access to all documents and records they hold, and undisturbed direct control in business premises. (Art 27(1)(1-4) - Law on Capital Market).

526. ISA may conduct on-site and off-site inspections of insurance companies, brokers and agents (Art 118 and 147 - Insurance Law).

527. Art 94(1) of the LPMLTF stipulates that AML/CFT supervision is conducted in line the competencies supervisors have at law, which includes the sectorial laws mentioned above. The Law on other FIs (Art 128) and the Insurance Law (Art 117) state that the powers to conduct inspections under sectorial laws are extendable to supervision for compliance with other laws to which the respective entities are subject hence including the LPMLTF.

528. ***Criterion 27.3 – (Mostly Met)*** Credit Institutions & Other FIs supervised by the CBM – shall submit, at the request and within the deadline set by the CBM, reports, information, and data on all matters relevant for supervision or other CBM tasks (Art 234 - Law on Credit Institutions, Art 115 - Law on other FIs, and Art 103(2) and 124(1) - Payment System Law). Repeated failure

to provide reports in a timely and accurate manner or prevent the carrying out of supervision may lead to the withdrawal of a bank's license (Art 73(2) item 18 - Law on Credit Institutions). Other FIs may be fined between €5,000 - €20,000 and payment institutions between €2,500 - €20,000 for failure to submit requested information (Art 146 - Law on Other FIs and Art 184 (1) item 17 - Payment System Law. There are no sanctions for electronic money institutions however there are none in operation.

529. *Investment Services* - The CMA may access all documents and records, when carrying out supervision on investment service firms. Failure to provide the requested documentation is sanctionable with a fine of between €5.000 - €40.000 (Art 27(1) and 407(1-7) - Law on Capital Markets). In respect of funds and fund managers the CMA may require (only during supervision) reports and information and establish how this should be reported (Art 142 and 95 - Law on Investment Funds, and Art 56 - Law on Voluntary Pension Funds). There are no sanctions for the non-provision of requested information by pension funds and pension fund managers.

530. *Insurance Entities* – Authorised persons have the right to review company files, books, documents and data on the operation of companies (and all other participants involved in insurance transactions) and to demand information (Art 115, 120 and 121 - Law on Insurance). Insurance entities may have their license revoked for not providing the requested information, or not enabling supervision (Art 144 and 147).

531. *Post of Montenegro* - Postal operators providing financial postal services are bound to submit information relating to postal services to EKIP and as determined by EKIP – Art 69 - Law on Postal Services. The Rulebook on the type and manner of the submission of data by postal operators provides a list of data that needs to be provided including financial information regarding commercial postal services (covering payment services) – Art 2. This is however limited to financial information and does not cover all information necessary to carry out AML/CFT supervision. Postal operators are subject to a pecuniary fine of between €2,000 - €20,000 for failure to provide the requested information.

532. As is mentioned under c.27.2 the provisions outlined under c.27.3 are rendered applicable to AML/CFT supervision by virtue of Art 94(1) of the LPMLTF.

533. ***Criterion 27.4 - (Partly Met)*** In relation to identified AML/CFT illegalities or irregularities supervisory authorities may (i) order REs to remove such illegalities or irregularities; (ii) initiate misdemeanour proceedings for the imposition of the pecuniary fines on REs or responsible persons of REs that are legal persons - Art 99 – 102 of the LPMLTF (see Rec. 35) and (iii) order other measures in accordance with the LPMLTF – Art 94(3), including prohibiting REs from carrying out business activities for up to six months, and prohibiting responsible persons of REs that are legal persons from performing activities - Art 99(2-4), 100(2-4) and 101(2-4) - LPMLTF.

534. *Credit Institutions and other financial institutions licensed by the CBM* - The CBM has the power to impose other measures (e.g. restrict operations and temporarily prohibit financial services) - Art 276(1) and 279 - Law on Credit Institutions. The CBM may withdraw a credit institution license if its activities are associated with ML/TF (Art 73(2)(14)). This however does not tantamount to the ability to withdraw a license when AML/CFT breaches are identified. For other financial service providers similar provisions apply (Art 134 - Law on Other FIs). These are also not implementable on the back of AML/CFT breaches.

535. In respect of payment and electronic money institutions, the CBM may impose various additional measures (e.g. temporary suspension of business and forced termination of agency relationships,) where they act contrary to laws and regulations (including the LPMLTF) - Art 98, 99 and 124 of the Payment System Law. The CBM may revoke a payment or electronic money institution's licence if it fails to implement supervisory measures imposed by the CBM, including if it fails to remediate AML/CFT breaches (Art 76(2) item 5 - Payment System Law).

536. *Investment Services* – In respect of investment funds and fund managers the CMA may take additional measures to those stipulated under the LPMLTF. These include (i) measures on members of the management and supervisory board (e.g. warnings, or dismissal), (ii) order to change the fund management company, (iii) temporarily prohibit the alienation of the management company and investment fund's assets; (iv) revoke the authorization to the management company, (v) suspend or revoke the license of the pension fund management company; and (vi) revoke the authorization for the establishment of the pension fund. These measures are clearly applicable in respect of outcomes of AML/CFT supervision (Art 145(1) and (3) - Law on Investment Funds and Art 59(1) and (3) - Law on Voluntary Pension Funds). With the exception of voluntary pension funds, the CMA may not temporarily suspend or revoke the authorisation of investment funds in view of AML/CFT breaches. Similar measures to order the remediation of irregularities and to suspend or revoke licenses are applicable for investment firms. While these appear to be applicable only for breaches of the Law on Capital Markets, the CMA provided at least two cases showing their application also in respect of AML/CFT breaches.

537. *Insurance Entities* - The ISA may impose additional measures when supervising the operations of an insurance company or other entity, which encompass compliance with the LPMLTF (Art 129(1) and 147 - Insurance Law). These measures include: (i) written warnings and remediation of illegalities within a specific time (ii) ordering special measures against responsible persons in the company; (iii) order transfer of insurance portfolio to another insurance company; (iv) introduce interim administration in the company; and (iv) revoke a license for pursuit of specific or all insurance operations.

538. The Agency may revoke a license were a postal operator fails to rectify identified irregularities within a stipulated deadline (Art 78(2) of the Law on Postal Services).

539. The deficiencies identified within R.35 limit compliance with this criterion.

Weighting and Conclusion

540. FI supervisors have adequate tools and powers to conduct AML/CFT supervision. The CBM may not revoke the license of a credit institution and suspend or revoke the license of other FIs envisaged under the Law on Other FIs on the back of AML/CFT breaches. The deficiencies relative to Montenegro's AML/CFT sanctioning regime outlined under R.35 impact the effective compliance with this recommendation. Other shortcomings are minor or of minor materiality including (i) the inability to sanction electronic money institutions, pension funds and pension fund managers for failure to provide information and (v) EKIP's inability to compel the production of information other than financial information. **Recommendation 27 is rated Largely Compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

541. In the 4th round MER of 2015, Montenegro was rated PC on R.24. There was a lack of mechanisms to prevent criminals and their associates from owning or controlling casinos, and casinos were not subject to proportionate, and dissuasive AML/CFT sanctions. There existed no AML/CFT supervisory regime or sanctions for lawyers, notaries, auditors and accountants. A new analysis of Rec. 24 is being undertaken.

542. ***Criterion 28.1 – (Partly Met)*** (a) All games of chance (including casino games) shall be organized by joint-stock companies and LLCs with head-office in Montenegro. Prospective operators need to meet the legal prerequisites and are granted a concession contract based on a decision made following a public call for tenders (Art 10 and 37 - Law on Games of Chance). Casino games may only be provided in casinos and only entities that are granted a concession contract may provide games of chance (including casino games) over the internet or other telecommunication means (Art 9 and 35). Montenegro has clarified that there is no specific licensing regime for ship-casinos.

543. (b) Casino concession applications need to be supported by data on individuals managing the business. This includes proof of suitability to manage a casino and proof that they have not been convicted or undergoing proceedings in relation to offences against the payment system and commercial operations – Art 36(1) (9 & 12). Not all criminal offences set out in the designated categories of offence in the FATF Recommendations are covered. These entry requirements apply only to those managing the casino business and not the owners; and are not effective to detect and prevent associates of criminals from infiltrating casinos.

544. (c) Organisers of games of chance (including online games or provided through other telecommunications means) are REs and supervised for AML/CFT purposes by the Administrative Authority competent for Inspection Affairs - Art 4(2)(10) and 94(1)(5) - LPMLTF. The term "games of chance" is defined under the Law on Games of Chance and includes casino games (Art 3 and 4(12)). Supervision is conducted in terms of the Law on Inspection Control (see Art 71 - Law on Games of Chance) which provides adequate powers (as set out under c.28.4(a)) to conduct supervisory functions.

545. ***Criterion 28.2 – (Partly Met)*** The designated competent authorities or self-regulatory bodies responsible for the AML/CFT supervision of DNFPBs other than casinos are the Ministry of the Interior for auditors and accountants, real estate agents, DPMSs, other traders in goods, and TCSPs, the Bar Association of Montenegro for lawyers, and the Notary Chamber for notaries - Art 94(1) - LPMLTF. Lawyers and notaries do not appear to be subject to all AML/CFT obligations envisaged for REs and are subject to specific obligations which demonstrated significant deficiencies. Trust service providers and some company services are not subject to AML/CFT obligations (see R.22 and 23). This limits the AML/CFT supervision of these DNFBPs.

546. ***Criterion 28.3 – (Partly Met)*** DNFBPs are subject to supervision for compliance with AML/CFT requirements by designated supervisory authorities or self-regulatory bodies (c.28.2). There are deficiencies concerning the supervisory coverage of AML/CFT obligations in the case of lawyers and notaries and the supervisory coverage of TCSPs. These impact the overall system for monitoring compliance with AML/CFT requirements.

547. ***Criterion 28.4 – (Partly Met)*** (a) *Ministry of the Interior (Auditors and Accountants, Real*

Estate Agents, DPMSs and other traders in goods and TCSPs) and Administrative Authority for Inspection Affairs (casinos) – The Law on Inspection Control regulates the conduct of inspections by ministries and administrative authorities (Art 1 and 2) including the Ministry of the Interior and the Administrative Authority for Inspection Affairs. Art 14 provides for the following supervisory powers: (i) examining buildings, premises, equipment, and work devices, (ii) examining books, files and other business documents, (iii) take away samples or documentation (temporarily) for the purpose of establishing facts, and (iv) generally undertake other measures to ensure the performance of the inspection control. Art 21 requires the controlled entity (REs) to provide the inspector with free access, information and documentation needed for the inspection and to generally ensure the undisturbed fulfilment of the inspection. These provisions are robust enough to enable on-site and off-site inspections, compel the production of information and to generally conduct inspections effectively.

548. *Bar Association of Montenegro and Notary Chamber (Lawyers and Notaries respectively)* – No information has been provided in relation to powers to conduct AML/CFT supervision of Lawyers by the Bar Association. The Notary Chamber is vested with the power to inspect files and records held by notaries to ensure compliance with the Law on Notaries, which power is not extendable to the monitoring of AML/CFT obligations.

549. (b) *Accountants and Auditors* - The title of certified accountant or auditor is acquired subject to a series of criteria including educational qualifications, the passing of a proficiency exam and absence of criminal convictions that makes one unworthy to perform (Art 10 - Law on Auditing and Art 24 - Law on Accountancy). Audit Firms may operate following the issuance of an audit permit by the Ministry for Finance. The majority of voting rights and the majority of members of the management body of an audit firm need to be certified auditors who would have fulfilled the respective certification criteria. There are no criminal probity criteria for accountancy firms.

550. The license/permit of an auditor and an audit firm may be revoked by the Ministry for Finance if the auditor or firm fails to remove any irregularities identified, if the auditor no longer meets the qualifying criteria set out above including criminal probity, or where the audit firm fails to satisfy the permit requirements. There are no similar provisions for the revocation of license for accountants and accountancy firms. Moreover, the provisions setting out the entry requirements are not wide enough to bar criminal associates.

551. Lawyers and Notaries need to fulfil a set of criteria to be allowed to practice in Montenegro (see Art 5 - Lawyers Act and Art 12 - Law on Notaries), including not being convicted of a criminal offence that makes them unfit to perform their duties. Notaries and lawyers will be dismissed if they are convicted of a criminal offence that renders them unfit or if they violate notarial or lawyer's duty - Art 66 and 23 - Lawyers Act and Law on Notaries respectively. It is unclear which criminal offences would render a lawyer and notary unfit to practice and these provisions are not wide enough to capture association to criminals.

552. There are no licensing, authorisation or registration regimes or other measures in place to prevent criminal or their associates from owning, managing or being involved in other type of DNFBPs.

553. (c) When supervisory authorities (inc. all DNFBP AML/CFT supervisors) identify illegalities or irregularities (following the carrying out of AML/CFT supervision), they are

authorised to (i) order REs to remove such illegalities or irregularities; (ii) initiate misdemeanour proceedings which may lead to the imposition of the pecuniary fines on REs or responsible persons of REs that are legal persons (see Rec. 35) and (iii) order other measures in accordance with the LPMLTF – Art 94(3) - LPMLTF. Such additional measures include prohibiting REs from carrying out business activities for up to six months and prohibiting responsible persons of REs that are legal persons from performing activities for up to six months (Art 99(4), 100(4) and 101(4) – LPMLTF).

554. Lawyers and notaries may not be dismissed in view of the commission of serious AML/CFT violations. No information was provided by the Ministry for Interior in respect of other supervised DNFBPs as to whether it is empowered to withdraw, restrict or suspend licenses, registration, authorisation or professional accreditation on the back of AML/CFT breaches. The deficiencies impacting R.35 are also relevant for this criterion.

555. ***Criterion 28.5 (Partly Met)*** – AML/CFT supervision (including of DNFPBs) should be performed on a risk sensitive basis (Art 94(5) - LPMLTF). When planning the frequency and scope of AML/CFT supervision, supervisory bodies are required to take into consideration: (i) ML/TF risks identified through the NRA, (ii) risks associated with customers, products and services, (iii) risk data derived from the reporting entity; and (iv) changes in business activity within reporting entities and their management – Art 94(6). Supervisory bodies are not required to take into account the policies, procedures and internal controls of the REs nor the degree of discretion afforded to REs in applying AML/CFT preventive measures.

556. Administrative Authority competent for Inspection Affairs (casinos) - The Administration for Inspection Affairs (casinos) when preparing the annual supervisory plan takes into account the NRA, data obtained from the Unified Information System for Inspections (JIIS), which contains data on previous inspections and follow-up actions, information on volume of activity and number of operative facilities. This information enables a degree of risk-based planning however it is not considered to be extensive enough to properly understand the ML/TF risk of the operators within the sector and model supervision on an on-going basis accordingly.

557. No information has been provided in relation to how the other designated supervisory authorities for DNFBPs risk rate and conduct risk-based supervision of DNFBPs.

Weighting and Conclusion

558. A number of significant deficiencies have been identified which undermine the regulation and supervision of DNFBPs for AML/CFT purposes. Certain TCSP services are not subject to AML/CFT obligations. There is legal uncertainty whether lawyers and notaries are subject to the entire scope of AML/CFT obligations as other REs, while the specific obligations they are subject to present several deficiencies. This hampers the AML/CFT supervision of the TCSPs, lawyers and notaries. Various DNFBPs are not subject to any licencing, registration or professional accreditation or entry requirements, that could prevent criminals or their associates from infiltrating the sectors. Moreover, the entry requirements for casinos, lawyers and notaries, accountants, auditors and tax advisors are not considered robust enough for that purpose either. DNFBP supervisory authorities or self-regulatory bodies (except the Administrative Authority for Inspection Affairs for casinos) do not have a framework or tools to understand RE's risks and to plan risk-based supervision on an on-going basis. The framework for casinos is not nuanced enough to enable effective risk-based supervision. Moreover, the Bar Association of Montenegro

(Lawyers) and the Notary Chamber (Notaries) do not have powers to undertake effective AML/CFT supervision such as carrying inspections and compelling the production of information. The sanctioning regime for DNFBPs is not considered effective, dissuasive and proportionate (see R.35) while no information was provided on whether DNFBPs, can have their license, authorisation, registration or professional accreditation withdrawn, restricted or suspended in view of AML/CFT breaches. **Recommendation 28 is rated Partially Compliant.**

Recommendation 29 - Financial intelligence units

559. In the 4th round MER of 2015, Montenegro was rated PC on R.26. The identified shortcomings mainly related to the following: (i) the FIU did not publicly release reports on trends and typologies; (ii) there was a low number of requests for administrative, financial and law enforcement information undermined the analytical and dissemination process; (iii) the dissemination process did not ensure that effective action were taken by the most appropriate law enforcement authority in all cases; (iv) no review by the FIU to determine whether the analytical output was adequate.

560. ***Criterion 29.1 –(Met)*** Since 2019, the Montenegrin FIU became an independent operational unit within the Police Directorate (Decree on the Organisation and Manner of Work of State Administration, Official Gazette of Montenegro, No. 087/18 dd 31.12.2018). The FIU is the national centre for the receipt and analysis of STRs and other information relevant for ML, associated predicate offences and TF, and for the dissemination of the results of that analysis to competent authorities and foreign FIUs (Article 55(2) of the LPMLTF).

561. ***Criterion 29.2- (Met)*** The FIU is the central agency for the receipt of disclosures filed by REs, including:

562. a) STRs filed by REs (Article 41(2) and (3) of the LPMLTF), including by lawyers and notaries (Article 51 of the LPMLTF).

563. b) other disclosures in line with the LPMLTF and other relevant legislation: (i) CTRs for amounts of at least EUR 15,000, without delay, and not later than three working days since the day of execution of the transaction, (ii) certified copies of the sale contracts referring to real estate trade and exceeding EUR 15 000, submitted weekly by lawyers and notaries, (iii) customer request for advice in relation to ML/TF reported by lawyers and notaries.

564. ***Criterion 29.3- (Met)*** (a) After estimating that there are reasons for suspicion of money laundering and related predicate offences or terrorist financing, the FIU can request information necessary for its analysis from all the reporting entities (Article 58 of the LPMLTF), lawyers, notaries (Article 59 of the LPMLTF).REs have the obligation to provide the requested information to the FIU without delay and in the manner and form as referred to in the request, and not later than eight days since the day of receiving the request.

565. b) The FIU has automatic access to a range of information and databases based on the MOU on Improvement of Cooperation in the Field of Crime Suppression, (FIU, Ministry of justice, Ministry of finance and social care, State prosecutor office, Supreme court, Central bank) 2021. Article 60 of the LPMLTF provides that the state authorities and public powers holder authorities have the obligation to provide the FIU with the information it requests necessary for detecting ML/TF. Through that mechanism, the FIU has direct access to various databases (see IO6), while

the authorities have to respond to any requests 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.

566. ***Criterion 29.4 (Met)*** Article 55 of the LPMLTF stipulates that the FIU is independent in decision-making related to, inter alia, delivery of the results of its strategic and operational analyses of the suspicious transactions to the competent authorities.

567. a) The Rulebook on Internal Organisation and Systematization of Workplaces of the Police Directorate defines that within the Department for Financial Intelligence Affairs, among others, there is a Group for suspicion transactions and operational analysis (Article 3), while one of the tasks performed within the Department is developing operational analytical reports related to ML/TF.

568. b) The Rulebook further defines that within the Department for Financial Intelligence Affairs, there is a Group for strategic analysis (Article 3). One of the tasks performed within the Department is developing strategic analysis reports related to ML/TF.

569. ***Criterion 29.5- (Met)*** FIU is able to disseminate spontaneously and upon request information and the results of its analysis, including the operational analysis of suspicious transactions (Art. 65 and 66 LPMLTF). This includes the State Prosecutor's Office and the Department for Fight Against Crime- Special Police Unit that directly performs police affairs related to criminal offences prosecuted by the Special Prosecutors Office (Article 26 of the Law on Special Prosecutor's Office).

570. There are no provisions in the Law for the use of dedicated, secure and protected channels for the dissemination of information. Article 98a of the LPMLTF defines that processing, exchanging and publishing data should be carried out in electronic form in accordance with laws defining electronic administration, electronic identification and electronic signature, electronic document and informational security. The information is disseminated in a written or electronic form. The information exchanged based on the aforementioned MoU is foreseen through secure communication channels (Art. 6 of the Rules of Procedures on the MoU). The signatories to this MoU can access data through a special computer network administered by the MoI. The access for each authority is granted according to their legal powers and mandate, pursuant to the conditions prescribed by the Rules of Procedures to the MoU.

571. ***Criterion 29.6- (Met)*** (a) Rules governing the security and confidentiality of information, including procedures for handling, storage, protection of and access to such information are stipulated under Art 88 and 93 of the LPMLTF, as well as the Law on Internal affairs. No specific rules for dissemination are provided. A set of internal rules have also been put in place which deal with data security.

572. b) Authorities advise, that the security clearance of FIU staff members is provided under the Law on classified information, whereas the employees dealing with confidential information are granted the license for accessing confidential data.

573. c) Article 93a of the LPMLTF provides for the limited access to information which is solely granted to the employees of the FIU, as well as technical conditions for informatic protection. Authorities state that access to the FIU premises is controlled through Plan for Physical Protection of Sensitive Data, while IT protection is further provided under Plan for the Physical Protection

in the FIU's IT system in place.

574. ***Criterion 29.7- (Met)*** (a) The FIU is operationally independent in exercising its powers and decision making in relation to analysing, making requests, forwarding and disseminating the results of its operational and strategic analyses to domestic and foreign counterparts (Art 55 LPMLTF).

575. b) The FIU is authorized to conclude agreements on the co–operation or establish independent co–operation in exchanging information with other domestic competent authorities and foreign financial intelligence units (Art 56 LPMLTF).

576. c) The FIU operates within the Police Directorate as an organisational unit that independently performs basic and other functions prescribed by the LPMLTF. It has separate key functions from those performed by other organisational units of the Police Directorate (Art 55-55b LPMLTF).

577. d) The FIU independently disposes the budget allocated to it (Article 55c LPMLTF). The material and technical resources cannot be given for use to another organisational unit of the MoI without a written consent of the head of the FIU (Article 55d). Similarly, employees from the FIU cannot be reassigned to other working position or tasked to perform other duties in the Ministry, without the authorization of the head of the FIU (Article 55b).

578. ***Criterion 29.8 – (Met)*** The previous Administration for the Prevention of Money Laundering and Terrorist Financing was a full Egmont Group member since July 2005 and its membership was suspended in 2019 due to organisational changes. The new administration of the FIU became a full member of the Egmont Group in November 2020.

Weighting and Conclusion

579. The FIU is provided with powers for the performance of its core functions. However, the timeframe for the obligations of REs to provide information to the FIU is not considered to be swift in order to allow the FIU to perform its analysis properly. **Recommendation 29 is rated Compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

580. In the 4th round MER of 2015, Montenegro was rated PC on R.27, on the basis of effectiveness issues. No technical deficiencies were identified.

581. ***Criterion 30.1– (Met)*** Montenegro has in place the Special Public Prosecutor's Office, which has a responsibility for ensuring that money laundering, associated predicate offences and terrorist financing are properly investigated (Art 3 - Law on Special Public Prosecutor's Office). The Special Police Unit is responsible for carrying out police tasks with respect to the criminal offences under the competence of the SPO (Art 26 and 27).

582. ***Criterion 30.2 – (Met)*** Under the Law on Special Prosecutor's Office, the Special Public Prosecutor's Office of Montenegro has an exclusive competence to investigate ML/TF. Respectively, if it investigates predicate offences, it has the authority to pursue any related ML/TF during a parallel financial investigation. In case that Prosecutor's Offices other than the Special Public Prosecutor's Office of Montenegro come across potential ML/TF in the context of parallel financial investigations related to predicate offences under their competence, they have an

obligation to pass on the entire case (and not only the ML aspect) to the Special Public Prosecutor's Office.

583. ***Criterion 30.3 – (Met)*** According to the CPC and the Law on Special Prosecutor's Office, all police and prosecutorial authorities are competent to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation or is suspected of being proceeds of crime (see R.4).

584. ***Criterion 30.4 – (N/A)*** There are no authorities in Montenegro other than the Public Prosecution Service and the Police Directorate, which have the responsibility of independently pursuing financial investigations of predicate offences. Respectively, this criterion is not applicable.

585. ***Criterion 30.5 – (Met)*** The Public Prosecution Service of Montenegro is a competent authority to investigate corruption. Within this institution, the Special Public Prosecutor's Office investigates high-level or/and organized forms of corruption, while the basic State Prosecution Offices investigate other forms of corruption. At the same time, the Special State Prosecutor's Office is a competent authority to investigate ML/TF. The Public Prosecution Service of Montenegro has sufficient powers to identify, trace, and initiate freezing and seizing of assets.

Weighting and Conclusion

586. All applicable criteria are met. **Recommendation 30 is rated Compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

587. In the 4th round MER of 2015, Montenegro was rated compliant with former R.28.

588. ***Criterion 31.1 – (Mostly met)*** The CPC contains measures that enable the competent authorities conducting investigations of money laundering, associated predicate offences and terrorist financing to obtain access to all necessary documents and information. The Special Prosecutor's Office is competent to obtain evidence during the inquiry and investigation, directly or through the Special Police Unit.

589. (a) *Production of records* - Under Article 31 of the Law on Special Public Prosecutor's Office, the special prosecutor may request administrative authorities, including those responsible for tax, customs, affairs involving ML/TF and inspection affairs246 to control operations of a legal or physical person, obtain certain documents, data and to take other actions per their competence.

590. Article 33 of the Law on Special Public Prosecutor's Office grants the power to the special prosecutor to request a bank to provide data on the accounts, including on the account balance. This power is applicable, if there is a suspicion that a person disposes or has disposed through his/her accounts an income generated from the commission of organized crime, ML, TF, high level corruption or/and war crimes, provided that it is relevant for a preliminary inquiry and investigation and is subject to seizure. The bank is obliged to submit the requested data within the time limit set by the special prosecutor. It is unclear whether the SPO can use this power,

[246] Police Directorate - Department for Fight Against Organized Crime and Department for Financial Intelligence Affairs - FIU, and Supervisory Authorities.

when investigating associated predicate offences to ML that do not fall under its jurisdiction.

591. Art 34 provides for the mechanism of monitoring bank accounts, if there are grounds for a suspicion that a person disposes in his/her bank accounts income generated from the commission of organized crime, ML, TF, high-level corruption and war crimes. In this case, an investigative judge may, upon the request of the special prosecutor, order the bank to monitor payment transactions on these accounts and to report on a regular basis, during the specific period, to the special prosecutor. Failure to abide by such orders is subject to sanctions. It is also unclear whether the SPO can use the power under this article, when investigating associated predicate offences to ML that do not fall under its jurisdiction.

592. Under the CPC Article 89, the State Prosecutors may request the competent public authority to perform control over the financial operations of certain persons and obtain evidence of a criminal offence, proceeds of crime, and suspicious transactions.

593. According to the CPC Article CPC Article 85 CPC (1), (3), (4), evidence may be seized, if is not surrendered voluntarily, based on the court warrant, upon the request of a State Prosecutor. Refusal to provide requested evidence is subject to sanctions, including detention of up to a maximum 2 months until the object is handed over or until the criminal procedure is completed. These rules apply to the data saved in devices for automatic or electronic data processing and media wherein such data are saved, which shall, upon the request of the court, be handed over in a legible and comprehensible form. These provisions are complemented by other articles (e.g. art 257, 257a, 257b and 259 which empower the state prosecutors and police (upon an order by the investigating judge) to seize records, including electronic communications and banking data.

594. (b) Search of persons and premises - Under the CPC Article 75 (1), search of dwellings and other premises of the accused persons or other persons as well as their movable items outside the dwellings may be carried out, if grounds for suspicion exist that search could lead to finding a perpetrator, traces of the criminal offence or objects relevant to the criminal procedure. Movable items include computers and similar devices for automatic data processing. The court may compel access to computers and removable storage devices and order the provision of necessary information on the use thereof. Search of persons may be undertaken if suspicions exist that during the search objects relevant to the criminal procedure would be found – Art. 75(3).

595. Under the CPC Articles 76, 77 and 78, a court may issue a search warrant upon the State Prosecutor's request (including through authorised police officers). In exceptional circumstances, search warrants may be requested and granted verbally, with the conversation being recorded. The CPC Articles 79 to 83 provide further rules for applying a search mechanism.

596. (c) Taking witness statements - Under the CPC (Art 107, 108 and 109), any person can be summoned as a witness if he/she is likely to provide information on the criminal offence or the perpetrator, unless he/she is exempted from the duty of testifying in certain justifiable grounds of criminal law principles.

597. (d) Seizing and obtaining evidence - The CPC Articles 85 – 97 stipulate the law enforcement powers, rules and procedure for seizing objects and obtaining evidence. Under the CPC Article 85 (1) objects which have to be seized according to the Criminal Code or which may be used as evidence in the criminal procedure, shall, at the proposal of a State Prosecutor, and based on a court ruling be provisionally seized. This excludes some material, which is exempted

for justifiable grounds of criminal law principles.

598. Under CPC Article 257 (1), (2) and (4), when there are grounds for suspicion that a criminal offence has been committed, the police on its own initiative or upon an order by a State Prosecutor is obliged to take measures including discovering the perpetrator, uncovering and securing traces of the criminal offence and items that may serve as evidence as well as gathering the information, which could be useful for successful criminal proceedings. The police authority may issue a warrant for seizure of items which are subject to a search and inspect (in the presence of the authorized person) facilities and premises of state authorities, companies, other legal persons and entrepreneurs, have insight in their documentation and seize it where needed. Affected persons are entitled to file a complaint with the competent state prosecutor.

599. Pursuant to the CPC Article 263 (1), (2), if there is a risk of delay, the police may provisionally seize items and carry out a search of dwelling and persons even before the investigation has been launched.

600. ***Criterion 31.2 – (Met)*** The CPC Article 157 envisages wide range of investigative techniques that are available for the competent authorities. Article 158 limits the use of these techniques to a certain category of offences, which includes ML, TF and FATF designated predicate offences. The CPC Article 159 stipulates the competences in issuing an order authorising secret surveillance measures. Depending on the nature of those measures, the order is issued either by the investigative judge in written form based on the motion of the state prosecutor or by the state prosecutor, upon the motion of the police administration.

601. (a) *Undercover operations* – The CPC Article 157(1) and (2) permits undercover operations and use of covert human intelligence sources.

602. (b) *Intercepting communications* - CPC Article 157 (1) item 1 permits secret surveillance and recording of communications.

603. (c) *Accessing computer systems* - The CPC Article 157 (1), (2) provides for the investigative technique of interception, collection and recording of computer data.

604. (d) *Controlled delivery* - The CPC Article 157 (2) provides for the mechanism of controlled delivery.

605. ***Criterion 31.3 – (Met)*** (a) Timely identification of accounts – Based on the central transaction account register managed by the CBM, the FIU and other competent authorities, including the Special Public Prosecutor's Office can determine if the persons concerned have or had bank accounts, at which banks, and what the turnover was through those accounts and if it corresponds with the information and statements submitted by the persons concerned to the competent tax authorities.

606. Moreover, an investigate judge (on the motion of the State Prosecutor) may issue an order obliging banks (within a time period) to submit data on bank accounts and banking transactions, subject to there being grounds of suspicion that a person has committed, is committing or is preparing to commit a criminal offence (Art 157 and 257b - CPC). Non-adherence with this obligation is subject to sanctions on responsible persons and banks themselves (€5,000 and €50,000 respectively) including imprisonment of up to two months for responsible persons.

607. Under Article 33 of the Law on Special Public Prosecutor's Office, if there are grounds for a suspicion that a person disposes or has disposed in his/her bank accounts an income generated from ML, TF, organised crime or high-level corruption, while such income is relevant for preliminary inquiry and investigation and is subject to seizure, the special prosecutor is authorised to request the bank to submit data on these accounts, including the account balance. The bank shall submit this data within the time-limit set by the special prosecutor.

608. (b) Identification of assets without prior notice to the owner - The legislation of Montenegro does not require a prior notice to the owner about the identification of assets by the competent authorities.

609. ***Criterion 31.4 – (Met)*** When there are reasons for suspicion of ML, predicate offences or TF regarding a certain transaction or person, the Court, State Prosecutor, other competent organisational units of the administrative authority competent for police affairs may request the FIU to initiate the procedure for collecting and analysing data, information and documentation - Art 64 (1), (2) LPMLTF.

610. Article 31 of the Law on Special Prosecutor's Office authorises the special prosecutor, when he/she deems necessary during carrying out his/her tasks, to request from the FIU to control operations of a legal or physical person, obtain documents, data and to take other actions falling within its mandate. Pursuant to Article 30 of the Law on Special Prosecutor's Office, in particularly complex cases the chief special prosecutor may form a special investigative team, which may include the FIU representative, who as a member of an investigative team is subject to an obligation to fulfil the requests of a team leader, the special prosecutor.

Weighting and Conclusion

611. The applicable criteria are mostly met. One shortcoming remains in that it is not clear whether the SPO may use its power to request bank account information when investigating associated predicate offences to ML that do not fall under its jurisdiction. **Recommendation 31 is rated Largely Compliant.**

Recommendation 32 – Cash Couriers

612. In the 4th round MER of 2015, Montenegro was rated PC on former SR.IX. The technical deficiencies identified were as follows: no power to obtain further information from the bearer in case of false declarations/failure to declare; no power to stop or restrain currency or bearer negotiable instruments; sanctions were neither proportionate nor dissuasive; deficiencies from R.3 and SR; Inadequate and insufficient level of training provided to Customs Authority.

613. ***Criterion 32.1 – (Partly Met)*** Montenegro has a system in place to declare the physical import and export of means of payment equal or above the designated threshold at the point of entry or departure in or from Montenegro - Art 10 Law on Foreign Current and Capital Operations (LFCCO).

614. Article 2 of the Rulebook on the Detailed Evidence on Performed Controls of Physical Entry and Exit of Means of Payment Across the State Border provides that means of payment are cash and payment instruments (including cheques, bonds and transfer orders), payable to the bearer, endorsed without limitations, issued to a name of fictitious beneficiary or in some other form and incomplete signed instruments (cheques, bonds and transfer orders), without noting

the name of the beneficiary. The latter definition of payment instruments is wide enough to correspond to the FATF Glossary definition of BNIs.

615. The existing declaration regime does not provide for coverage of physical cross-border transportation of cash and BNIs through mail and cargo. This is also confirmed by the public notice available on the RCA website which specifically states that the declaration obligations apply to travellers who carry cash with them while coming in and out of Montenegro (Informacije za putnike (carina.co.me).

616. In Montenegro, the Revenue and Customs Administration is a responsible for identifying persons involved in cross-border transportation of currency and BNIs and conducting preventive measures.

617. ***Criterion 32.2– (Met)*** Under the LFCCO Article 10 and Article 3 of the Rulebook, all persons making a physical cross-border transportation of currency or BNIs in the amount of EUR 10 000 and more, or equivalent in other currency, are required to submit a written declaration to the Customs Administration.

618. ***Criterion 32.3 – (N/A)*** This criterion is not applicable. Montenegro has a declaration system.

619. ***Criterion 32.4 – (Met)*** Under Article 24 of the Law on Customs Service, when conducting customs tasks, the powers of the customs authority include collecting any personal and other data and information, checking the compliance of operations by inspecting business books, records and other documents, verification of identity of a person, summoning persons to collect information, temporary restriction of the freedom of movement of persons, search of persons, inspection of goods, monitoring, stopping, inspection and search of vehicles and temporary seizure of goods and documentation. These powers are wide enough to cover the power of the customs authority to request and obtain further information from the carrier with regard to the origin of the currency or BNIs, and their intended use.

620. ***Criterion 32.5 – (Partly Met)*** The sanctions under the LFCCO have not been changed since the previous evaluation, when they were considered not dissuasive and proportionate. Article 15 establishes the following fines for failing to declare import/export of means of payment as required by law:

- €2,500 to €16,500 for legal entities
- €550 to €2,000 on a responsible person of a legal entity or natural persons
- €300 to €6,000 for entrepreneurs

621. ***Criterion 32.6 – (Met)*** Under Article 74 of the LPMLTF the customs authority is obliged to provide the FIU with the information on declarations or failed declarations of cross-border transfers of cash and payment instruments equal to or exceeding EUR 10 000. This information is to be provided within not later than three days from the day when the transportation of cash or other payment instruments occurs. Since January 2023, the FIU has been receiving this information through access to the Customs Administration Database, which guarantees access to the information within minutes (see IO6).

622. The Customs Authority is also required to notify the FIU regarding cross-border transfers

or attempted transfers of less than EUR 10 000, in case of ML/TF suspicions.

623. ***Criterion 32.7 – (Mostly Met)*** Since 2017, various Ministries, the RCA, the Supreme Court of Montenegro, the Supreme Public Prosecutor's Office, the Judicial Council, the CBM, FIU and Police Administration signed an Agreement on Enhancing Cooperation in Preventing and Combating Crime. This agreement seeks to enhance cooperation in the field of combating organized crime, corruption and other crimes, and facilitate the efficient exchange of operational and other information including through automatic means. This agreement foresees the specific exchange of various sets of data held by the RCA (including customs and transit data as well as money movements across borders), with the MoI, FIU and State Prosecutors. On the other hand, the RCA may access useful information which assists in monitoring cash movements at borders and identifying potential ML/TF suspicions such as information on criminal records, ongoing investigations, access to the Central Transaction Account Registry and the CRBO. Furthermore, the RCA and the FIU coordinate and exchange information on cross-border cash declarations in various ways. The RCA submits STRs to the FIU where suspicions of ML/TF are identified which have led to the launching of ML preliminary investigations. On the other hand, the RCA has since January 2023 granted the FIU access to the register of money transfers across borders which is used by the FIU for operational and tactical analysis purposes (see IO6).

624. The Customs Administration moreover cooperates with domestic authorities (i.e. State Prosecution Office and Police) in relation to activities against fraud, cross borders smuggling, "grey economy" and other irregularities, which at times also involve coordination with international and foreign counterparts (among which, OLAF and Interpol). These led to criminal reports and investigations, and show that the RCA activities address some of the main identified ML threats of the NRAs (i.e. fraud, goods smugglings, informal economy and misuse of cash). No specific information was however provided on coordination between the RCA, State Prosecutors, and the Police in respect to the monitoring of cross-border cash movements.

625. ***Criterion 32.8 – (Partly Met)*** Article 44 of the Law on Customs Service provides a general power to customs officers to temporarily seize means of payments, however, it does not specify whether this power can be used in all the circumstances set out under c.32.8(a) and (b). The AT was however provided with statistics (see IO.8) to show that this power was used in cases of detection of false declaration. No evidence was however provided to show that this mechanism of administrative seizure is applicable to the suspicions of ML/TF or predicate offences, where the declaration obligation is not violated.

626. ***Criterion 32.9 – (Mostly Met)*** – The Customs Administration cooperates with other countries. It is included in the regional systematic electronic data exchange system (SEED system), which contains information on currency declarations exceeding the prescribed threshold and data on false declarations of cash. However, the Customs Administration of Montenegro does not retain information on suspicions of ML/TF for the purpose of international cooperation and assistance.

627. ***Criterion 32.10 – (Met)*** Under Article 16 of the Customs Law, information that is by its nature confidential or obtained in such a way, is considered an official secret and shall not be further disclosed by the customs authority without the express consent of the person or authorized bodies that provided it. In addition, pursuant to Article 13 (2) of the Law on Customs Service, the authorized customs officer, while performing customs duties has the obligation to

protect secret and personal data.

628. ***Criterion 32.11 – (Met)*** The physical transportation of currency or BNIs that are related to ML/TF are subject to ML and TF criminalisation and respective sanctions under the CC Articles 268 and 449. Those sanctions are proportionate and dissuasive.

629. The seizure and confiscation measures described under Recommendation 4 apply to persons who are carrying out a physical cross-border transportation of currency or BNIs related to ML/TF or predicate offences.

Weighting and Conclusion

630. Montenegro meets R. 32 criteria to a large extent. Major shortcomings include: (i) the lack of coverage of physical cross-border transportation of cash or BNIs through mail or cargo by the declaration regime, (ii) the sanctions for violation of declaration obligations are not proportional and dissuasive, and (iii) the system of administrative seizure is not applicable to cash and BNIs that do not violate the declaration obligations but are suspected to be related to ML/TF or predicate offences. **Recommendation 32 is rated Partially Compliant.**

Recommendation 33 – Statistics

631. In the 4th round MER of 2015, Montenegro was rated PC on former R.32. There was no mechanism for the regular review of the AML/CFT system; unclear statistics on confiscation and provisional measures for ML and predicate offences; incomplete statistics on the dissemination process maintained by the FIU; no MLA statistics for the years 2009-2012 were provided; incomplete statistics on supervisory examinations were presented.

632. ***Criterion 33.1*** – (Partly Met) (a) STRs (received and disseminated): The FIU maintains and provided detailed statistics on STRs received and disseminated, the type of suspects featuring in them and underlying crimes amongst other information.

633. (b) ML/TF investigations, prosecutions and convictions: Statistics on ML/TF investigations, prosecutions and convictions are maintained by the authorities; however, these are not comprehensive enough to enable an effective monitoring of the effectiveness of the system. By way of example conflicting and unclear statistics were provided on the types of ML prosecutions.

634. (c) Property frozen, seized and confiscated: Data on frozen, temporarily and permanently confiscated assets are kept by the courts and may be obtained from their investigative registries. The data can also be obtained from the Secretariat of the Judicial Council - Department of Information and Communication Technologies and Multimedia (ICT). Statistics data on seized and confiscated assets broken down according to type of crimes, and distinguishing between proceeds of crime and instrumentalities, domestic and foreign proceeds, as well as information on actually recovered assets were not available.

635. (d) Mutual legal assistance or other international requests for co-operation made and received. The MoJ (responsible for handling MLA) put in place a document management system, LURIS, which processes and stores information on MLA cases. The system allows for reporting on the basis of various criteria, such as type of legal assistance, criminal offense and state with which cooperation is established and is currently being further enhanced. The AT was concerned with country's difficulties to provide the necessary statistical data to demonstrate effectiveness in this

area. The AT was in fact provided with statistics on incoming and MLA requests from various differing sources, at times conflicting.

636. The FIU maintains comprehensive statistics on incoming and outgoing FIU-FIU cooperation, such as on FIUs with which it cooperates and predicate offences underlying incoming / outgoing requests. Statistics on international cooperation are also maintained by the Police and Supervisors, however these were not comprehensive. The police lacked information such as on foreign counterparts to which requests are sent and underlying crimes linked to outgoing ML requests. The supervisors did not provide any details on the type of international cooperation provided and received other than overall figures.

Weighting and Conclusion

637. While Montenegro maintains statistics as outlined under R.33, the statistics maintained by authorities (other than the FIU) are often not detailed and accurate enough to permit a proper analysis of the effectiveness of the AML/CFT system on the covered aspects. **Recommendation 33 is rated Partially Compliant.**

Recommendation 34 – Guidance and feedback

638. In the 4th round MER of 2015, Montenegro was rated LC on R.25.

639. ***Criterion 34.1 (Mostly Met)–*** (Guidance) Supervisory authorities are required to issue guidelines on risk analysis to enable REs to prepare their own risk analysis. All FI Supervisors, as well as the MoI (Directorate for Supervision) and the Administrative Authority for Inspections Affairs (covering DNFBPs except lawyers and notaries) have issued such type of guidelines. With the exception of the CBM Guidelines (covering most of the financial sector), the other guidance documents are mostly focused on risk analysis, and though providing guidance on compliance with some other AML/CFT requirements, they are lacking in practical guidance.

640. Other guidance issued include the (i) Rulebook on the manner of work of the compliance officer – detailing how compliance officers should monitor the implementation of AML/CFT programs; and (ii) Rulebook on the indicators of suspicious transactions and clients – which provides a list of red flags indicative of potential suspicious activities to assist various FIs and DNFBPs in detecting and reporting suspicious transactions and (iii) Guidelines on the implementation of international restrictive issued by CBM, CMA.

641. (Feedback) – The FIU may provide STR feedback to REs (Art 67 - LPMLTF). Feedback is provided to REs submitting STRs, indicating whether the STR gave rise to a ML/TF suspicion or not. The FIU also assesses the quality of STRs for different sectors and individual entities, by analysing the quality of information reported and the type of cases reported (e.g., the indicators they are based on, whether the case involves a natural or legal person, and the value of the reported transaction). The assessment of quality based on the type of cases reported however does not consider the predicate offences underlying such reported cases to understand if these are aligned with Montenegro's risk profile.

642. This STR quality assessment is shared with RE supervisors, and with banks throughout meetings and training sessions. The CBM gives feedback to all supervised FIs concerning the quality of the STRs in every examination report. The quality of STRs was also discussed at various events organised by the CBM for its RE (e.g. December 2021 (for credit institutions), January 2022

(for other FIs) and September 2022 (for credit and other FIs)). Other FI/DNFBP supervisory authorities did not provide information on STR feedback given to RE.

643. Feedback on AML/CFT compliance weaknesses and actions to remediate are provided to individual REs as part of the supervisory process (see. IO3). Moreover, the CBM shares information on common findings with REs during meetings and training events. Where the CBM notes deficiencies running across multiple REs, the CBM communicates in writing with the entire effected sector/s to raise awareness about identified issues.

Weighting and Conclusion

644. Most authorities have been active in issuing guidance and the FIU and CBM in conducting AML/CFT training. Guidance published by supervisors other than the CBM, however lacks in practicality. There is no mechanism by which competent authorities provide feedback to FIs and DNFBPs (other than banks) on the quality and outcome of STRs. This is however less material considering that the large majority of STRs come from banks. **Recommendation 34 is rated Largely Compliant.**

Recommendation 35 – Sanctions

645. In the 4th round MER of 2015, Montenegro was rated PC on R.17. Sanctions were not effective, proportionate and dissuasive since: the Law on Misdemeanours restricted proceedings when one year would have passed from the occurrence of the misdemeanour; the maximum fine that could be applied directly by the APMLTF to a legal person, entrepreneur or individual was low; administrative sanctions could not be applied to a branch of a foreign banks, foreign investment management company, or foreign pension fund managers; the SEC could only apply sanctions where REs failed to remediate breaches, and the range of sanctions available to the APMLTF was not broad and proportionate. A new analysis of Rec. 35 is being undertaken.

646. ***Criterion 35.1 – (Partly Met)***

647. Implementation of R.6 (TFS) Art 32 and 33 of the IRM Law set out the sanctions for violations of TFS obligations by natural and legal persons. In case of legal persons sanctions range from €1,000 to €40,000, while for natural persons fines range from €500 to €4,000. Not all persons are subject to the obligations to freeze assets as required in terms of c.6.5(a), and not all assets as required in terms of c.6.5(b) are captured for TFS obligations purposes (see R.6). These deficiencies impact the application of sanctions as foreseen by this criterion. Moreover, the sanctions set out under Art 32 and 33 are not considered to be proportionate and dissuasive.

648. Implementation of R.8 (NPOs) – The NGO law provides for misdemeanour fines under Art 42 and 43, which however do not cover the AML/CFT requirements set out under R.8.

649. Implementation of R.9-23 (Preventive Measures) – Art 94(3) of the LPMLTF stipulates that when supervisory authorities identify illegalities or irregularities, they are authorised to (i) order the removal of illegalities or irregularities; (ii) initiate misdemeanour proceedings which may lead to the imposition of the pecuniary fines as outlined in Art 99 – 101; and (iii) order other measures in accordance with the LPMLTF.

650. Art 99 - 101 provide for the following misdemeanour penalties for AML/CFT breaches:

651. (i) for legal persons a fine of between €2,000 (or €3,000) up to either €10,000, €18,000 or €20,000 depending on the type of breach. The maximum penalty of €20,000 is reserved for what are considered more serious breaches of AML/CFT obligations; and

652. (ii) for natural persons fines of between €200 and €2,000, while for entrepreneurs, fines of between €500 and €6,000 depending on the type of breach.

653. Art 99(4), 100(4) and 101(4) also envisage another misdemeanour sanction which includes the prohibition of carrying out business activities for up to six months which may be imposed on REs. FI supervisory authorities may impose additional supervisory measures over and above those set out in the LPMLTF. Some deficiencies were however noted with the applicability of these sanctions for AML/CFT purposes (see c.27.4).

654. The authorities indicated that the misdemeanour fines set out above apply for every singular AML/CFT infringement. There is however no clear interpretation in this sense under the LPMLTF, and also since there are no sanctioning policies setting out how sanctions should be applied. These sanctioning measures are not deemed to be proportionate and dissuasive. Furthermore, according to Art 59(1) of the Law on Misdemeanour, misdemeanour proceedings must be initiated by not later than one year from the day that an offence is committed. This prescription period seriously hampers the ability to impose misdemeanour fines for AML/CFT violations.

655. ***Criterion 35.2 – (Partly Met)*** The responsible person of a RE may be subject to a misdemeanour fine where the REs breaches AML/CFT requirements - Art 99(2), 100(2) and 101(2) - LPMLTF. Art 17 of the Law on Misdemeanour procedures stipulates that a responsible person would be responsible for the breach (even after he ceases to hold such a position) if: (i) it is committed by his own action (intentionally or negligently) or (ii) if it was due to lack of supervision. The same article specifies that the responsible person may not be held liable if he was following superior orders and took all required action to prevent the breach.

656. Fines that may be imposed on responsible persons range from €400 to €2000 (depending on the entity of the AML/CFT breach). It is only in the case of REs that are legal persons that such responsible persons may be subject to such fines. Responsible persons of these REs may also be prohibited from performing activities - Art 99(4), 100(4) and 101(4) – LPMLTF. These sanctions are not considered to be proportionate and dissuasive.

657. Authorities advised that the term "responsible person" is interpreted to cover the legal representatives of the legal person. In terms of the Law on Companies (Art 24 and 25), the legal representatives are (i) the partners (in case of partnerships), (ii) the executive director or chairman of the board of directors for Joint Stock Companies and LLCs and (iii) other persons authorised to represent the legal entity. Thus, in terms of this definition sanctions are not applicable to all directors, and to senior management officials of REs.

Weighting and Conclusion

658. The applicability of sanctions for TFS obligations is limited and are not proportionate and dissuasive. There are no sanctions for infringements of AML/CFT requirements by NGOs. The misdemeanour fines envisaged under the LPMLTF for REs and responsible persons are not considered to be proportionate and dissuasive. Not all REs may have their authorisation or registration withdrawn, restricted or suspended on the back of AML/CFT breaches, while it is

only in the case of REs that are legal persons that sanctions may be imposed on responsible persons. The term responsible person does not capture senior management officials and all directors. Furthermore, the application of misdemeanour penalties is seriously hampered by a short prescriptive period. These deficiencies are significant, while there are other minor breaches. **Recommendation 35 is rated Partially Compliant.**

Recommendation 36 – International instruments

659. In the 4th round MER of 2015, Montenegro was rated LC on former R.35 and PC on SRI. While the majority of the provisions of the Vienna Convention were implemented by Montenegro broadly in line with the Convention. Some minor shortcomings remained for: the Article 3 (the criminalization of the ML offence), as well as Articles 6 and 7 of the Convention due to the requirement of dual criminality in the Law on Mutual Legal Assistance in Criminal Matters (MLA Law), and few remaining deficiencies of the confiscation framework, such as the partial absence of value-confiscation in regard to the implementation of Art. 5. Detailed information were not provided in terms of Art 15, 17 and 19 of Convention. The deficiencies in regard to the definition of ML offence and confiscation framework were also valid in term for Palermo Convention. Another shortcomings was identified in regard to implementation of Art. 30 of the Convention. The most significant deficiencies were identified in the framework of TF Convention implementation: the lack of complexity of criminalisation in accordance with the annexes of Convention, including cascade effect of requirement of dual criminality, due to the shortcomings identified with respect to TF offence, limited scope of application Art 18 of the Convention (preventive measures), including effects of limited definition of TF offence.

660. ***Criterion 36.1 – (Met)*** Technically there were not adopted substantive changes. The Montenegro remained fully fledged party of all Conventions as it follows from the table below.

International Instrument	Ratification	Succession of Montenegro
Vienna Convention 1988	1990*	2006
TF Convention 1999	2002*	2006
Palermo Convention 2000	2001*	2006
Merida Convention 2003	2005*	2006

*By the Socialist Federal Republic of Yugoslavia

661. None of the above have been subject to reservations or negative declaration. For the sake of completeness, it should be noted that it is also a party to all of the instruments listed in the Annex to the TF Convention.

662. While not subject to assessment under the FATF Methodology however, within the sense of R36 the evaluators note that Montenegro ratified and implemented other relevant international conventions including the Council of Europe Convention on Cybercrime, 2001 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005.

663. ***Criterion 36.2 – (Mostly met)*** The majority of deficiencies identified in previous round of evaluation has been addressed by the Law on Amendments to the Criminal Code of Montenegro ("Official Gazette of Montenegro" nos. 44/17) entered on force on 14 July 2017 . The definition of property benefit obtained by criminal offense was changed. Amendments were made to the

criminal offense of money laundering. In Article 268 of the Criminal Code of Montenegro, the action of the criminal offense was amended with the aim of punishing the aiding and abetting perpetrator of the criminal offense in order to avoid his responsibility for the committed criminal offence. Alignment with the Convention on the Physical Protection of Nuclear Material was carried out, in such a way that the action of the criminal offense was supplemented with the basic form. Two new forms of the criminal offense of jeopardizing the safety of air traffic were introduced, in order to comply with the Protocol on Suppression of Illegal Acts of Violence at Airports Serving International Civil Aviation. The criminal offense of FT has been introduced as a stand-alone criminal offence.

Weighting and Conclusion

664. While Montenegro is a Party to the Vienna, Palermo, Merida and TF Conventions certain minor deficiencies still remain in their implementation into domestic law, in particular as described under Recommendation 3 and Recommendation 4. **Recommendation 36 is rated Largely Compliant.**

Recommendation 37 - Mutual legal assistance

665. In the 4th round MER of 2015, Montenegro was rated LC on R.36 and PC on SRV. There were concerns regarding the ability to provide MLA in relation to ML cases where the predicate offence is punishable by less than four years and the fact that the MLA provisions did not cover all the requirements under the standard (i.e. identification, freezing, seizure or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for TF, as well as the instrumentalities of such offences and assets of corresponding value). This latter deficiency was addressed.

666. ***Criterion 37.1 – (Mostly met)*** The Constitution of the Montenegro (Art. 9) stipulates that ratified and published international treaties enjoy supremacy over national laws. MLA is provided on the basis of international agreements and where certain matters are not regulated under international treaties, MLA would be provided on the basis of the Law on Mutual Legal Assistance in Criminal Matters ("Law on MLA") and on condition of reciprocity (Art. 2). The provisions of the Law on MLA incorporate the provisions of the European Convention on Mutual Legal Assistance and additional protocols, the European Convention on Transfer of Sentenced Persons, European Convention on the Transfer of Proceedings in Criminal Matters, and the European Convention on Extradition.

667. Montenegro has ratified a significant number of conventions of the CoE and the UN, which serve as a basis for international judicial cooperation. In addition to this, Montenegro signed bilateral agreements with 24 countries247 applicable in MLA.

668. Mutual legal assistance that may be provided is broad and includes the transfer of criminal proceedings, enforcement of foreign criminal verdicts, setting up joint investigation teams, submission of documents, written materials, bank information and other cases related to the criminal proceedings in the requesting country, mutual exchange of information, as well as undertaking of procedural actions (i.e. hearing the accused, witness and expert, crime scene

[247] MoUs are signed with Albania, Austria, Belgium, Bosnia and Herzegovina, Czech republic, Denmark, France, Greece, Holland, Cyprus, Hungary, Germany, Poland, Russian Federation, Slovenia, Switzerland, Türkiye, Serbia, Slovakia, Romania, Macedonia, Italy, Croatia and Spain. https://www.gov.me/mpa/medunarodna-saradnja/bilateralni-ugovori

investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, and other procedural actions. The term "other procedural actions" covers all other actions permissible for domestic judicial authorities within criminal proceedings (Art 3 and 42).

669. MLA may be technically limited in view the principle of dual criminality (see Art 5 of the Law on MLA). Issues with the criminalisation of the financing of travellers for terrorism purposes (c.5.2 bis) may hamper the provision of MLA where dual criminality is required.

670. ***Criterion 37.2 – (Mostly met)*** The Ministry for Justice (MoJ) is the central authority responsible for handling incoming MLA requests related to any criminal offence, including ML and TF. Requests are forwarded to the competent court or prosecutor's office, depending on the type of legal assistance sought. The requested data or information, once obtained, is referred to the MoJ which forwards it to the requesting state (see IO2). When provided for under an international agreement or on the basis of reciprocity, Montenegrin judicial authorities may receive and respond to MLA requests from foreign judicial authorities directly, in which cases they shall notify the MoJ (Art 4 – Law on MLA).

671. There is no express legal provision in the Law on MLA setting out deadlines for the execution of MLAs, and no formal prioritisation procedures for handling MLA requests (see IO2). MLA Requests are generally acted upon in a timely manner, and those relating to serious cases, or marked as "urgent" by the requesting authority are prioritised.

672. The MoJ and the prosecutors' offices make use of the "LURIS" system, while the courts use of the judicial information system (PRIS) to keep records on MLA cases. While these systems are useful to also track MLA workload, they are not geared to provide case management solutions (see IO2).

673. ***Criterion 37.3 – (Met)*** In addition to restrictions arising from the application of the double criminality principle (see c.37.6), the Law on MLA provides for other scenarios where MLA shall not or may not be provided. These include cases where: (i) the request relates to a military criminal offence (in which case MLA shall not be provided), (ii) the request concerns political criminal offences and (iii) the execution of the letter rogatory is likely to prejudice the sovereignty, constitutional order, security or other essential interests of Montenegro (see Art. 46 & 47of the Law on MLA). Neither of these conditions are unreasonable or unduly restrictive.

674. The obligation of keeping a secret arising from an investigation as is referred to in Art. 284 of the CPC does not impose unduly restrictive conditions for MLA.

675. ***Criterion 37.4 – (Mostly met)*** Montenegrin law does not provide for the possibility of refusing a request based on the fact that it involves fiscal matters, or on grounds of secrecy or confidentiality requirements on FIs and DNFBPs. However as set out under c.9.1(a) there are no explicit legal obligations exempting investment fund managers and pension fund managers from confidentiality obligations for the purpose of providing information to LEAs.

676. ***Criterion 37.5 – (Met)*** The provisions of the CCP apply to the provision of MLA (see Art. 54 of the Law on MLA). Thus, the confidentiality and accessibility restrictions set out in the CCP (i.e. Art.203, 203a and 203b) in respect of case files cover also MLA requests.

677. Moreover, in accordance with Art 5a of the Law on MLA, where a requesting authority

requires a request to be treated in a confidential manner the letter rogatory may only be made available to the competent authorities to act on it and to the extent that is necessary. Where confidentiality may not be ensured the requesting authority needs to be informed.

678. ***Criterion 37.6 – (Not met)*** The principle of dual criminality envisaged under Art 5 of the Law on MLA is applicable without exception, unconditionally to all types of MLA actions, even when requests do not involve coercive actions.

679. ***Criterion 37.7 – (Met)*** There is no provision under Montenegrin Law expressly stating that the principle of dual criminality is satisfied regardless of whether both countries place the offence withing the same category of offences or denominate the offence by the same terminology. Nonetheless the provisions of Art. 5 of the Law on MLA (setting out the dual criminality principle) merely require that the act in relation to which assistance is requested is a criminal offence (and hence criminalised) under both Montenegrin and the requesting country's law and poses no other restrictions.

680. Moreover, the requirements foreseen in c.37.7 are envisaged in international conventions to which Montenegro is a party (e.g. CoE Convention CETS. 198) which is directly applicable according to Article 9 of Montenegro's constitution. The AT is not aware of practical cases where the application of the principle of dual criminality hindered the provision of MLA as foreseen in criterion 37.7.

681. ***Criterion 37.8 – (Mostly Met)*** As mentioned above under C.37.1 the Montenegro authorities can provide a wide range of investigative assistance to the requesting countries, which in principle extends to all powers and investigative techniques required under R.31 that are available domestically (provided that the foreign request complies with the conditions set by relevant international treaties). All of the specific powers discussed under R.31 are available, on the same conditions as domestically, for the execution of a foreign MLA request.

682. The absence of explicit legal obligations exempting investment fund managers and pension fund managers from confidentiality obligations for the purpose of providing information to LEAs may impact the sourcing of information for MLA purposes (see c.9.1a).

Weighting and Conclusion

683. Montenegro largely meets the requirements of this recommendation. The main shortcomings include the application of the dual criminality principle even in relation to requests not involving coercive measures, and the lack of formal prioritisation procedures to handle incoming MLA requests. There is no evidence that the dual criminality restrictions impact the provision of effective judicial cooperation. **Recommendation 37 is rated Largely Compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

684. In the 4th round MER of 2015, Montenegro was not evaluated against the former R.38, having received a LC rating in the previous assessment.

685. ***Criterion 38.1 – (Mostly Met)*** The provision of MLA to identify, freeze and confiscate proceeds of crime is regulated by Chapter VIII of the Law on Seizure and Confiscation of Material Benefit derived from Criminal Activities. Article 78 provides that international cooperation with a view to seizing, confiscating and managing material benefits shall be exercised in accordance with international treaties or the provisions of the Law on Seizure and Confiscation and the Law

on MLA on the basis of reciprocity.

686. In terms of Art 3 and 42 of the Law on MLA, assistance covers all procedural actions available to domestic judicial authorities within criminal proceedings (see c.37.1). Thus, the powers to identify, freeze, seize and confiscate the property envisaged under c.38.1 (a-e) for domestic purposes (analysed under c.4.1 and c.4.2) are also applicable in response to requests by foreign authorities. The analysis and shortcomings identified under c.4.1 and c.4.2 are also applicable to this criterion.

687. Incoming requests are processed via the MoJ (Directorate for International Cooperation) and allocated to the Prosecution Office for the further proceedings. The execution of the request is allocated to the ARO Office and the Special Organizational Police Unit responsible for financial investigations (see Art. 79 & 80 of the Law on Seizure and Confiscation). The Prosecution Office and the Court are responsible for ensuring that the requests meet the criteria envisaged under the Law (Art 82). Foreign confiscation orders are also recognized and executed pursuant to Chapter IV of the Law on MLA based on available international treaty or if there is a reciprocity. The foreign confiscation decision shall be recognized by the territorially competent panel composed of three judges without presence of the parties.

688. Art 5 of the Law on Seizure and Confiscation obliges the court and competent authorities to act urgently in relation to the tracing, seizure and confiscation of material benefit derived from crime. This obligation to act urgently does not extend to requests concerning instrumentalities and property of corresponding value, and there are no explicit provisions requiring such requests to be dealt with expeditiously under the Law on MLA. Notwithstanding this, there are no obstacles that would impede all requests from being dealt with expeditiously.

689. ***Criterion 38.2 – (Met)*** The LSC explicitly requires a final conviction as a pre-requisite for confiscation, however, caters for the possibility of non-conviction-based confiscation in exceptional circumstances. If a person against whom criminal proceedings have been initiated dies, or the proceedings cannot be continued due to the presence of circumstances which permanently preclude prosecution, the material benefit derived from criminal activities or property of illegal origin shall be still confiscated from the deceased's successors or from the person against whom the criminal procedure may not be continued (Art. 10).

690. ***Criterion 38.3 – (Mostly met)*** Upon a request from the prosecutor's office, the court is in charge for seizure and confiscation procedures in cooperation with other state authorities. The prosecutor's office is the only state authority competent for submitting the requests for seizure or confiscation. The Directorate for State property is the authority in charge of managing the seized property.

691. (a) The Law on Seizure and Confiscation (Art. 78) provides that international cooperation with a view to seizing, confiscating, and managing material benefits is exercised in line with international treaties or in the absence of international treaties this law. The SPO and ARO may make use of international networks such as Eurojust, Europol and CARIN for this purpose. No information was provided on any bilateral agreements with other countries for coordinating seizure and confiscation actions.

692. (b) The Law on Seizure and Confiscation (Articles 53-67) sets the mechanism for managing and disposing of seized and confiscated property (see c.4.4).

693. ***Criterion 38.4 – (Partly met)*** Art 78(4) of the Law on Seizure and Confiscation enables the sharing of confiscated proceeds which is to be governed by an international treaty. Montenegro did not however conclude any such treaties.

Weighting and Conclusion

694. Montenegro is able to provide legal assistance to identify, freeze, seize, or confiscate proceeds of crime. Some deficiencies remain; the mechanism for enforcing foreign confiscation orders does not explicitly require expeditious action in some cases, while the shortcomings under c.4.1 and 4.2. impact the ability to provide such legal assistance. Moreover, the sharing of confiscated assets while permitted by law is not regulated by any international agreement. **Recommendation 38 is rated Largely Compliant.**

Recommendation 39 – Extradition

695. In the 4th round MER of 2015, Montenegro was not evaluated against the former R.37 and R.39, having received a LC rating in the previous assessment. Montenegro was rated PC with former SRV (see introduction to R.37).

696. ***Criterion 39.1 – (Mostly met)*** Extradition to foreign states is primarily regulated by the relevant international treaties (e.g. the 1957 European Convention ETS 043) and rendered possible by a number of bilateral treaties (see c.37.1.) or reciprocity. Definition of extraditable offences and detailed procedural rules are set out under Chapter II of the Law on MLA.

697. a) According to the CC of Montenegro both ML and TF are criminal offences punishable with more than one year of imprisonment (see R.3 and R.5) and therefore both are extraditable offences pursuant to Art. 13(1) of Law on MLA. The extradition of sentenced persons to serve the sentence shall not be granted if the duration of the imposed imprisonment sentence or the remaining portion thereof does not exceed four months (Art 13(2)).

698. b) The MoJ's LURIS system records useful information on incoming and outgoing extradition requests, and actions taken to address the same (see section 8.2.1). While this helps in managing the workload, the LURIS system does not serve the purpose of a case management tool . The authorities did not however adopt any formal procedures to prioritise incoming extradition requests. The Law on MLA nonetheless sets deadlines for different phases within the proceedings to approve foreign requests for extradition which are aligned to the European Convention on Extradition and considered to meet international standards, customs and best practices. AT did not find significant technical obstacles that could result in not providing the extradition process in a timely manner.

699. c) Montenegro does not place unreasonable or unduly restrictive conditions on the execution of extradition requests. Extradition shall not be allowed for political criminal offences and offences connected therewith or military criminal offences within the meaning of the European Convention of Extradition (excluding criminal offences of genocide, crime against humanity, war crimes and terrorism), and if the request is related to an offence punishable by the death penalty - Art 12 and 14 - Law on MLA. Other general restrictions based on double criminality, the ne bis in idem principle, concurrence with domestic criminal proceedings and the statute of limitations apply.

700. ***Criterion 39.2 – (Met)*** a) The extradition of Montenegrin nationals is prohibited unless

in line with the international obligations of Montenegro (Art 12 - Constitution of Montenegro). Thus, such extradition can be regulated by a bilateral agreement. Bilateral Agreements regulating extradition of own nationals when certain conditions are met exist with Serbia, Croatia, Italy, Bosnia and Herzegovina and the UK.

701. b) Upon request Montenegro may assume the criminal prosecution of a national or resident of Montenegro for a criminal offence committed abroad when extradition is not allowed and if the requesting state indicates that it will not subsequently prosecute the defendant for the same offense - Art 36 - Law on MLA.

702. ***Criterion 39.3 – (Met)*** As a general rule, dual criminality is required for extradition (Art 5 - Law on MLA). The Law on MLA does not include any explicit provision stipulating that the dual criminality requirement should be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalize the conduct underlying the offence. Nonetheless as set out under c.37.7, art 5 only requires that the act is criminalised in both the requesting state and Montenegro and does not pose other restrictions. Moreover, it could be concluded that this criterion is applied in practice.

703. ***Criterion 39.4 – (Met)*** Art. 29 of Law on MLA caters for extradition through a summary procedure if the person voluntarily consents, which consent may not be revoked. Where the process of extradition of the accused or convicted was instituted by the imposition of custody through an international arrest warrant, the requesting state shall be notified within 10 days from when the concerned person consents to the summary proceedings, indicating that the submission of a letter rogatory is not required.

704. The decision on extradition in a summary procedure is taken by a competent court, which shall without delay inform the Ministry, which will in turn notify the requesting state.

Weighting and Conclusion

705. Montenegro meets most of the criteria under Recommendation 39. The LURIS system is not geared to function as a case management tool, while there are no procedures for the timely processing of extradition requests. **Recommendation 39 is rated Largely Compliant.**

Recommendation 40 – Other forms of international cooperation

706. In the 4th round MER of 2015, Montenegro was rated PC on R.40 and SR.V in view of deficiencies impacting the international cooperation framework applicable to the FIU, CBM, Securities and Exchange Commission, and the Agency for Telecommunication and Postal Services. These included (i) lack of clear and effective gateways to permit direct cooperation between counterparts; (ii) limited foreign supervisors the CBM could exchange information with; (iii) the Agency's inability to cooperate with foreign counterparts on AML/CFT matters; (iv) the FIU (APMLTF) was able to exchange information for supervisory purposes only in case of suspicions of ML/TF; (v) the SEC was unable to share information spontaneously in some cases, and could not conduct examinations on behalf of a foreign authority; and (vi) insufficient information on controls in place to ensure the authorised use of received information. In respect of SR.V refer to the introduction of R.37 for information on the main deficiency identified, which was addressed. Most other deficiencies were also addressed, and Montenegro was re-rated as LC for R.40.

707. ***Criterion 40.1 – (Mostly met)*** Montenegrin legislation provides for a wide range of international cooperation in relation to ML, associated predicate offences and TF, both upon the request of foreign counterparts as well as spontaneously.

708. *Police to Police Cooperation* – Police is empowered to exchange data at their own initiative or at the request of foreign international organizations, under conditions of reciprocity and where this is necessary to fulfil tasks within its scope of the police's competence (Art 68(1) - Law on Internal Affairs). Art. 203 provides further detail on police-to-police international cooperation powers. The Department for International Operational Police Cooperation and the Asset Recovery Office Police Unit (located within the same department) makes use of international networks such as Interpol, Europol and CARIN, as well as various bilateral agreements with counterparts from Serbia, Bosnia and Herzegovina, Kosovo*, Albania, North Macedonia, Croatia, Romania, Italy, Russia, Ukraine and Hungary.

709. *FIU to FIU Cooperation* – The FIU may provide data, information, and documentation related to suspicions of ML, related predicate offences and TF to foreign counterparts upon request and spontaneously - Art 70 and 71 LPMLTF. Upon the request of a foreign FIU information may be provided even where the predicate offence for ML is unknown at the time of the request. The signature of an agreement or MoU not required however, 36 MoUs were signed with foreign FIUs to facilitate the exchange of information.

710. *Supervisors* – The CBM may cooperate and exchange information with other central banks, international financial institutions, and organizations, which have scope of activities related to those of the CBM and may also be a member of international institutions and participate in their work (Art 9 - Law on the CBM). The CBM is empowered to transmit any confidential information to EU and third country authorities supervising credit institutions and other financial institutions (Art 347 and 350), while in terms of Art. 31 it is required to cooperate with foreign institutions supervising of credit institutions. These powers are wide enough to enable cooperation on AML/CFT supervision and for all FIs falling under the CBM's portfolio and to also enable the exchange of information upon request and spontaneously. The CBM signed 30 MoUs with 19 countries to facilitate international cooperation with supervisory counterparts.

711. The CMA may cooperate and exchange information upon request with other EU and third country regulatory authorities (Art 41 and 43 - Law on Capital Markets), and to assist such authority with the carrying out of its task and functions and to safeguard capital markets. The CMA may also conclude MoUs with competent authorities of third countries competent for supervising financial institutions and may also cooperate and exchange information with the European Securities and Markets Authority (ESMA) – Art 44 and 45. The CMA is a full member of IOSCO and a signatory to the multilateral Memorandum of Cooperation and Mutual Understanding, which recognizes the capacity of the CMA for Equal Cooperation and Exchange of Information between IOSCO members. In addition, the CMA signed 7 MoUs with regulators from the region. The CMA has been accepted as a signatory to the Memorandum of Co-operation in the Field of Alternative Investment Funds which enhance cooperation and exchange of information. There are no explicit provisions permitting the spontaneous exchange of information by the CMA.

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

712. EKIP may cooperate and exchange information with bodies of the Universal Postal Union and the EU, as well as foreign regulatory authorities (Art 65(1) items 6 and 7 - Law on Postal Services). In accordance with Article 66, EKIP is however obliged to cooperate with postal operators and other bodies and organizations with regards to consumer protection and the postal services market, while in accordance with Art. 94(4) of the LPMLTF it is also able to cooperate on AML/CFT supervision aspects. EKIP has signed MoUs with regulatory authorities of Slovenia, Serbia, Croatia, Romania, Italy, Latvia, Albania and the Czech Republic.

713. ISA is empowered to cooperate with foreign supervisory authorities (Art 128 and 177 - Insurance Law). The ISA concluded five MOUs with foreign partners covering cooperation in areas of supervision (hence including also AML/CFT) and exchange of relevant information. Almost all these MoUs cater for the possibility of providing unsolicited (i.e. spontaneous) information.

714. Other supervisors, including DNFBP supervisors, are obliged to provide data and documentation that is required for the purposes of AML/CFT supervision, upon the request of foreign authorities (Art 94(4) – LPMLTF). This does not cover spontaneous information sharing.

715. *Customs* - The Customs Administration is empowered to and may cooperate and exchange data with customs services of other countries and international organizations on matters in the field of customs and in accordance with international agreements (Art. 6(1) item 8 and Art. 22 – Law on Customs Service). The Customs Administration is a member of the World Customs Organisation (WCO) which facilitates customs to customs international cooperation and has also signed bilateral agreements with seven foreign counterparts.

716. In terms of Section 3.2 of the FIU Working Procedures employees of the Division for International Financial Intelligence Cooperation are obliged to abide with the procedures for the exchange of data and information prescribed by the Egmont Group. These standards require FIUs to ensure that they can rapidly exchange information (see clause 11). The CBM's Work Procedure for the standardisation of internal processes – see c.40.2(d)) also requires the timely and rapid exchange of information with other competent authorities mentioned above. There are no similar procedures in respect of other authorities.

717. ***Criterion 40.2 – (Partly Met)***

718. (a) *have a lawful basis for providing co-operation* - The legal basis for international cooperation for the various competent authorities is set out under c.40.1.

719. (b) *be authorised to use the most efficient means to co-operate* – The Montenegrin Police is a member of and uses the channels provided by Interpol, Europol and CARIN networks. The FIU is a member of the Egmont Group and exchanges information via the Egmont Secure Web. The CBM, CMA and EKIP may conclude MoUs to regulate cooperation (although not a requirement). All financial supervisory authorities concluded MoUs with international counterparts. The Customs Administration is a member of the WCO international cooperation network. (see c.40.1). Other authorities have no impediments as to the means of cooperation.

720. (c) *have clear and secure gateways, mechanisms or channels that will facilitate and allow for the transmission and execution of requests* - LEAs and the FIU make use of the secure channels provided by the international networks mentioned under point (a). The FIU is bound to reply to incoming requests via secure communication systems (Art 70(2) – LPMLTF). This obligation does

not however apply to spontaneous exchanges, but in practice the same channel is used for both types of cooperation. The CBM has clear rules of procedure (see Rulebook on Secrecy) regulating the handling of data, information and documents, and setting measures for their protection. The CMA is required to ensure that any information exchanged is subject to adequate confidentiality safeguards (Art 41 - 43 - Law on Capital Markets), and also makes use of the IOSCO portal to exchange information with other member states. The Customs Authority is bound to ensure that foreign customs services it cooperates and exchanges information with provide an equivalent level of data protection (Art. 22(2) – Law on Customs Service). No information was available in respect of other competent authorities.

721. (d) *have clear processes for the prioritisation and timely execution of requests* - The FIU has a section dedicated to international cooperation (i.e. Division for International Financial Intelligence Cooperation). The FIU's Working Procedures (section 3.2) only contain an internal timeframe of 48 hours for the international cooperation officer to prepare a draft reply and set no other processing timeframes or prioritisation. The CBM's Work Procedure for the standardisation of internal processes includes procedures on the handling of international cooperation (section 5.7) stipulating that requests for information should be executed in accordance with the timeframes envisaged under the request and in the absence thereof without delay. No information in this regard was provide by other competent authorities.

722. (e) *have clear processes for safeguarding the information received* - The FIU's Division for Financial Intelligence Information System, Data Protection and Prevention is responsible for monitoring and ensuring the application of standards on the use and protection of personal and secret data. Moreover, the FIU is bound to use obtained data only for the purpose that it was obtained for, ensure that FIU data is only accessed by FIU employees and to provide technical conditions for the protection of that data and information (Art 90 and 93a - LPMLTF). Information received by the CBM is subject to safeguards in terms of the CBM's Rulebook on Secrecy and is protected from unauthorized access and specifically labelled according to the level of secrecy. No information in this regard was provided by other competent authorities.

723. ***Criterion 40.3 – (Met)*** The signing of MoUs or agreements is not a prerequisite for the exchange of information by the Police, FIU and supervisors. Nonetheless the FIU and the CMA are expressly authorised to enter into such agreements (Art 56(2a), 68 - LPMLTF and Art 44 - Law on Capital Market). There are no legal provisions requiring restricting other authorities from entering into such agreements to facilitate international cooperation. In fact all financial supervisors signed MoUs with foreign authorities (see c.40.1). The Customs Authority is required to enter into international agreements to regulate international cooperation (Art 22(1) and (3) – Law on Customs Services) and signed agreements with several foreign counterparts including most neighbouring countries (Albania, Croatia, Kosovo*, Moldova, Serbia, Slovenia, and UK).

724. ***Criterion 40.4 – (Met)*** The FIU is bound by the Egmont Principles for Information Exchange (clause 19), which require the provision of feedback on the use and outcome of information received from foreign FIUs. There are no explicit provisions requiring the provision of feedback by other competent authorities, however their respective legal frameworks (see

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

c.40.1) do not restrict or prohibit the provision of such feedback.

725. ***Criterion 40.5 – (Mostly Met)*** Except in the case of the CMA, the laws regulating the exchange of information and cooperation with international counterparts (see c.40.1) do not envisage any of the restrictions set out under paras (a) – (d) of this criterion, nor do they impose any conditions that are considered unreasonable or unduly restrictive. However as set out under c.9.1(a) there are no explicit legal obligations exempting investment fund managers and pension fund managers from confidentiality obligations for the purpose of providing information to LEAs which impacts this criterion.

726. Police to Police cooperation is provided based on reciprocity, and subject to prior guarantees that the foreign counterpart has adequate personal data protection measures and uses the information to carry out tasks of police competence – Art. 48 - Law on Internal Affairs.

727. The FIU may set terms and limitations on the use of shared data and may only share data when it confirms that the requesting FIU has a system in place to protect personal data and that it will only use the data for the requested purpose - Art 70(4) and (8) – LPMLTF.

728. The CMA may exchange information with foreign counterparts, on condition that: (i)there is adequate protection of data and information and (ii) information is used by the foreign regulatory authority to fulfil its functions at law (Art 41(1) and 43(2) - Law on Capital Market). The CMA may reject to exchange information requested by an EU supervisory authority when the disclosure (i) could jeopardize the security of Montenegro; (ii) could have negative effects on the control exercised by the CMA; and (iii) where there is already a final judgment in Montenegro on the same matters and persons envisaged in the request. The CMA however may refuse cooperation to EU counterparts when proceedings against a person who is the subject of a request has been initiated. This latter restriction is not permissible in terms of c.40.5(c).

729. ***Criterion 40.6 – (Mostly Met)*** *Police to Police* – Personal data may only be exchanged if the foreign authority will use it for the purpose prescribed under the Law on Internal Affairs (i.e. for tasks falling under police competency) – Art 68(2). This provision is limited to personal data and does not encompass all information as envisaged under this criterion.

730. *FIU-FIU cooperation* – The FIU prior to responding to requests for information by foreign counterparts shall ensure that the information will be solely used for the requested purposes (Art 70(4) - LPMLTF). This same obligation does not apply to spontaneous exchanges however, in terms of Art 71(2) the FIU may impose any limitations it deems fit on the use of information. On the other hand, any data obtained by the FIU (through requests for information) from foreign counterparts shall be used only for the purposes set out in the LPMLTF and no further dissemination or use may take place unless the requested FIU consents thereto - Art 69(3). Art 90 then provides that data obtained in terms of the LPMLTF (including data provided spontaneously by foreign FIUs) can only be used for the purposes that it was provided for.

731. *Supervisors* – For the CBM, limits on the use of exchanged data envisaged under this criterion are set out under Art 347 and 350 of the Law on Credit Institutions. The CMA may submit data to foreign authorities subject to it being used only for the purposes of the performance of duties and tasks of the competent regulatory authority (Art 41(2) and 43(2) - Law on Capital Market). Data exchanged by ISA with other supervisory or regulatory authorities may be further disseminated only with the prior approval of ISA. No other information was provided by other

supervisors and customs.

732. ***Criterion 40.7 – (Mostly Met)*** *Police to Police* – Police officers are bound to keep confidential and protect classified and personal data obtained while carrying out police duties, which obligation persists even after police officers cease to perform their duties. The Regulations on the protection of personal data are rendered applicable to the processing of personal data by the Police. Art 48(1) and (2), Art 69 - Law on Internal Affairs. Moreover, information pertaining to foreign authorities that in accordance with international agreements is required to be kept confidential is regarded as classified information for the purposes of Montenegrin law (Art 8 - Law on Classified Information). Furthermore, the Police is allowed to exchange data with foreign counterparts only if there are prior guarantees that such counterpart applies adequate personal data protection measures and will use information for the purpose for police functions.

733. *FIU-FIU* – All data, information and documentation collected by the FIU in accordance with the LPMLTF (including data obtained from foreign FIUs) shall be assigned the appropriate degree of confidentiality and must not be made available to third parties (Art. 88 (3) - LPMLTF. Moreover, the FIU is obliged to use data, information and documentation received in accordance with the LPMLTF only for the purposes that it was obtained for - Art 90. Prior to responding to requests from foreign FIUs, the FIU shall ensure that the requesting FIU has a system in place to protect personal data and that it will use the data for the requested purpose.

734. *Supervisors* – Information received by the CBM (including information received from foreign authorities – Art 4) is subject to safeguards in terms of the CBM's Rulebook on Secrecy and is protected from unauthorized access and labelled according to the appropriate level of secrecy. The CBM when exchanging information with foreign authorities shall ensure that such an authority is obliged to protect confidential information (Art 347(2) and 350(2) - Law on Credit Institutions). Similarly, ISA and CMA are bound by confidentiality obligations which also cover information on requests received and information exchanged with foreign counterparts (Art. 189 – Insurance Law and Art. 39 – Law on Capital Market). The CMA is also bound to ensure that foreign counterparts can adequately protect data and information shared (Art 41(1) and 43(2) - Law on Capital Market). Supervisors (apart from CBM and CMA) made reference to no provisions which bind them to exchange information only with foreign counterparts that are able to protect the confidentiality of information. Moreover, EKIP and DNFBP supervisors provided no information on confidentiality obligations.

735. *Customs* - Customs officers are bound to protect confidential and personal data when performing duties of customs service, hence including international cooperation and exchange of information (Art. 13(2) – Law on Customs Service). The Customs Administration can exchange personal and secret data with foreign customs authorities if those authorities provide an equivalent level of data protection (Art. 22(2) – Law on Customs Service).

736. ***Criterion 40.8 – (Mostly Met)***

737. *Police* – The Police is empowered to exchange data with foreign counterparts upon request (see c.40.1), as well as obtain criminal intelligence in relation to criminal offences in the context of international cooperation (Art. 203 – Law on Internal Affairs).

738. *FIU* – Where there are reasons to suspect ML, related predicate offences and TF, the FIU can request and obtain information from other REs, lawyers, notaries and other competent

authorities (Art 58-60 – LPMLTF). The domestic powers to collect information are conditioned by the existence of suspicion of ML, predicate offences and TF. Hence should the FIU determine that incoming FIU requests for information contain a basis of suspicion, such domestic powers would also be available to respond to international requests.

739. *Supervisory Authorities* – Refer to c.40.15 regarding financial supervisors. No other information was provided in relation to other supervisors.

740. *Customs* – While the Customs Administration is empowered to cooperate with international customs services and exchange secret and confidential data, there are no specific provisions empowering it to conduct inquiries to obtain information on behalf of foreign counterparts.

741. ***Criterion 40.9 – (Met)*** The FIU has an adequate legal basis to provide international cooperation in relation to ML, related predicate offences and TF, this even when the underlying predicate crime is not yet known. The FIU is able to exchange information both upon request and spontaneously and may use its domestic powers for collecting and obtaining information also for international cooperation purposes (see c.40.1 and c.40.8). The FIU may also suspend suspicious transactions upon the request of a foreign FIU (see Art 72).

742. ***Criterion 40.10 – (Met)*** There are no legal impediments to the provision of feedback to foreign FIUs (see c.40.4). Moreover, the Egmont Principles of Information Exchange (section 19) require FIUs to provide feedback to foreign counterparts on the use of information provided and on the outcome of any analysis based on information provided.[248]

743. ***Criterion 40.11 – (Met)*** The FIU is authorised to provide data, information and documentation to the foreign FIUs (upon request) about persons or transactions connected with suspicions of ML/TF and related predicate offences - Art 70 - LPMLTF. The FIU may use its domestic powers for requesting and obtaining information also to reply to request by foreign FIUs when there exists a basis for suspicion of ML/TF and related predicate offences (see c.40.8).

744. ***Criterion 40.12 – (Mostly Met)*** The legal basis for providing international cooperation for AML/CFT purposes by financial supervisors is provided under c.40.1. None of these powers are conditioned by the nature or status of the foreign counterpart. However, the lack of explicit provisions enabling the CMA and EKIP to exchange information spontaneously (see c.40.1) limit the compliance with this criterion.

745. ***Criterion 40.13 – (Met)*** The legislative provisions enabling the financial supervisors to provide international cooperation and to exchange information are wide enough not to limit the type of information and documents which may be shared and provided. By way of example Art 90(5) of the LPMLTF stipulates that upon request Montenegrin AML/CFT supervisors may exchange data or documentation that is required and needed by foreign supervisory authorities to conduct AML/CFT supervision. Art 347 and 350 of the Law on Credit Institutions empowers the CBM to exchange with foreign supervisors confidential information, while Art 304(3) item 18 makes it clear that any information subject to banking secrecy may be made available in line with

[248] Membership of the FIU of Montenegro to the Egmont Group was suspended due to the structural changes. From 1 January 2019 the APMLTF ceased to exist, with its authorities and powers being transferred to the Montenegro Police Administration. The membership of the FIU to the Egmont Group was confirmed in November 2020.

the Law on Credit Institution which also includes the provisions on international cooperation.

746. ***Criterion 40.14 – (Mostly Met)*** As set out under c.40.13 the legislative provisions enabling international cooperation by financial supervisors do not limit the type of information which may be exchanged which is thus considered to include the information envisaged under c.40.14. The type of information which may be shared is also the subject of the terms and conditions of MoUs and international agreements signed by the various financial supervisors (see c.40.1). By way of example the information envisaged under paragraph (a) and (b) is covered through the IOSCO MMoU to which the CMA is a signatory.

747. EKIP provided no information on limitations to exchange of information for the AT to analyse the adherence to this criterion.

748. ***Criterion 40.15 – (Partly Met)*** While there are no provisions explicitly providing for the conduct of inquiries on behalf of foreign counterparts, the general powers granted to the financial supervisors to cooperate with their foreign counterparts would not prohibit this.

749. With regards to the power to authorise or facilitate the ability of foreign counterparts to conduct directly inquires themselves in Montenegro, this is permissible in respect of EU supervisory authorities and only in so far as banks and investment services firms are involved. With respect to banks this is enabled under Art 316 of the Law on Credit Institutions which allows the CBM to delegate its supervisory powers to an EU authority for the purposes of supervising on a consolidated basis groups of credit institutions that have a presence in Montenegro. In respect of investment services firms, it is rendered possible via Art 41(2) of the Law on Capital Markets.

750. Other financial supervisors did not provide any information to evidence compliance with this requirement.

751. ***Criterion 40.16 – (Mostly Met)*** The CBM's officials and employees are bound to keep confidential the information and data which is considered secret (covering also information received from foreign authorities – Art 4 of the CBM's Rulebook on Secrecy). There are also obligations posed on CBM employees to ensure that data obtained while fulfilling their functions is only used for the performance of their duties (Art 344(2) - Law on Credit Institutions and Art 15(1) of the Rulebook). There is however no specific provision to require the prior consent of the requested foreign authority to disseminate any obtained information, however the CBM stipulates that this occurs in practice.

752. The CMA may disseminate data and information acquired from an EU or third-party regulatory authority, only with the written consent of that authority and for the purposes for which the approval was granted (Art 42(1) and 44(3) of the Law on Capital Market). This restriction without prior consent only covers dissemination and not the ulterior use of obtained information.

753. Officials and employees of the ISA are obliged to keep as confidential data on persons over which the Agency exercises supervision, as well as other data obtained in accordance with this Law - Art 189 - Insurance Law. Confidential data is however defined narrowly to only capture data from the supervision procedure and data on imposed supervision measures which would not include data received from international counterparts.

754. No information was provided on compliance with this criterion by EKIP.

755. ***Criterion 40.17 – (Met)*** In terms of Article 203 of the Law on Internal Affairs the Police is empowered to cooperate with competent authorities of other states and international organizations and institutions, in accordance with the law, ratified and published international agreements, as well as generally accepted rules of international law. Art 203(3) moreover provides that such cooperation may entail (i) the exchange of existing data and criminal intelligence for the purpose of conducting investigations or collecting criminal intelligence on criminal offences and (ii) the exchange of other data and information.

756. There is no explicit mention of the ability to also exchange information for the purposes of identifying and tracing proceeds of crime. However, considering that the Police may exchange other data and information beyond data and intelligence required for the investigation of criminal offences and given that cooperation is to take place in accordance with international agreements and the fact that the ARO section of the Police is part of the CARIN network, this requirement is also considered to be covered.

757. The Police Directorate also confirmed that through the Department for International Operational Police Cooperation it exchanges information with ARO offices through the CARIN network in order to identify property that may become the subject of a freeze and confiscation order. The AT was also informed that the ARO has access to numerous national databases which it can use for the purposes of international cooperation.

758. ***Criterion 40.18 – (Partly Met)*** In the framework of international cooperation the Police may exchange existing data and criminal intelligence, but also collect and obtain criminal intelligence on criminal offences (Art. 203 – Law on Internal Affairs). It is not clear however whether Montenegrin Police is able to use its domestic investigatory powers for the purpose of collecting and obtaining information on behalf of foreign counterparts.

759. Montenegro has arrangements in place with Interpol, Europol and Eurojust and abides by the rules of such arrangements in imposing restrictions on use of information provided.

760. ***Criterion 40.19 – (Met)*** In accordance with Art 58 of the Law on Internal Affairs police officers may undertake certain police duties within joint investigations together with the police officers of another country or of an international organisation. The possibility to participate in joint investigative teams is also envisaged under Art 18 of the Operational and Strategic Co-operation Agreement signed between Montenegro and Europol in 2016.

761. Moreover, pursuant to the Law on MLA (Art 41a-41d) the SPO may set up a joint investigation team (JIT) with a competent authority of one or more foreign states. JIT is a concept that can be used in the area of anti-money laundering as well as TF related criminal pre-investigation, investigation and criminal prosecution.

762. ***Criterion 40.20 – (Mostly Met)*** The FIU is subject to the Egmont Principles of Information Exchange which under section 18 provide that FIUs may decide to exchange information indirectly with non-counterparts in response to requests from competent authorities. Moreover Art 70(2) of the LPMLTF empowers the FIU to exchange information with other bodies of a foreign state that are responsible for the detection and prevention of ML/TF with such information flowing through the counterpart FIU.

763. The provisions of Art 203 of the Law on Internal Affairs empower the Police to cooperate with the competent authorities of other states and international organizations and institutions

which do not restrict cooperation only with counterpart police services.

764. No information was provided by supervisors on compliance with this criterion.

Weighting and Conclusion

765. All the material competent authorities have a good basis for providing international cooperation. The most material deficiencies identified included (i) the absence of provisions requiring competent authorities (other than the FIU and the CBM) to exchange information rapidly, (ii) no information was provided by authorities other than the FIU and the CBM on applicable processes to prioritise and execute requests in a timely manner, and processes to safeguard information received and(iii) it is unclear whether the Police is able to use its domestic investigatory powers for the purpose of collecting and obtaining information on behalf of foreign counterparts. Other deficiencies were considered minor in nature or related to less material competent authorities. **Recommendation 40 is rated Largely Compliant.**

Summary of Technical Compliance – Deficiencies

ANNEX TABLE 1. COMPLIANCE WITH FATF RECOMMENDATIONS

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	**LC**	• Only the CBM and the CMA have provided the respective supervised entities with an overview of the main results of the 2020 NRA. • The 2020 Action Plan does not set clear priorities for the implementation of actions. • Exemptions from CDD are not based on any risk assessment outcomes identifying low ML/TF risks. • There are gaps identified with respect to supervision of a number of categories of REs, including VASPs, Investment Funds, Voluntary Pension Funds, trust service providers and some company services. • Deficiencies identified under R.26 and R.28 impact c.1.9. • The LPMLTF does not explicitly require REs to document risk assessments. • Only large entities are required to have their AML/CFT policies, controls and procedures approved by senior management.
2. National cooperation and coordination	**LC**	• There are no co-operation and coordination mechanisms in place to combat the financing of proliferation of WMD.
3. Money laundering offences	**LC**	• The definition of property under Art. 268(7) of the CC covers only “rights” to property, rather than the property itself. • Art 268(2) of the CC does not cover the action of assisting “any person” who is involved in the commission of the predicate offence to evade the legal consequences of his actions. • The CC does not specify that the ML offence extends to the type of property that indirectly represents the proceeds of crime. • The criminal liability of legal person is limited as it depends on the proof of "gain" for the legal entity.
4. Confiscation and provisional measures	**LC**	• Issues with the definition of property (see c.3.1) impact compliance with c.4.1. • In terms of the CC the confiscation of property of a corresponding value is limited to money. • Confiscation of property of corresponding value does not cover laundered property and instrumentalities of crime.
5. Terrorist financing offence	**LC**	• The TF offence does not cover the financing of acts of theft or robbery of nuclear material, embezzlement or fraudulent obtaining of nuclear material. • The financing of travelling of individuals for the purpose of preparation, planning, perpetration, or participation in terrorist acts is not covered. • The definition of “funds and other assets” does not explicitly cover interest, dividends or other income on or value accruing from or generated by funds or other assets. • The liability of legal persons is excluded when the act is committed by persons who exercise control over the entity (other than responsible persons) and when it cannot be proven that gain was obtained, or that the act went against the legal person’s policy or orders. • The threshold to contribute to the commission of one or more TF offences or attempted offences is higher than required under R.5.
6. Targeted financial sanctions related to terrorism & TF	**PC**	• There is no formal procedure establishing the process for detection and identification of targets for designation based on the criteria set out in relevant UNSCRs.

Recommendations	Rating	Factor(s) underlying the rating
		• The evidentiary standard to make proposal for designation or to designate is higher than envisaged under c.6.1(c) and c.6.2(d). • There is no provision indicating whether Montenegro may be made known to be the designating state. • There are no provisions indicating that designations should not be conditional upon the existence of a criminal proceeding. • There is no legal provision enabling the competent authority to collect or solicit information to identify persons and entities that meet the criteria for designation. • The freezing obligation is not required to be implemented without prior notice. • The scope of entities required to implement restrictive measures does not extend to all natural and legal persons. • The obligation to freeze does not fully extend to funds or other assets as specifically referred to under Criteria 6.5(b)ii to 6.5(b)iv. • The prohibition under Art. 16 of the IRM Law do not cover all the aspects of making funds or assets available. • There is no mechanism for directly communicating designations to DNFBPs immediately upon taking such actions. • No guidance is provided to DNFBPs and other persons and entities on the application of freezing measures, and adherence to delisting and unfreezing actions. • It is not clear whether REs required to report other actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions. • There are no publicly known procedures to submit de-listing requests to the UN sanctions Committees 1267/1989 and 1988. • There are no procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730. • In terms of the designations on the Al-Qaida Sanctions List, there are no procedures for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, to accept de-listing petitions. • There are no publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities. • There is no mechanism to communicate de-listings and unfreezing directly to DNFBPs immediately upon taking such action. • Legislation does not authorise access to frozen funds for or other assets for extraordinary expenses. • The procedure to authorise access to frozen funds and assets doesn't reflect the procedure set out in UNSCR 1452 and successor resolutions.
7. Targeted financial sanctions related to proliferation	**PC**	• Unclarity about the legal authority and competent authorities responsible for implementing and enforcing TFS. • The freezing obligation does not extend to all natural and legal persons (Rec.6). • The deficiencies under 6.5(b), 6.5(c), 6.5(d), 6.5(e) and 6.5(f) apply respectively for criteria 7.2(b), 7.2(c), 7.2(d), 7.2(e) and 7.2(f) to UNSCRs 1718 and 1737 (and subsequent resolutions). • There are no provisions or measures implementing c.7.4 and c.7.5.
8. Non-profit organisations	**NC**	• The subset of organisations falling within the FATF definition of NPO, has not been identified. • The features and types of NPOs which are likely to be at risk of terrorist financing abuse have not been identified.

Recommendations	Rating	Factor(s) underlying the rating
		• The nature of threats posed by terrorist entities to NPOs which are at risk, as well as how terrorist actors could abuse those NPOs, were not identified. • The adequacy of measures, including laws and regulations, which relate to the subset of the NPO sector that may be abused for terrorism financing have not been reviewed. • There is no process in place to periodically reassess the sector as required under c.8.1(d). • There are no clear policies to promote accountability, integrity and public confidence in the administration and management of NPOs. • Limited activities aimed at raising and deepening awareness among NPOs and the donor community about the potential TF vulnerabilities of NPOs and TF risks, and the preventive measures have been conducted. • No practices in place to work with NPOs to develop and refine best practices to address TF risk and vulnerabilities. • There are no measures in place to encourage NPOs to conduct transactions via regulated financial channels. • No specific steps are taken to promote effective supervision or monitoring to demonstrate that NPOs at risk of TF abuse are able to apply risk-based measures. • No practices are in place monitor the compliance of NPOs with the requirements of R. 8. • No sanctions are available for violations by NPOs or persons acting on behalf of NPOs. • There is no mechanism or practice in place to ensure effective cooperation, co-ordination and information-sharing among appropriate authorities or organisations that hold relevant information on NPOs. • No specific requirement to provide full access to NPO information mentioned under sub-criterion 8.5(c). • Unclear whether there is a mechanism for information sharing between competent authorities in order to take preventive or investigative action. • No identified specific contact points and procedures to respond to international requests for information regarding particular NPO related TF suspicions.
9. Financial institution secrecy laws	**LC**	• Lack of explicit provisions exempting investment fund managers and pension fund managers from confidentiality obligations for the purposes of sharing information with LEAs. • shortcomings under R.13 apply in relation to the lack of an explicit obligation to ensure that all CDD information is to be provided by the responded institution upon request.
10. Customer due diligence	**PC**	• Investment and Voluntary Pension Funds are not designated as REs and not subject to AML/CFT obligations. • It is not explicitly specified that in cases of suspicions of ML/TF, CDD should be performed irrespective of any exemptions or thresholds. • Where REs doubt the accuracy of obtained CDD data and documents in respect of legal persons they may rely on a written statement of the representative attesting the accuracy of CDD data. • It is questionable whether REs must verify the authorisation of trustees of foreign trusts or similar entities. • For foreign trusts and similar entities, the LPMLTF promotes exclusive reliance on public registers to determine beneficial ownership, which would not hold BO information for foreign legal arrangements, and data which is accurate and reliable.

Recommendations	Rating	Factor(s) underlying the rating
		• FIs are not bound to revise and keep up-to date and relevant all CDD documents, data and information but just customer (and in some cases BO's) identity data. • The obligation to obtain data on the customer's business activity is not applicable in the case of occasional transactions. • REs are not required to determine the legal form and proof of existence for foreign trusts. • There is no explicit obligation to verify the powers that regulate and bind legal persons, foreign trusts and similar entities. • REs are not bound to collect the names of all senior management officials of legal persons. • It is unclear whether in the case of foreign entities similar to trusts REs are required to identity the equivalents of the settlors, trustees or protectors. • REs are not required to obtain the principal place of business of legal persons when different from the registered office. • There is no obligation to obtain the country of establishment of foreign trusts or similar entities. • In case of legal persons that receive, manage, and allocate assets (asset management companies) the identification and verification of identity of every BO is not required. • Formal ownership of a legal person is defined strictly as the ownership of more than 25% of its share capital, excluding legal persons which do not have ownership interests organised in share capital. • For asset management companies the BO definition is not in line with the FATF standards covering only persons who directly or indirectly controls at least 25% of the legal person's assets or who are beneficiaries of at least 25% of the income. • Senior managing officials of legal persons may be identified as BOs where "it is not possible" to identify Bos rather than when no such natural persons exist. • The definition of beneficiaries of foreign trusts, as those who manage property, is misleading and gives rise to misinterpretation as to who the beneficiaries are. • It is doubtful whether in the case of similar entities to trusts all the persons equivalent to the trust parties are required to be identified and verified. • FIs are not required to include life insurance beneficiaries as a relevant risk factor to determine the application of EDD. • There is no specific obligation to conduct EDD where the beneficiary (who is a legal person / arrangement) presents a higher risk. • The obligation to carry out CDD prior to establishing a business relationship does not apply to occasional transactions between €1,000 and €14,999 that are wire transfers. • There are no provisions requiring REs to apply CDD measures to existing customers at an appropriate time considering the timing and adequacy of previous CDD. • Banks and other FIs licensed by the CBM and ISA, are permitted to apply SDD in specific circumstances not backed by a risk analysis. • Except for FIs licensed by the CBM, there is no obligation to ensure that SDD measures are commensurate to the lower risk. • The obligation to terminate business relationships does not apply where REs are unable to conduct on-going monitoring. • REs are not required not to carry out wire transfer occasional transactions between €1,000 to €14,999 when they are unable to conduct CDD • When unable to conduct CDD REs are not explicitly required to consider submitting a STR.

Recommendations	Rating	Factor(s) underlying the rating
		• Where REs suspect ML/TF and reasonably believe that the conduct of CDD will tip-off the customer, they are not allowed to desist from pursuing the CDD process.
11. Record keeping	**LC**	• Unclear whether insurance companies are obliged to safekeep all records on transactions both domestic and international. • There is no explicit requirement to keep the results of any analysis undertaken as part of the CDD measures. • In respect of life insurance brokers and agents there are no specific requirements to keep records of transactions in a sufficient manner to allow reconstruction of individual transactions. • There is no obligation for the insurance sector to make information swiftly available.
12. Politically exposed persons	**LC**	• The definition of foreign PEPs does not capture all types of heads of states / governments. • Some FIs (excluding those licensed by the CBM) are not explicitly obliged to establish if a customer or BO is a PEP. • EDD measures apply to domestic PEPs that are Montenegrin citizens (excluding non-citizens). • For high-risk life insurance policies there is no clear requirement to conduct enhanced monitoring of the whole business relationship, and to consider submitting a STR in case of suspicions of proceeds of crime.
13. Correspondent banking	**PC**	• For respondent institutions located in EU countries or equivalent countries EDD is required only in case of high risk of ML/TF. • EDD measures are only applicable to correspondent relationships established with credit institutions, excluding other types of FIs. • There is no explicit requirement to understand fully the nature of the respondent's business. • No requirement to determine the reputation of the respondent. • FIs are also not required to determine whether the respondent institution is subject to any ML/TF investigation or action and the quality of supervision from publicly available sources but rather through self-declarations. • FIs are not obliged to obtain information on whether a respondent institution has been subject to ML/TF investigations but only if it is currently under such an investigation or action. • There is no explicit obligation to clearly understand the respective AML/CFT responsibilities of each institution. • Correspondent banks may obtain a written statement to determine whether some CDD measures (rather than all) were applied on customers that have direct access to the correspondent's accounts, instead of being required to take measures to be satisfied of this. • There is no clear and unequivocal obligation to ensure that all CDD information may be provided upon request. • Correspondent banks may obtain a written statement from the respondent attesting that it does not provide services to shell banks, rather than taking measures to be satisfied of this.
14. Money or value transfer services	**LC**	• The term "funds" within the definition of "money remittance" does not cover all money instruments and stores of value. • The CBM relies on the general public and supervisory inspections to identify unlicensed activities. • Entities (other than the Post of Montenegro) offering financial postal services would not be reporting entities. • There is no explicit obligation for PSPs to monitor their agents' compliance with the PSPs AML/CFT program.
15. New technologies	**PC**	• There are no legal obligations for the country to identify and assess the ML/TF risks of new products and business practices.

Recommendations	Rating	Factor(s) underlying the rating
		• No risk assessment of new products and business practices was undertaken. • The ML/TF risk assessments for VA/VASPs is not sufficiently comprehensive. • No risk-based approach applied to prevent and mitigate the identified ML/TF risks associated with VA/VASPs. • There are no market entry requirements for VASPs. • Most of the VASPs envisaged under the FATF Standards are not covered for AML/CFT purposes. • The CBM does not seem to have legal basis and powers to supervise covered VASPs. • No specific AML/CFT guidance, red flags or typologies were issued in respect of VAs/VASPs • Shortcomings with sanctions envisaged under R.35 apply also to covered VASPs. • Shortcomings identified in R.10-21 are similarly applicable to covered VASPs. • CDD obligations for covered VASPs do not apply to occasional transactions of €1,000 to €14,999. • There are no provisions regulating the transfer of VAs and information accompanying VA transfers • The deficiencies set out under c.6.5(d), 6.5(e), 6.6(g), 7.2(d), 7.2(e), 7.3 and 7.4(d) apply to covered VASPs. • Deficiencies identified under R.37-39, and deficiencies applicable to the FIU, Police and CBM under R.40 apply to c.15.11.
16. Wire transfers	**PC**	• There are doubts whether all cross-border wire transfers should be accompanied with payer information. • There are no obligations regarding payee information. • There is no obligation to ensure that batch files contain full payee information, and no specific requirement to ensure that the information on the batch file is fully traceable in the beneficiary country. • PSPs (payer) are prohibited from executing wire transfers where the required information couldn't be obtained, rather than when all the requirements envisaged under c.16.1 – 16.7 are not fulfilled. • There are no prohibitions (as per c.16.8) for persons or entities providing money transfer services in terms of the Postal Services Act. • There is no explicit requirement for intermediary PSPs to ensure that wire transfers are accompanied with the required payer information. • There are no specific obligations for intermediary PSPs to (i) take reasonable measures to identify cross-border transfers of funds with missing payer / payee information, nor to (ii) have risk-based procedures to determine the steps to be taken where such transfers are identified. • No detailed guidance or recommendations are provided as to what reasonable measures may be adopted to detect funds transfers with missing information. • In case of occasional funds transfers, the PSP (payee) is required to verify the identity of payees only where the PSP (payee) is also the PSP of the payer. • No specific obligations for PSPs (payee) to have risk-based policies to determine the steps to be taken were transfers of funds with missing payer / payee information are identified. • No specific requirements for PSPs controlling the ordering and beneficiary side of a wire transfer to take into account all information from both sides when deciding whether to file an STR, and to report in all affected countries.

Recommendations	Rating	Factor(s) underlying the rating
		• Deficiencies relating to TFS obligations outlined under R.6 and R.7 apply to PSPs. • It is unclear whether PSPs (other than banks) are subject to the freezing obligations under c.6.5(a) and c.7.2(a).
17. Reliance on third parties	**PC**	• The RE placing reliance is not responsible for the implementation of all CDD measures. • There is no requirement for CDD data to be provided and obtained immediately. • The RE placing reliance is however not required to satisfy itself that the relevant CDD documentation would be made available without delay upon request. • The RE placing reliance is not obliged to satisfy itself that the third party is regulated, supervised and has measures in place to comply with CDD and record keeping requirements. • REs may not rely on third parties from countries that do not apply AML/CFT standards equivalent to those in Montenegro, which equivalency criteria is impacted by the deficiencies in R.10 and R.11. • The country equivalency assessment is based on adherence to AML/CFT standards and does not consider the country's ML/TF risk.
18. Internal controls and foreign branches and subsidiaries	**PC**	• Only large entities (which includes only four of the 11 banks) and Insurance Companies are required to have a compliance officer at management level and to establish an independent audit function. • REs that form part of a financial group are not required to implement the group's AML/CFT policies and procedures • REs are only obliged to monitor that business units or majority owned subsidiaries apply the procedures for preventing ML/TF when these are situated outside Montenegro. • The LPMLTF does not specify explicitly what the AML/CFT procedure, to be put in place for majority owned subsidiaries, should entail. • There is no obligation for REs forming part of a financial group to share and receive customer, account and transaction data with/from group-level compliance, audit and or AML/CFT function. • There is no requirement to implement group-wide safeguards on data confidentiality and to prevent tipping-off. • REs must require foreign branches and majority-owned subsidiaries to implement AML/CFT measures equivalent to those of the home country, when in the host country the standards are equivalent or higher, rather than lower.
19. Higher-risk countries	**PC**	• FIs are required to apply EDD measures in respect of higher- risk third countries, which implicitly (and not explicitly) covers countries for which EDD is called for by the FATF. • There is no legal basis for authorities to require the application of countermeasures.
20. Reporting of suspicious transaction	**LC**	• The reporting obligation does not cover the financing of travel for the purposes of perpetrating, planning, preparing for or participating in terrorist acts, or providing or receiving training in terrorism.
21. Tipping-off and confidentiality	**LC**	• The protection from liability when disclosing information to the FIU, does not clearly cover directors or other officials of REs. • The prohibition from disclosing the fact that a STR or other information has been provided to the FIU is unduly restricted to some employees. • No clear provisions to ensure that group-wide information sharing is not inhibited by the restrictions of c.21.2.

Recommendations	Rating	Factor(s) underlying the rating
22. DNFBPs: Customer due diligence	**PC**	• Trust services and a number of company services are not subject to the requirements of R.10, 11, 12, 15 and 17. • It is doubtful whether lawyers and notaries are bound to implement the LPMLTF's CDD measures analysed under R.10. • The customer verification measures specifically set out for lawyers and notaries (Art 49(2) and 50) demonstrated various deficiencies: (i) EDD in the case of complex and unusual transactions is mandatory only when there are ML/TF suspicions (ii) no requirement to carry out all CDD measures when there are ML/TF suspicions of ML/TF or doubts about the veracity or adequacy of CDD data (iii) customer written statements may be used to verify the customer's and BO's identity; (iv) no clarity on what identification data should be obtained on BOs of legal persons; (v) there is no requirement to carry out all the CDD measures envisaged in c.10.8, 10.9 and 10.10; (vi) no specific identification and verification requirements for foreign trusts or similar entities as per c.10.11; and (vii) the requirements of c.10.14 to 10.20 do not apply to them. • Deficiencies with the application of R. 11 have also been identified in respect of lawyers and notaries: (i) unclear whether they should retain records of transactions occurring within a business relationships; (ii) no time-frame for the retention of transaction records and a number of other CDD records; (iii) there isn't an explicit obligation to retain all CDD records, account files, business correspondence, and results of any analysis undertaken; (iv) there is no specific obligation to retain all sufficient records to permit the reconstruction of individual transactions; (v) there are no clear and explicit obligations to ensure that records are available swiftly to the FIU and other domestic competent authorities; • PEP EDD requirements apply to lawyers and notaries only in case of ML/TF suspicions. • Lawyers and notaries are not bound to assess the risks posed by important changes to business processes, before such changes are introduced, and are not expected to mitigate the risks arising from new products and business practices. • Organisers of games of chance do not appear to be subject to the measures set out in paras (b), (c) and (d) of Rec. 10. • Organiser of games of change are not required to link CDD information for a customer to the transactions that the customer conducts. • Real estate agents are not bound to apply CDD measures on both purchasers and vendors of immovable property. • With respect to DNFBPs (other than trust service providers, certain company service providers, lawyers and notaries) the analysis of R.10, 11, 12, 15 and 17 and the respective technical deficiencies identified apply.
23. DNFBPs: Other measures	**PC**	• Trust service providers and some company service providers are not subject to the obligations set out in R.23. • R.18, 19, and 20 deficiencies apply to all DNFBPs defined as REs. • Lawyers and notaries are not subject to any internal control and high-risk countries requirements (R.18 and R.19). • The specific reporting obligations applicable to lawyers and notaries presented the following deficiencies: (i) there are no obligations to report suspicions on proceeds of crime; (ii) no obligation to report when there exist reasonable grounds to suspect; (iii) lawyers and notaries are only obliged to report when they act on behalf and for a customer in a financial or real estate transactions; (iv) only suspicions regarding to prospective transactions are reportable, to the exclusion of past transactions; and (v) no obligation to report promptly.

Recommendations	Rating	Factor(s) underlying the rating
		• R.21 shortcomings impact all DNFBPs defined as REs as well as lawyers and notaries. • Lawyers and notaries are not subject to the prohibition from disclosing of information provided to the FIU (mirroring the requirements of c.21.2).
24. Transparency and beneficial ownership of legal persons	**PC**	• A more comprehensive and detailed assessment is necessary to understand the ML/TF risks and vulnerabilities of all legal entities, and the adequacy of the control framework. • Partnerships are not required to keep relevant records set out in c.24.4. • No obligation for LPs to notify and keep the CRBE updated with information on the value of the contribution of each member, nor an explicit obligation for LPs and GPs to notify the registry whenever members cease to be involved in a GP or LP. • No obligation for JSCs to retain information on the categories of shares. • No explicit obligation for JSCs to retain the register of shareholders and to retain it in Montenegro and at a place notified to the CRBE. • There are no penalties applicable for the submission of false /wrongful basic and shareholder/member information. • The CRBO is largely unpopulated. • Deficiencies in the implementation of BO obligations envisaged under c.10.5 and c.10.10 impact the implementation of c.24.6. • No supervisory measures / mechanism in place to ensure the timely provision of and accuracy and up-to-datedness of BO information held at the CRBO. • No measures as foreseen under c.24.8 are applicable to ensure co-operation with authorities in determining the BO. • No information is provided on the obligation to keep basic information after the dissolution of companies or NGOs by the companies/ NGOs themselves or by the Registers. • Apart from the recording of nominal accounts in the case of the CCDC, there are no measures to prevent the misuse of nominee directors and shareholders. • The fines envisaged under the Law on Companies for failure to submit to the CRBE the data required by law and changes thereto are not dissuasive and proportionate. • The mechanism for the calculation of penalties set out in c.24.13 is not clear and hence how proportionality of sanctions is to be ensured. • The deficiencies in relation to sanctions applicable to REs as set out under R.35 are also relevant for c.24.13. • Deficiencies present in R37-40 related to the cooperation of authorities have an impact on this criterion. • No information has been provided on monitoring and keeping records on the quality of assistance received from foreign counterparts in response to requests for basic and BO information or requests for assistance in locating BO residing abroad.
25. Transparency and beneficial ownership of legal arrangements	**PC**	• Trustees are not recognized as REs and the setting up of trusts in a foreign jurisdiction and provision of trust services is not subject to AML/CFT obligations (see c.22.1(e)). This impacts the fulfilment of c.25.1(c). • Lawyers and notaries which may be involved in the setting up of foreign trusts or that provide other services to foreign trusts such as property acquisition are not obliged to carry out CDD in respect of foreign trusts (see c.22.1(d)). This impacts the fulfilment of c.25.1(c). • Deficiencies under c.25.1(c) impact the fulfilment of c.25.2.

Recommendations	Rating	Factor(s) underlying the rating
		• Deficiencies under c.10.11 impact the fulfilment of c.25.3. • There are no specific obligations for trustees of foreign trusts to disclose their status to reporting entities (see c.10.4). • The deficiencies outlined under c.25.1(c) hamper the obtainment of information on foreign trusts from Montenegrin trustees and from lawyers/notaries providing services to such trusts. • Deficiencies under c.25.1(c) hamper the provision of information on foreign trusts to foreign counterparts. • Deficiencies under R.35 are also relevant for c.25.8.
26. Regulation and supervision of financial institutions	**PC**	• Concerning qualifying holders in investment firms, pension fund management companies and other FIs (listed under the Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit Guarantee Operations) there are no express provisions requiring evidence of absence of criminal convictions. • In respect of payment and e-money institutions, pension fund management companies there are no fit and properness criteria for those acquiring qualifying holding. • Except for Banks, reputability criteria are not wide enough to ensure that criminal associates are barred from infiltrating FIs. • No information was provided on on-going fitness and probity checks for qualifying holders of life insurance companies, and qualifying holders and management of other insurance entities. • The CBM relies exclusively on examinations and public information to monitor the continued suitability of owners and managers of all other FIs besides Banks. • Supervisors (except for the CBM) do not have established processes to carry out risk-based supervision. • ISA has no established process to assess and review ML/TF risks for supervised FIs.
27. Powers of supervision	**LC**	• It is unclear whether the CBM may suspend or revoke the license of a credit institution and other FIs envisaged under the Law on Other FIs on the back of AML/CFT breaches. • It is unclear whether the CMA may restrict the operations, suspend, or revoke the license of investment funds (other than voluntary pension funds) in view of AML/CFT breaches. • The deficiencies relative to Montenegro's AML/CFT sanctioning regime outlined under R.35 impact compliance with R.27. • There are no sanctions for electronic money institutions, pension funds and pension fund managers for failure to provide information to supervisors. • EKIP is only able to compel financial information.
28. Regulation and supervision of DNFBPs	**PC**	• Trust services and a number of company services are not subject to AML/CFT obligations. • It is doubtful whether lawyers and notaries are subject to AML/CFT obligations as other REs, while the specific AML/CFT requirements that are subject to present several deficiencies (see R.22/23) • Apart from casinos, lawyers, notaries, individual accountants, auditors and audit firms, other DNFBPs are not subject to any licencing, registration or professional accreditation or entry requirements, to prevent criminals or associates from infiltrating these sectors. • The entry requirements for casinos, lawyers and notaries, accountants, auditors and tax advisors are not robust enough. • DNFBP supervisory authorities or self-regulatory bodies (other than the Administrative Authority for Inspection Affairs) do not have a framework to understand RE's ML/TF risks and to plan risk-based supervision on an on-going basis. • The framework for casinos is not nuanced enough to enable effective risk-based supervision.

Recommendations	Rating	Factor(s) underlying the rating
		• The Bar Association and the Notary Chamber (Notaries) do not have powers to undertake effective AML/CFT supervision. • The sanctioning regime for DNFBPs is not considered effective, dissuasive and proportionate (see R.35) • No information was provided on whether DNFBPs, can have their license, authorisation, registration or professional accreditation withdrawn, restricted or suspended in view of AML/CFT breaches.
29. Financial intelligence units	**C**	
30. Responsibilities of law enforcement and investigative authorities	**C**	
31. Powers of law enforcement and investigative authorities	**LC**	• Unclear whether the SPO may use its power to request bank account information and to request the monitoring of bank accounts when investigating associated predicate offences to ML that do not fall under its jurisdiction.
32. Cash couriers	**PC**	• The declaration regime does not cover the physical cross-border transportation of cash and BNIs through mail and cargo. • The sanctions for violation of the declaration obligations are not proportional and dissuasive. • No specific information was provided on coordination between the RCA, State Prosecutors and the Police in respect to the monitoring of cross-border cash movements. • The mechanism of administrative seizure is not applicable in case of suspicions of ML/TF or predicate offences, where the declaration obligation is not violated. • The RCA does not retain information on suspicions of ML/TF for the purpose of international cooperation and assistance.
33. Statistics	**PC**	• Statistics maintained by authorities (other than the FIU) are often not detailed and accurate enough to permit a proper analysis of the effectiveness of the AML/CFT system.
34. Guidance and feedback	**LC**	• Guidance published by supervisors (other than the CBM) lacks in practicality. • There is no mechanism for the provision of feedback on the quality and outcome of STRs for FIs and DNFBPs (other than banks).
35. Sanctions	**PC**	• The applicability of sanctions for TFS obligations are limited, and the sanctions are not proportionate and dissuasive. • There are no sanctions for infringements of AML/CFT requirements by NGOs. • The misdemeanour fines under the LPMLTF for REs and responsible persons are not proportionate and dissuasive. • There are no procedures or policies stipulating how sanctions should be applied. • Not all REs may have their authorisation or registration withdrawn, restricted or suspended on the back of AML/CFT breaches. • Only in the case of REs that are legal persons sanctions may be imposed on responsible persons. • Sanctions are not applicable to all directors and senior management officials. • The application of misdemeanour penalties is hampered by a short prescriptive period.
36. International instruments	**LC**	• Deficiencies related to R.3 and R.4 remain in relation to the implementation of international Conventions into domestic law.

Recommendations	Rating	Factor(s) underlying the rating
37. Mutual legal assistance	**LC**	• Issues with the criminalisation of the financing of travellers for terrorism purposes (c.5.2 bis) may hamper the provision of MLA where dual criminality is required. • There are no formal prioritisation procedures for handling MLA requests. • The lack of explicit legal obligations exempting investment fund managers and pension fund managers from confidentiality obligations for the purpose of providing information to LEAs (see c.9.1(a)) impacts c.37.4(b) and c.37.8. • Dual criminality is applicable even when requests do not involve coercive actions
38. Mutual legal assistance: freezing and confiscation	**LC**	• The deficiencies identified under c.4.1 and c.4.2 impact the c.38.1. • There are no explicit requirements to expeditiously respond to requests to identify, freeze, seize, or confiscate instrumentalities and property of corresponding value. • No bilateral or multilateral treaties concluded with other countries (not parties to the Eurojust, Europol and Carin networks) for coordinating seizure and confiscation actions. • There are no international treaties regulating the sharing of confiscated assets with other countries.
39. Extradition	**LC**	There are no formal procedures for the prioritisation of incoming extradition requests
40. Other forms of international cooperation	**LC**	• There are no explicit provisions permitting the CMA, EKIP and DNFBP supervisors to exchange information spontaneously, and requiring authorities (apart from FIU and CBM) to exchange information rapidly. • No information was made available by ISA to assess compliance with c.40.2(c), by EKIP to assess compliance with c.40.2(c), c.40.6, c.40.7, c.40.14, and by DNFBP supervisors to assess compliance with c.40.2(c), c.40.6, c.40.7, c.40.8. • No processes for the prioritisation and timely execution of requests (other than for the CBM). • No clear processes for safeguarding information received (other than for the FIU and CBM). • The CMA may refuse to cooperate with EU counterparts when proceedings against a person who is the subject of a request have been initiated in Montenegro which runs contrary to c.40.5(c). • LEA safeguards on the use of information exchanged are only applicable to personal data. • The RCA provided no information on controls and safeguards related to exchanged information, while it is not empowered to conduct inquiries and obtain information on behalf of foreign counterparts. • Only EU supervisory authorities conducting supervision of banks and investment services firms may be authorised or be facilitated to conduct inquiries in Montenegro. • No specific provisions requiring the CBM, CMA, ISA and EKIP to require the prior consent of the requested foreign authority to disseminate any obtained information, or to make ulterior use thereof. • No clear provisions empowering the Montenegrin Police to use its domestic investigatory powers for the purpose of collecting and obtaining information on behalf of foreign counterparts. • No information was provided by supervisory authorities on compliance with c. 40.20.

GLOSSARY OF ACRONYMS[249]

	DEFINITION
AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
APMLTF	Administration for the Prevention of Money Laundering and Terrorist Financing
APPD	Agency for the Protection of Personal Data
ARO	Asset Recovery Office Police Unit
AT	Assessment Team
BO	Beneficial Owner
BOC	Bureau for Operational Coordination
BPO	Basic State Prosecution Office
CARIN	Camden Asset Recovery Inter-Agency Network
CBM	Central Bank of Montenegro
CC	Criminal Code
CCDC	Central Clearing Depository Company
CDD	Customer Due Diligence
CFT	Countering the financing of terrorism
CMA	Capital Market Authority
CMS	Case Management System
CPC	Code of Criminal Procedure
CRBE	Central Register of Business Entities
CRBO	Central Register of Beneficial Owners
CSP	Company Service Provider
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Business or Profession
DPMS	Dealers in precious metals and stones
EDD	Enhanced Due Diligence
EGMONT	Egmont Group of Financial Intelligence Units
EKIP	Agency for Electronic Communications and Postal Services
ESW	Egmont Secure Web
EU	European Union
EUROPOL	European Union Agency for Law Enforcement Cooperation
EUROJUST	European Union Agency for Criminal Justice Cooperation
FATF	Financial Action Task Force
GP	General Partnership
IIWG	Inter-Institutional Working Group
INTERPOL	International Criminal Police Organization
IOSCO	International Organization of Securities Commissions
ISA	Insurance Supervision Agency
HPO	High State Prosecution Office
JIIS	Unified Information System for Inspections
JIT	Joint Investigation Team
JSC	Joint Stock Company
FDI	Foreign Direct Investment
FI	Financial Institution
FIU	Financial Intelligence Unit
KYC	Know Your Client

249 Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

LEA	Law Enforcement Authority
LCLLE	Law on Criminal Liability of Legal Entities
LFCCO	Law on Foreign Current and Capital Operations
LIRM	Law on International Restrictive Measures
LLC	Limited Liability Company
LP	Limited Partnership
LPMLTF	Law on the Prevention of Money Laundering and Terrorist Financing
LSC	Law on Seizure and Confiscation of Material Benefit Derived From Criminal Activity
MFA	Ministry of Foreign Affairs
MFI	Microcredit Financial Institution
ML	Money Laundering
MLA	Mutual Legal Assistance
MoI	Ministry of Interior
NCBCP	National Coordination Body on Counter-Proliferation
NGO/NPO	Non-Governmental / Non-Profit Organisation
NIOT	National Interdepartmental Operational Team for the Suppression of Violent Extremism, Terrorism, Money Laundering and Terrorist Financing
NRA	National Risk Assessment
NSA	National Security Agency
NSC	National Security Council
OCG	Organised Crime Group
OLAF	European Anti-Fraud Office
PCB	Permanent Coordinating Body
PEP	Politically Exposed Person
PF	Proliferation Financing
PSP	Payment Service Provider
RCA	Revenue and Customs Administration
RE	Reporting Entity
SEC	Security and Exchange Commission
SELEC	Southeast European Law Enforcement Center
SDD	Simplified Due Diligence
SOCTA	Serious and Organized Crime Threat Assessment
SOF	Source of Funds
SPO	Special State Prosecution Office
SPU	Special Police Unit
STR	Suspicious Transaction Report
TF	Terrorist Financing
TFS	Targeted Financial Sanctions
UN	United Nations
UNSCR	United Nations Security Council Resolution
VA	Virtual Asset
VASP	Virtual Asset Service Provider
WCO	World Customs Organisation
WMD	Weapons of Mass Destruction

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Anti-money laundering and counter-terrorism financing measures

Montenegro

Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in Montenegro as at the date of the on-site visit (6 to 17 March 2023). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Montenegro AML/CFT system and provides recommendations on how the system could be strengthened.