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Screening report

Montenegro

Chapter 29 – Customs Union

Date of screening meetings:

Explanatory meeting: 23-24 May 2013

Bilateral meeting: 20-21 June 2013

I. CHAPTER CONTENT

The customs union *acquis* mainly consists of legislation which is directly binding on the Member States, ensuring the functioning of the customs union and the effective protection and control of its external borders. It includes the EU Customs Code and its implementing provisions, the Combined Nomenclature, common customs tariff and provisions on tariff classification, customs duty relief, duty suspensions and certain tariff quotas, and other provisions such as those on customs control of intellectual property rights infringing goods, drugs precursors, cultural goods, as well as on mutual administrative assistance in customs matters and transit. Member States must ensure that the necessary implementing and enforcement capacities, including links to the relevant EU computerised customs systems¹ are in place. The customs services must also ensure adequate capacities to implement and enforce special rules laid down in related areas of the *acquis* such as external trade, health and security provisions.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Montenegro and the discussions at the screening meeting. Montenegro indicated that it can accept the *acquis* regarding the customs union and that it is aware of the obligations and the challenges that its full implementation by the date of accession would entail for Montenegro.

II.a. Customs legislation

General customs rules and procedures

The core acts of customs legislation in Montenegro are the Customs Law (OG 21/08)², the Law on the Customs Tariff (OG 28/12), the Customs Service Law (OG 29/05), the Implementing Provisions to the Customs Law (OG 38/08), and the Rulebook on the Form, Content, Methods of Lodging and Filing the Customs Declaration and Summary Declaration (OG 48/07). Montenegro indicated that, at the time of the screening, an amendment to the Customs Law was under preparation for adoption in 2013; the amendments seek to further harmonise some provisions of the law with applicable EU rules.

The customs territory of Montenegro consists of the territory of Montenegro. Traders are allowed to interact with the Customs Administration themselves or through a customs agent authorised by the Customs Administration. In the latter case, the representative can act in the name of and on behalf of the person/operator it represents (direct representation) or he can act in his own name, but on behalf of the other person/operator (indirect representation). The representative must have its headquarters or residence in Montenegro, except in the case of

¹ For example: the Integrated Tariff Environment (TARIC, QUOTA, Surveillance, etc.), transit (NCTS - New Computerised Transit System), export and import controls (ECS – Export Control System, ICS - Import Control System), economic operators (EOS – Economic Operators System), risk management (RIF) etc.

² References to Montenegro's Official Journal are limited to the respective latest amendment, as provided by the Montenegrin authorities.

transit or temporary importation declarations. Goods entering or leaving the customs territory of Montenegro are subject to customs supervision measures and customs verification. Goods remain under customs supervision as long as it is deemed necessary. Foreign goods acquire the status of domestic goods by release for free circulation, payment of customs debt and fulfilment of all other importation related requirements.

When goods arrive in the country a summary declaration or a transit declaration for temporary storage has to be presented. This can also be done electronically. Montenegro does not apply the concept of the pre-arrival/pre-departure summary declaration lodged prior to the shipment of the goods.

After entry, the goods may be cleared directly or temporarily benefit from a suspensive customs regime. Customs controls are conducted according to risk analysis. The general rules cover, amongst others, the presentation of goods to customs, summary declaration, temporary storage of goods, as well as customs-approved treatment or use. The customs declaration must be lodged in writing or electronically on the Single Administrative Document form (SAD). Montenegro stated that the codes used are based on international standards and that it is partly aligned to the EU's SAD. In 2013, Montenegro established a unified single registration number for customs and tax purposes.

A customs debt is incurred when (i) a permit is issued for the release for free circulation or placing of goods under the temporary importation procedure with partial relief from the import duties; (ii) goods are unlawfully introduced into the customs territory or from a free zone or a free warehouse to the rest of the customs territory; or (iii) goods are unlawfully removed from customs supervision. The law does not differentiate between import and export related debts. Montenegro requires a guarantee for potential or existing debt, where this is above EUR 500, either in form of a cash deposit or an undertaking of a guarantor, i.e. an authorised commercial bank with headquarters in Montenegro. Recovery or repayment of duties is conducted ex officio until 3 years after communication or payment of the debt.

Montenegrin law contains provisions on the release of goods for free circulation (import), transit, temporary importation and export. It also contains provisions on warehousing, inward/outward processing, processing under customs control and free zones. Simplified procedures are foreseen in Article 84 of the Customs Law, by means of incomplete declarations, commercial or administrative documents (e.g. invoice) or through local clearance (book-keeping records). However, such procedures are not widely used yet. Montenegro indicated that it plans to fully harmonize the rules on simplified procedures with the *acquis* by amending the implementing provisions to the Customs Law.

In case of disputes concerning customs, appeals against first-instance decisions may be submitted within 15 days to the Appeal Body of the Ministry of Finance. The ruling of the Ministry of Finance, to be issued within 30 days, can be appealed to in Administrative Courts, in accordance with the Law on General Administrative Procedure (OG 32/11).

The control of baggage and personal luggage in air transport is organized, as in the EU, through red and green channels. Montenegro announced that such channels would also be established in seaports for controlling maritime traffic. Transit passengers are only allowed to access the transit hall and remain separate from domestic passengers. Outgoing international airport passengers are checked at the airport of departure. If passengers continue on an international journey after an internal flight the baggage controls take place at the airport

where the international flight starts. The baggage tags are of the type set out in international traffic conventions (IATA).

Customs status of goods and transit

The concept of 'customs status of the goods' is defined in Article 5 of the Customs Law, comprising domestic and foreign goods. The Customs Law differentiates between external and internal transit. External transit concerns the movement between two places in the customs territory of (i) foreign goods without payment of customs debt or (ii) domestic goods for which the export procedure has been carried out. Internal transit concerns the movement of domestic goods, crossing the territory of a third country without change in customs status. Montenegro stated that the provisions of the Customs Law relating to transit are close to the *acquis*, in terms of (electronic) use of documents, lodging guarantees, waivers, and simplified procedures. As regards computerisation, the Customs Administration uses a centralised computerised system for national transit, which allows for the national transit procedure to be carried out electronically. This computer system is reliable and stable.

Montenegro is signatory of the following international conventions covering transit: The Convention on International Transport of Goods Under Cover of International Road Transport Carnets (TIR Convention) and the Convention on Temporary Admission. The TIR and temporary admission (ATA) carnets are issued by the Montenegrin Chamber of Commerce. The rules concerning the import, export, and transit of goods for forces under North Atlantic Treaty Organization (NATO) command are contained in the 2005 Agreement between Serbia and Montenegro and NATO on transit arrangements for support of peace operations. The document used for the movement of such goods is NATO Form 302.

Montenegro has expressed interest in becoming a full member of the Common Transit Convention (CTC) and has the status of Informal Observer to the Joint CTC Committee. Although some initiatives have been taken for the introduction of the New Computerised Transit System (NCTS) the Customs Administration did not have a clear timeline or plan for establishing the system at the moment of the screening.

Customs valuation

Montenegro applies the provisions of Article VII of the General Agreement on Tariffs and Trade (GATT) and of the Agreement on the implementation of Article VII of GATT in its customs legislation. The transaction value is the basis for customs valuation. The Customs Law foresees a number of alternative valuation methods in line with the hierarchy established by Article VII GATT. Montenegro confirmed that it does not use any reference prices for determining the value of any products and goods. In Montenegro perishable goods cannot benefit from simplified valuation methods, because there are no special legal provisions regarding simplified valuation methods. However, perishable goods have priority in customs procedures. For second hand cars, no special procedures are followed; frequently the deductive method is used.

Customs classification and tariff

The nomenclature of the customs tariff of Montenegro is specified in the Law on the Customs Tariff (OG 28/12) and is harmonised with the World Customs Organisation's Harmonised System and the EU's Combined Nomenclature. Additional classification within the customs tariff is realized via the Integrated Customs Tariff of Montenegro (TARICG). The tariff is published on a website of the Customs Administration and is accessible to the public. The classification regulations adopted by the European Commission, as well as the Explanatory Notes are included in the administrative instructions distributed to the customs officers.

In accordance with Article 12 of the Customs Law, the customs authority issues binding information on the classification of goods under the customs tariff (Binding tariff Information, BTI), similar to the EU system. Moreover, EU classification decisions are respected and followed by Montenegro. A BTI is issued at the latest within three months upon receipt of the written application and is valid for a period of three years. BTI's are published on the Customs Administration's website and they are issued free of charge.

Montenegro became a member of the World Trade Organisation on 29 April 2012. The basic rate of duty is based on the principle of most-favoured nation, which is applicable to imports of goods from the member countries of the World Trade Organisation. The customs tariff of Montenegro is harmonised with the schedule of negotiated concessions in the section concerning market access for goods. In addition to the World Trade Organisation agreement, Montenegro entered into and applies a number of preferential trade agreements, namely with the EU under the Stabilisation and Association Agreement, with members of the European Free Trade Association (EFTA), the free-trade agreement with the Russian Federation, the free-trade agreement with Ukraine, the Central European Free Trade Agreement (CEFTA), and the free-trade agreement with Turkey.

Montenegro informed that tariff quotas are administered on a first-come-first-served basis through the TARICG module, but tariff quota requests need to be made in a paper form of the SAD. Furthermore, the Customs Law authorises the government to approve autonomous preferential customs duties for the importation of certain goods. However, Montenegro indicated that this option has not been used so far.

Rules of preferential and non-preferential origin

Non-preferential origin is defined in Article 23 et sqq. of the Customs Law, while Article 28 together with Article 21 regulates the preferential origin of goods.

Non-preferential origin is based on the concepts of wholly obtained products or of the last substantial, economically justifiable operation, resulting in new products, representing a crucial stage of manufacture or leading to a change in tariff heading. Moreover, Article 25 of the Customs Law defines a number of processes that do not result in the acquisition of origin. For specific products (e.g. textile products) special rules apply, amongst others describing substantial operations not conferring origin and non-substantial processing conferring origin.

The rules on preferential origin are based on provisions in each individual free trade agreement concluded by Montenegro, including the 2006 CEFTA as well as the Stabilisation and Association Agreement with the EU. These allow for bilateral or diagonal cumulation of origin within the region. Montenegro also ratified the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin, which entered into force on 1 September 2012.

Montenegro has not yet granted autonomous preferences to other countries, but stated that its Generalised System of Preferences (GSP) is broadly based on the EU rules; some differences remain as the current rules have not yet been aligned with the latest developments. Otherwise, Montenegro is a GSP beneficiary country of seven countries, including the USA and the Customs Union of the Russian Federation, Belarus, and Kazakhstan.

Certificates of domestic origin of goods are issued by the Chamber of Commerce of Montenegro. The Customs Law also foresees the issuing of binding information on origin within 60 days of the receipt of a complete written application. However, Montenegro has not received requests for such binding information of origin. Montenegro acknowledged that some provisions are not fully aligned with the most recent *acquis* in this field, such as a negative list for the acquisition of origin or the non-manipulation clause which is gradually being introduced in the EU's preferential regimes to replace the direct transport rule.

Duty relief

Montenegro stated that most of the grounds on which duty relief can be granted in Montenegro also exist in the *acquis*; however, it foresees a number of grounds for duty relief, which are not covered by EU rules, such as goods brought into Montenegro as an investment by a foreign investor in accordance with a special law or passenger cars for disabled persons.

Goods contained in the personal luggage of a traveller are exempted up to a value of EUR 150 or up to certain specified quantities for tobacco, alcoholic beverages and perfumes. Small consignments of non-commercial nature of a total value of up to EUR 150 are also exempted, except for alcohol and tobacco products.

Article 181a of the Customs Law foresees the possibility to set up duty free shops in airports and seaports that are open for international traffic. The provisions on the requirements and handling of sales are specified in the Regulation on Duty Free Shops (OG 50/09).

Montenegro indicated that it intends to bring its duty relief legislation in line with the *acquis* by January 2014, but that it also wanted to maintain the relief grounds that are not covered by the *acquis* until the day of accession to the EU.

Security aspects of the Customs Law

Article 14 of the Customs Law foresees that customs supervision and control is performed on the basis of risk analysis.

The country acknowledges the World Customs Organisation's SAFE Framework of Standards to Secure and Facilitate Global Trade and the Customs Law foresees the concept and use of authorised economic operators. However, the concept is not yet implemented as implementing provisions are under preparation and planned to be operational in 2014. An electronic system of risk analysis was first introduced in 2007 and upgraded in 2013; it enables risk targeting in all customs procedures (including export) and customs information systems through a red (5 %), green (92 %) and yellow (3%) channel. Montenegro claimed that its system is compatible for connection to the EU risk management system.

Intellectual property rights

The legal framework in this field is comprised of the Customs Law and the Regulation on Measures of Customs Authorities with Goods under Suspicion of Infringement of Intellectual Property Rights (OG33/11), supplemented by special laws that regulate the protection of intellectual property rights in Montenegro (see chapter 7 – intellectual property law). Montenegro is a member of the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights. It stated that the above referenced Regulation is aligned with Council Regulation (EC) No 1383/2003 and related EU provisions as well as with the basic principles of the Agreement on trade-related aspects of intellectual property rights of World Trade Organization (TRIPS). .

Customs measures on Intellectual Property Rights can be taken in the framework of all customs procedures and are set in motion ex officio (customs own initiative) or upon application of the right holders. As regards the latter, no fee is paid for the lodging of the application for action; it is valid for one year. The customs authority immediately notifies the right holder and declarant (holder of the goods) following the suspension of a customs procedure and temporary detention of goods. The right holder needs to provide a response and, as applicable, initiate court proceedings within 10 working days (three working days for urgent situations, e.g. perishable goods). The right holder has the possibility to inspect the goods under customs supervision.

In the case of ex officio procedures, Customs can suspend clearance of goods in respect of which it has acquired satisfactory evidence that an intellectual property right is being infringed. The right holder is notified in writing about the temporary detention and the possible infringement of intellectual property rights and given a deadline of three working days to make a request for suspension. In the absence of such a request, the customs procedure resumes and goods may be cleared.

The right holder accepts liability for all expenses relating to storing and keeping the goods and regarding damages that might occur during the procedure in the event that the goods in question are subsequently found not to infringe an intellectual property right. The Montenegrin legislation also foresees a simplified procedure, whereby goods can be destroyed under customs control without court procedure, following agreement between the right holder and the declarant.

The legislation on Intellectual Property Rights exempts inter alia goods of non-commercial nature in the personal baggage of travellers within the limits of the duty-free allowance (a value of no more than EUR 150), where there are no material indications that suggest the goods are part of commercial traffic.

Montenegro stated that the procedure and applicable deadlines are aligned with the EU legislation.

Cultural goods

The legal basis in this field is the Law on Culture (OG 49/08), as well as the Law on Protection of Cultural Property (OG 49/10, see also chapter 26 – education and culture, for reference to international conventions). The Ministry of Culture is the competent authority for

issuing export licences for temporary or permanent export of a cultural good. Montenegro admitted that the legal framework is not yet aligned with the *acquis*, including as regards the differentiation between cultural goods and works of art.

Cash control at the borders

The legal framework for controls of transborder transfers of cash is comprised of the Law on Foreign Current and Capital Operations (OG 40/11) and the Law on Prevention of Money Laundering and Terrorism Financing (OG 14/12).

Montenegro stated that, similar to the EU, it applies a reference value of EUR 10,000 (or equivalent in other currencies) as a threshold for the declaration of cash at the border. Monetary fines may be imposed if cash amounts above this threshold are not declared.

Customs officials are empowered to conduct controls and searches on passengers, baggage, and vehicles in the entire customs territory, file misdemeanour reports, and provide data on transfer of cash to the Administration for the Prevention of Money Laundering and Terrorist Financing and the Central Bank. Specific agreements enable cooperation with EU Member States.

Drug precursors

The Montenegrin legal base in this field is the Law on Control of Production and Trade of Substances that can be used in manufacturing of narcotic drugs and psychotropic substances (OG 83/09). The list of precursors to be monitored is determined by the Decision on Control List for Import and Export of Goods (OG 25/13). Montenegro is a party to the UN Conventions on Narcotic Drugs and on Psychotropic Substances and to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Trade licences are issued by the Ministry of Health or the Agency for Medicines and Medical Devices with a validity of three or five years depending on the substance category. Licences for import, export, or transit have to be used within 30 days and are transmitted electronically to the Customs Administration. In June 2013 the Montenegrin Customs Administration signed a Protocol on Cooperation with the Agency for Medicines and Medical Devices to strengthen enforcement capacity and inter-agency cooperation. Until now, customs did not seize any precursors. Additionally, no production or trade of precursors within Montenegro, or exports of such substances have been reported. In case of import, all precursors went directly to the end user.

Mutual administrative assistance and international customs cooperation

Montenegro has been a member of the World Customs Organisation since 2006 and the World Trade Organisation since 2012. In addition, the country is a signatory of a number of international conventions, such as the UN TIR Convention, the UN Convention on the Harmonisation of Frontier Controls of Goods, as well as the World Customs Organisation Convention on the Simplification and Harmonisation of Customs Procedures (Revised Kyoto Convention, General Annex) and the World Customs Organisation ATA and Istanbul Convention. Montenegro ratified 26 agreements on mutual assistance in customs matters and

cooperates with OLAF and international organisations such as the Southeast European Law Enforcement Centre, CEFTA, and MARINFO. It also signed a number of memoranda of understanding with private companies such as airline and shipping agents, covering among others pre-arrival information.

Montenegro participates in mutual assistance with EU Member States in accordance with Protocol 6 of the Stabilisation and Association Agreement (Protocol on mutual administrative assistance in customs matters) and maintains a number of other agreements on customs cooperation with third countries, including CEFTA. It is also a member of the Southeast Europe Cooperative Initiative and exchanges pre-arrival data with third countries in the region via the system for the electronic exchange of pre-arrival data (SEED). During the period 2010-2012 Montenegro participated in 13 international joint customs operations. Montenegro informed that the next ICT strategy would foresee the development of its customs IT system in accordance with the provisions and tools included in the Council Regulation (EC) No 515/97 on Mutual Assistance.

Finally, the Customs Administration has agreements in force to cooperate with other Montenegrin institutions.

II.b. Administrative and operational capacity

Administrative organisation

The Montenegrin Customs Administration is an administrative organisation within the Ministry of Finance of Montenegro; it is headed by a Director. At the time of the screening, it consisted of 385 work posts with 721 positions. Out of these 721 positions, only 546 are currently filled by the Customs Administration. The Customs Administration is responsible for 24 border crossing points and 12 inland terminals, including two international airports, as well as two major commercial (Bar) and passenger (Kotor) ports. A free zone is established in the port of Bar.

Under the current set-up, clearance of goods can only take place at the inland terminals (with the exception of daily newspapers, bricks, bitumen and other simple goods that do not require any specific licences and permits for import). Goods arriving at the border are sent under customs control to these offices. All of these offices can clear any type of goods and handle all customs procedures. The Customs Administration collects excise duties only at the point of importation. Agreements on integrated border management have been concluded with police and health services and joint actions performed. Fees have to be paid only for exceptional services, e.g. clearance at out of working hours or outside regular working places. Montenegro indicated that all other administrative fees have been abolished. The analysis of samples for classification purposes is outsourced to ISO accredited public laboratories.

In 2013, Montenegro adopted a Customs Business Strategy 2013-2015, which sets out the strategic objectives for this period and includes an Action Plan. A Strategic Group has been established to manage and organise the application of the European Commission's Customs Blueprints for the development of the Montenegrin Customs Administration, in line with EU best practice. In 2012, the Customs Administration adopted a new code of ethics for customs

officials. The free, anonymous, and confidential phone hotline for reporting illegal activities relating to customs and corruption was not often used, but information communicated via this means has nevertheless led to detection of irregularities.

Computerisation

The Montenegrin Customs Administration makes extensive use of information technology to manage customs procedures, including in relation to risk analysis. All of the 36 customs offices are connected to the central IT system. However, the customs and taxation IT systems are not integrated.

In the last three years, approx. 99% of all customs clearances and 55% of national transit procedures (increasing trend) were processed electronically. Pre-arrival information is exchanged in the context of SEED with Albania, Bosnia and Herzegovina, Kosovo and Serbia. Montenegro is not yet part of the New Computerised Transit System, which is a pre-condition for joining the Common Transit Convention.

Montenegro indicated that it is currently in the process of developing a new IT Strategy for Customs covering the period until 2020. This strategy needs approval from the Ministry of Finance and endorsement of the government. Montenegro stated that it considers the mobilisation of the financial resources needed to fulfil EU requirements in this area as challenging.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTATION CAPACITY

Overall, Montenegro's legislation in the field of the customs union is broadly aligned with the *acquis*. However, some discrepancies have been identified where further harmonisation is required. Montenegro needs to focus on further strengthening its administrative capacity and ensuring the uniform and efficient application of the rules. As regards computerisation, Montenegro needs to develop a comprehensive strategy on the establishment of the necessary IT systems to exchange information with EU Member States by the time of accession.

III.a. Customs legislation

General customs rules and procedures

The level of alignment is high. The following main discrepancies with the *acquis* have been identified:

- The format of the Single Administrative Document needs to be fully harmonised with the EU provisions. A number of data and codes used on the Montenegrin form are not yet compliant with the EU model.

- Montenegro does not require a pre-arrival and pre-departure safety summary declaration prior to importation. Montenegro plans to modify the provision in the Customs Law with the next amendment, currently under adoption.
- The Law on Free Zones is not fully aligned with the customs *acquis*. For example, goods like petrol and food used or consumed within the zone are exempted from customs duties, which is not in line with EU practice.
- As regards customs debt and guarantees, only a few issues have been identified as requiring action for full harmonisation. These include questions on time taken for custom duties to be entered into the accounts, cases where such entry is waived, suspension of the time limit for the communication of the customs debt in case of submission of an appeal or payment facilities other than simple postponement of payment.

Customs status of goods and transit

A good level of harmonisation has been reached; the following main differences between the *acquis* and the Montenegrin Customs Law have been identified:

- Montenegro needs to establish the New Computerised Transit System in order to become a member of the Common Transit Convention and, hence, fully comply with legal and administrative EU requirements.
- Montenegrin goods currently retain their 'domestic status' if these are reimported during a period of 3 years.

Customs valuation

The level of alignment of Montenegrin legislation is very high.

Customs classification and tariff

The level of alignment of Montenegrin legislation on classification and tariff is high. However, several differences exist, including:

- The Montenegrin customs legislation does not contain provisions concerning tariff ceilings. Montenegro plans to introduce this with the upcoming amendment to the Customs Law, currently under adoption.
- The Customs Law does not foresee export customs duties (even if such duties are currently not employed by the EU either).

Rules of origin

The rules on the determination of non-preferential origin are similar to the EU rules, but they are not identical. In order to achieve full alignment as regards non-preferential origin, Montenegro needs to address, inter alia, the following issues:

- As to the provisions on the proof to be presented for non-preferential purposes, Montenegro's legislation contains a general requirement for the presentation of a

certificate. Such an obligation only exists in the EU legislation for the implementation of special import arrangements for agricultural or fisheries products (mainly quota based on an agreement with the third country concerned).

- The Montenegro legislation provides for a whole set of detailed provisions on certificates issued for export purposes, including on duplicates, and certificates issued retrospectively. This is not the case in the EU legislation.
- Montenegro needs to fully align its legislation with Annexes 9 to 11 of Commission Regulation (EC) No 2454/93.
- Montenegro's legislation includes a negative list for the acquisition of origin, which is not in line with EU rules.

In order to achieve full alignment as regards preferential origin, Montenegro needs to address, inter alia, the following issues:

- Domestic goods which are exported and are reimported to Montenegro within 3 years retain their domestic origin; in the EU, such goods lose their EU preferential origin upon leaving the customs territory.
- The GSP rules of origin are not yet harmonised with the recent legislative developments on the EU side. The differences include the types of cumulation, the general tolerance rule, the minimal operations list (negative list), and the non-manipulation rule.

Duty relief

While the Montenegrin law is broadly harmonised with the EU rules on duty relief, Montenegro needs to address in particular the following differences:

- Montenegro grants relief under several circumstances that are not foreseen in the *acquis*, or not aligned with it, inter alia: passenger vehicles for disabled persons, goods brought into Montenegro as an investment by a foreign investor in accordance with a special law, goods contained in the personal luggage of travellers, goods used for restoration of monuments, equipment imported by state authorities.

Security aspects of the Customs Code

Montenegro's customs legislation provides that customs supervision and control are conducted selectively on the basis of risk analysis. Import, export and transit shipments are subject to automated risk screening, using risk profiles, at the moment of submission of the relevant declaration.

However, Montenegro's approach to pre-arrival/pre-departure risk analysis is not at this time aligned with the *acquis*.

For the maritime and air sectors, the pre-arrival data received is generally based on (or comprised of) shipping/commercial documents and is not harmonised with the *acquis* in the manner of Annex 30A to the Implementing Provisions of the EU Customs Code. The risk analysis is not automated in either case. For maritime traffic inbound to the port of Bar, there is no legal requirement analogous to the Entry Summary Declaration (Montenegro receives pre-arrival information from freight agents by fax or email on a voluntary memorandum of

understanding basis, on every ship and cargo). For air traffic inbound, there is likewise no Entry Summary Declaration process (pre-arrival data is provided from trade sources by email, under voluntary arrangements, covering an estimated 2/3 of total airline traffic). For the land border, Montenegro does receive pre-arrival data through the reciprocal SEED system, which includes automated risk analysis functions. It covers import, export and transit shipments, including TIR and ATA Carnet movements, and empty freight vehicle movements. However, this data is provided from neighbouring customs administrations based on the declarations they received, rather than from trade declarants based on Annex 30A data.

Montenegro recognises the need for further development of systems and processes to attain the *acquis* in this domain, and identifies in particular the NCTS, as well as the Import and Export Control Systems (ICS and ECS) as “applications to be prepared”.

The concept of the Authorised Economic Operators is introduced in the Customs Law, although the criteria are not entirely aligned with the *acquis*. Moreover, the programme is not yet operational, as Montenegro needs to adopt required implementing provisions.

Trade facilitation should be stimulated for which a complete legal basis has to be created. Montenegro informed that it plans to adopt AEO provisions fully aligned with the *acquis* next year. The use of simplified procedures in the framework of specific authorisations should be encouraged. The administration should further strengthen risk management capacities and improve the level of cooperation with trade and other government authorities.

Intellectual property rights

This area is broadly aligned, but needs to be harmonised with the recent development of the *acquis* in this area:

- The deadline for responses from the right holders under the ex-officio procedure needs to be reviewed and brought in line with the *acquis*.
- The EU adopted a new Regulation on the Customs Enforcement of Intellectual Property Rights, which will be applicable as of 1 January 2014. Montenegro needs to align its legislation accordingly.

Cultural goods

The Montenegrin law in this field is not aligned with the *acquis*. Differences exist as regards the definition of, and conceptual approach to, cultural goods. Montenegro will need to make significant amendments to its legislation in this area, including by moving away from the distinction between cultural goods and works of art.

Cash control at the borders

The Montenegrin legislation is broadly aligned with the *acquis* regarding the area of cash controls at the borders. It uses the same definition and threshold in its legislation as specified in EU Regulation (EC) 1889/2005 on this issue. Montenegro also exchanges cash control

information with the Prevention of Money Laundering Administration and the Central Bank; the template for the latter will need to be aligned with the EU Cash Declaration Form. Penalties applicable in the event of failure to comply with the obligation to declare are introduced. In addition, the legislation is being currently reviewed so as to include provisions for the confiscation of cash.

Drug precursors

A general legal framework for the monitoring of drug precursors, based on Article 12 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, is in place in Montenegro. However, in order to fully align this legislation with the *acquis*, a number of important changes will need to be carried out, in particular in relation to pre-export notifications. Additionally, the necessary framework for non-scheduled substances will need to be provided for. In the EU, competent authorities work very closely together with the chemical industry and also this will need to be developed in Montenegro (e.g. issuing guidelines). The list of substances to be monitored is already aligned with the EU's list.

Mutual administrative assistance and international customs cooperation

Montenegro cooperates with the EU on customs matters in the framework of the Stabilisation and Association Agreement. As regards the agreements that Montenegro has concluded with third countries, Montenegro confirmed its readiness to bring these into compliance with the *acquis*, or denounce them if they are not compatible with the *acquis* (see also Chapter 30 – External Relations).

As regards the exchange of information, Montenegro can now use some IT tools provided by OLAF (Mutual Assistance Broker (MAB) Mail, Virtual Operation Coordination Unit (OCU)). From the first day of accession, Montenegro must use all IT tools provided by OLAF in accordance with Council Regulation (EC) No 515/97 (Customs Information System (CIS) and Customs File Identification Database (FIDE)).

III.b. Administrative and operational capacity

Administrative organisation

From the first day of accession, the Montenegrin Customs Administration will have to manage and control Montenegro's borders, which will then to a large extent represent the external border of the Union, in full compliance with the EU *acquis*. The Montenegrin Customs Administration will have to put in place all necessary facilities to develop straightforward and efficient customs control operations at ports, airports, land borders, and inland offices, capable of facilitating a flow of legitimate passengers and trade, while ensuring collection of national and EU revenue and the protection of national and EU citizens.

The Montenegrin Customs administration should continue to develop its legal and administrative structures in order to further implement and enforce the customs legislation.

Computerisation

The EU requires that customs procedures are computerised and that the IT systems that are used by the customs administrations are connected to the EU systems in this area.

As regards transit procedures, Montenegro will need to ensure that its national transit IT system is compatible and connected to the EU's New Computerised Transit System. This is a pre-condition for membership of the Convention on Common Transit, which Montenegro is recommended to join before EU accession. On tariff and export/import controls, Montenegro will be required to connect to several EU IT systems to guarantee the correct application of the EU's external tariff and of the EU commercial policy and security measures.

At present, Montenegro does not have IT systems that are interconnected with the EU systems. Montenegro is in the process of developing a comprehensive IT interoperability strategy to address this issue. Significant resources are needed to ensure that the exchange of computerised data between the Montenegro Customs Administration and the EU is prepared and operational by the time of accession.

Montenegro may want to consider the integration of the IT Customs and IT Taxation systems in order to further improve performance.