

Screening report

Montenegro

Chapter 4 – Free movement of capital

Date of screening meetings:

Explanatory meeting: 18 January 2013

Bilateral meeting: 21 February 2013

I. CHAPTER CONTENT

As regards capital movements and payments, Member States must remove, with some exceptions, all restrictions on movement of capital both within the EU and between Member States and third countries. The relevant Treaty provisions governing the freedom of capital movements are enshrined in Articles 63 to 66 of the Treaty on the Functioning of the European Union (TFEU). The definition of the different types of movement of capital relies on Annex I of Directive 88/361/EEC. Relevant case-law of the European Court of Justice and Commission Communications 97/C220/06 and 2005/C293/02 provide additional interpretation of the above Articles.

The liberalisation of payments is also an essential requirement for the free movement of capital. Regulation EC (No) 924/2009 on cross-border payments regulates the charges levied by an institution on electronic payment transactions in euro and other notified Member State currencies (e.g. credit transfers, direct debits, card payments, ATM withdrawals). Directive 97/5/EC on cross-border credit transfers and Directive 2007/64/EC on payment services aim to facilitate payment transactions within the EU, creating a legal framework for the single "domestic" payments market. The e-money Directive 2009/110/EC amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, provides the legislative framework for the taking up, pursuit and prudential supervision of the business of electronic money and creates a single market in e-money services.

The key piece of legislation in the field of anti-money laundering is Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (amended by Directives 2007/64/EC, 2008/20/EC and 2009/110/EC) together with its implementing measures specified in the Directive 2006/70/EC. It requires entities subject to the Directive to apply customer due diligence and to report suspicious transactions, as well as to take relevant supporting measures, such as record keeping, training and establishing internal procedures. Furthermore, Regulation (EC) No 1889/2005 governs cash entering or leaving the EU and Regulation (EC) No 1781/2006 stipulates that transfers of funds must be accompanied by meaningful information on the payer in order to ensure full traceability of funds.

In order to successfully combat financial crime, Member States need to make sure that effective administrative and enforcement capacity is in place, including co-operation between supervisory, law enforcement and prosecutorial authorities.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarizes the information provided by Montenegro and the discussion at the screening meeting.

Montenegro indicated that it can accept the *acquis* regarding free movement of capital and that it does not expect any difficulties to implement the *acquis* by the time of accession.

II.a. Capital movements and payments

Montenegro stated that its regime of capital movements and payments is largely liberalised and in line with the EU regime.

According to Montenegro, the Law on Foreign Investment, last amended in 2011, grants to foreign investors the same treatment as to national ones. Foreign companies can own fully a domestic company and invest basically in any sector. The only restrictions concern fisheries (see chapter 13-Fisheries), air transport (see chapter 14-Transport Policy) and the industry of arms and military equipment. With respect to the latter, the authorities plan to amend the Law at the end of 2013 in order to abolish the restriction, which currently limits foreign ownership in the industry of arms and military equipment to 49%. The Montenegrin authorities confirmed that there are no other restrictions on foreign direct investment.

Montenegro indicated that the right of foreigners to acquire real estate in Montenegro is restricted by the Law on Ownership Rights adopted in 2009. However, these restrictions do not apply to EU nationals given that, as from entry into force of the Stabilisation and Association Agreement in May 2010, they are granted the same treatment as Montenegrin citizens. Branches and subsidiaries of foreign companies which conduct their business in Montenegro are also allowed to buy real estate. Real estate, as defined in the Law on State Surveying and Cadastre of Immovable Property, last amended in 2011, includes, among others, agricultural and forest land as well as residential structures and business premises.

Most of the seized agricultural land in social ownership has now been returned to the former owners. Restitution to former owners of ownership rights confiscated for the benefit of the state, social or cooperative ownership is currently being carried out under the 2004 Law on Restitution as amended in 2007. The deadline for applications has now expired and according to the report established in December 2012 by the Ministry of Finance, 45.9% of the total requests have been processed.

Other restrictions concern the provisions of the Law on Insurance, last amended in 2012, which provides, with some exceptions, that residents may be insured only with insurance companies established in Montenegro.

According to Montenegro, the Law of 2006 on Insurance as well as the Law on Voluntary Pension Funds also include certain restrictions concerning investment rules on the asset allocation of institutional investors. In addition, the European Economic Area countries have been omitted from the list of permitted investment locations. Montenegro stated that it is currently preparing a new law on Capital Markets which will replace the current Law on Securities. The new law is expected to be adopted at the end of 2013. Montenegro also intends to fully harmonise the Law on Pension Funds before accession with the *acquis*.

Privatisation in Montenegro is being carried out on the basis of an annual privatisation plan which includes companies to be privatised by public tender or through the stock exchange. Montenegro confirmed that the government has not retained any special rights in the companies already privatised and that it does not intend to introduce such rights in the future. Montenegro stated that the government does not hold any special rights in Kombinat Aluminijuma Podgorica - KAP - and stressed that the rules on special rights of the state will be in line with the *acquis* upon accession.

II.b. Payment systems

Montenegro's current legislative framework in the area of payment systems is defined by the Law on National Payment Operations - published in the Official Gazette of Montenegro under

the references 61/2008 and 31/2012 - and a number of specific Decisions. Montenegro stated that an assessment of its legal framework conducted in the context of a twinning project was largely in line with the *acquis*. It also concluded that there is no compliance with regard to information of payment service users at a lower level; there are no payment institutions; it is not possible to issue e-money and there are no e-money institutions. Payment system operators are restricted only to banks.

The payment system providers are the Central Bank of Montenegro and eleven banks. A payment system operator can be the Central Bank of Montenegro and a bank if it has a payment system licence. The Central Bank of Montenegro is the owner, operator, participant and agent for the settlement of all interbank transfers.

Following the implementation of the above-mentioned twinning project, Montenegro drafted a new Payment System Law which was submitted to public hearing and the Commission services for consultation in February 2013. Montenegro stated that the new draft Payment System Law will transpose Directives 2007/64/EC, 2009/110/EC, 98/26/EC and 2009/44/EC. Montenegro informed that it intends to adopt the draft Law as soon as possible.

II.c. Fight against money laundering

Montenegro's legislative framework in this area consists of the Law on the Prevention of Money Laundering and Terrorist Financing, published in the Official Gazette of Montenegro under the references 14/2007, 04/2008 and 14/2012, and a number of implementing regulations. Montenegro described the provisions of the above-mentioned Law which, amongst others, refers to definitions of money laundering and terrorist financing; designates reporting entities and explains their obligations; describes the procedures and the measures that reporting entities need to take for customer due diligence (CDD); sets out limitations for carrying on business with a customer; describes the conditions under which a reporting agency can conduct simplified or enhanced CDD; defines the politically exposed persons and the CDD measures that need to be conducted for these persons; and sets out the tasks and obligations of lawyers and notaries, as well as some relevant exceptions.

Montenegro presented its institutional framework for the prevention of money laundering and terrorist financing. *Inter alia* Montenegro described the organisational structure and the competencies of the Administration for the Prevention of Money Laundering and Terrorist Financing (APMLTF) as well as those of other supervisory bodies; explained the process for reporting of suspicious transactions; set out the procedure for opening and processing of cases in the APMLTF; and mentioned the data bases used by the APMLTF. In 2011 the Central Bank, the Securities Commission, the Insurance Supervision Agency, the Ministry of Finance and the APMLTF signed a Memorandum of Understanding with the aim to improve cooperation amongst supervisory bodies in the fight against money laundering and terrorist financing.

As regards implementation, Montenegro stated that in 2012 there were 246 open cases for processing and analysis. Out of a total of 110 of received suspicious transactions, 103 came from Banks, 5 from Customs, one from Lawyers and one from the Securities commission. Nine transactions were temporarily suspended in 2012; they amounted to about EUR 3.7 million. Sixteen cases were still under investigation at the moment of the screening. Moreover, Montenegro indicated that more than 75% of controls of reporting agencies were

conducted by the APMLFT (153 out of 195) in 2012. About half of these controls were in the area of real estate (74 out of a total of 153) while about 40% of the controls were addressed to construction companies (58 out of 153).

Concerning administrative capacity in the area of supervision and prevention of money laundering and terrorist financing, APMLFT employs the vast majority of staff (32 out of a total of 41); the Central Bank employs 4, the Securities Commission 3 and the Insurance Supervision Agency 2 staff members. Montenegro also stated that it intends to take steps in the future in order to strengthen the administrative capacity of APMLTF and other stakeholders as well as to organise training courses for the staff of the obligated sector. Montenegro also intends to adopt a new law on the prevention of money laundering and terrorism financing by the end of 2014 (addressing also the Financial Action Task Force recommendations); to develop a new Action Plan 2013-2014 for the implementation of the Strategy for the Prevention and the Combat of Terrorism, Money Laundering and Terrorist Financing; to implement its IT strategy and the strategy for the development of APMLTF and to define activities for the national risk assessment.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Montenegro has reached a high level of alignment and applies a substantial part of the *acquis* in the fields covered by this chapter. Regarding the payment systems alignment is only partial. Overall, Montenegro's administrative capacity in this area is sufficient.

III.a. Capital movements and payments

Montenegro has a good understanding of the *acquis* in the area of capital movements and payments. It has achieved a high degree of alignment with the *acquis* in this area. Montenegro's regime is liberalised, notably in the areas of direct investment, inward and outward portfolio investment, other operations in securities and financial loans and credit operations. Moreover, residents are allowed to carry out transactions in relation to current and deposit accounts with foreign financial institutions. In particular, Montenegro complies with the obligations under the Stabilisation and Association Agreement.

There are restrictions on acquisition by foreigners of real estate, including agricultural land and forests and forest land. However, these restrictions do not apply to EU and EEA nationals because the Stabilisation and Association Agreement grants them the same treatment as nationals. The restitution process is well advanced.

Full alignment is still needed in the areas of direct investment in fisheries (see chapter 13-Fisheries), air transport (see chapter 14-Transport policy), arms and military equipment, prudential rules for institutional investors and restrictions for residents to be insured only with domestic companies. Montenegro stated that it plans to amend and harmonize with the *acquis* the relevant laws in the above areas before accession and, in some cases, before the end of 2013.

Montenegro confirmed that it does not intend to introduce special rights in companies to be privatised.

No major problems are foreseen during the negotiations in the area of capital movements and payments.

III.b. Payment systems

The current Montenegrin legal framework on payment services is only partially in line with the *acquis*. The scope of national law i.e. the Law on National Payment Operations, is limited to banks and does not encompass other payment service providers that operate in the EU, such as payment institutions and e-money institutions. Some other relevant provisions of Directive 2007/64/EC concerning information requirements as well as rights and obligations of the payment service users have not been included yet in Montenegrin law.

The new draft of the Payment Systems Law, which has been consulted with the Commission in 2012, aims to fully align Montenegro's legislation with Directives 2007/64/EC and 2009/110/EC. Once adopted, it should bring Montenegro's legislation into full compliance with the *acquis* on payment systems.

The relevant supervisory authorities mandated to oversee payments and to deal with complaints need to be staffed accordingly. The possibility for out-of-court complaint and redress procedures for the settlement of disputes should also be established.

III.c. Fight against money laundering

Montenegro's legislation in the area of anti-money laundering is well aligned with the *acquis*. Montenegro is preparing to align with the most recent amendments of international standards (Financial Action Task Force) which will also be incorporated in the *acquis*.

Cooperation between the various bodies dealing with anti-money laundering needs to be improved. The administrative capacity of the relevant implementing bodies has to be strengthened. Montenegro's preparedness in the field of fight against money laundering should be read in connection with its performance in applying relevant aspects covered by the *acquis* under chapter 24-Justice, freedom and security.