

**Government of Montenegro**

**Ministry of Economy**

## **Questionnaire**

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

– ADDITIONAL QUESTIONS –

### **03 Right of establishment and freedom to provide services**

Minister:

**Branko Vujovic**



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**CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP**

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### **3: Right of establishment and freedom to provide services**

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## ***I&II RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE CROSS BORDER SERVICES***

### **A. General**

**N.B. For general information on the EU Services Directive, you can consult the internet link: [http://ec.europa.eu/internal\\_market/services/services-dir/index\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/index_en.htm) We would also recommend that you apply for a TAIEX seminar on the Services Directive. Furthermore, the Commission services are available for an expert meeting in Brussels to discuss and clarify the questions.**

#### **1. (Ref to Q. 1): Please better analyse and explain the differences under point a) and b)**

Strategic commitment of Montenegro is liberalised and open economic system, that would attract foreign investors to establish companies in Montenegro, to invest in the existing companies and to buy companies. In order to encourage economic activity, through foreign investments, in the process of harmonisation of Montenegrin with the legislation of the WTO and EU, procedures for establishment of companies are significantly simplified and easier access to the market has been allowed.

The Law on Foreign Investments (Official Gazette of Montenegro 52/02 and 36/07), Article 5 states:

„Foreign investor in Montenegro may do the following:

- a) establish a company (alone or with other investors);
- b) invest into the companies; and
- c) buy a company, that is part of the company, in compliance with this Law.

Foreign investor may establish part of the foreign company.“

If a foreign investor wants to establish a company, then he establishes company in Montenegro (alone or with other investors), in the form of the shareholders company or limited liability company, pursuant to the Law on Companies, which corresponds to the definition of „**subsidiary**“ in the Article 52 of the Association and Stabilisation Agreement.

If a foreign investor wants to establish a part of the foreign company, then this corresponds to the definition of a „**branch**“ pursuant to the Article 52 of the Association and Stabilisation Agreement which states that the „branch of certain company which is not having legal capacity and which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third Parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension“.

The Law on Companies (Official Gazette of Montenegro 6/02 and 17/07), which has been submitted with the first round of answers, in the Article 80, regulates the establishment and registration of the part of the international company conducting its business activity in the territory of Montenegro. Namely, the international company conducting its business activity over its part in the territory of Montenegro is obliged to register at the Central Registry of the Commercial Court (CRCC).

The international companies establishing parts of their companies in Montenegro are obliged, within 30 days from the day of establishment of the part of the company, to submit to the Central Registry of the Commercial Court the following data on registration: address of the headquarters of

the part of the international company, **business activity**, name and legal status of the international company and the name of the part of the international company, if different from the name of the international company, certified copy of the articles of incorporation of the international company as well as the translation of the articles of incorporation on the language in official use certified by the court interpreter, copy of the certificate on registration of the international company, that is appropriate document certified in the prescribed manner as the legally valid certificate on registration of the international company in the home country, names and addresses of the persons authorised to represent the company in relation to the third persons, and these: as the body of the company determined by the law or as members of such body and as permanent representatives of the company for conduct of the business activities of the part of the international company with authorisations for the stated persons to represent the company individually or collectively, names and addresses of one or more persons with the place of residence in Montenegro authorised to represent the company in legal proceedings and the last balance sheet, ie. financial documents prescribed by the law of the country in which the company has been registered.

Montenegro signed the **Stabilisation and Association Agreement** with the EU on 15 October 2007. the **Law on Confirmation of the Stabilisation and Association Agreement** has been adopted by the Parliament of Montenegro and it has been published in the Official Gazette 07 /07. Chapter V - "Movement of Workers, Establishment of Companies, Provision of Services, Capital", in the Subchapter II - "Establishment of companies" regulates relationship between Montenegro and the Community (EU today) in the area of the right on establishment of companies (articles 52 to 61). In the Interim Agreement that entered into force on 1 January 2008, Article 61 of the Stabilisation and Association Agreement and part of the Protocol 4 regulating land transportation entered into force. Remaining articles of this Chapter, regulating the right on establishment of the companies, will enter into force upon the application of the overall Stabilisation and Association Agreement. According to the notification of the Council of 30 March 2010, the **Stabilisation and Association Agreement will fully enter into force on 1 May 2010**, because the ratification process has been terminated in all Member States of the EU have been submitted instruments of ratification.

**Article 52 of the Stabilisation and Association Agreement** defines the terms "company", "subsidiary", "branch", "establishment", "operations", "economic activities", "Community national", that is "Montenegro" and the area of "financial services" provided in the Annex VI of the Agreement.

**Article 53 of the Stabilisation and Association Agreement** – Montenegro will facilitate the setting-up of operations on its territory by Community companies and nationals. Montenegro will do this by granting treatment which is no less favourable than the treatment it provides to its own companies. Regarding business operations of already established subsidiaries and branches Montenegro will grant the treatment which is no less favourable than the treatment it provides to its own companies and branches.

Contracting parties (Montenegro and EU) will not adopt any new regulations or measures that would introduce discrimination of companies of the other contracting party, in relation to their own companies, regarding establishment of companies and regarding their business operations upon their establishment.

Subsidiaries and branches of the companies from the EU, upon entry into force of the Stabilisation and Association Agreement, will have the right to use and take under the lease properties in Montenegro, as well as the right to acquire and enjoy ownership rights over properties, in the same manner the Montenegrin companies do.

**Article 54 of the Stabilisation and Association Agreement** - the Parties may regulate the establishment and operation of companies and nationals on their territory, insofar as these regulations do not discriminate against companies and nationals of the other Parties in comparison with its own companies and nationals, except in the area of financial services (Annex VI).

**Article 56 of the Stabilisation and Association Agreement** - The provisions of Articles 53 and 54 do not preclude the application by a Party of particular rules concerning the establishment and operation in its territory of branches of companies of another Party not incorporated in the territory of the first Party, which are justified by legal or technical differences between such branches as compared to branches of companies incorporated in its territory or, as regards financial services, for prudential reasons.

**Article 57 of the Stabilisation and Association Agreement** - In order to make it easier for Community nationals and nationals from Montenegro to take up and pursue regulated professional activities in Montenegro and in the Community respectively, the Stabilisation and Association Council shall examine which steps are necessary for the mutual recognition of qualifications. It may take all necessary measures to that end.

**Article 58 of the Stabilisation and Association Agreement** - A Community company established in the territory of Montenegro or a Montenegrin company established in the Community will be entitled to employ, or have employed by one of its subsidiaries or branches (in accordance with the legislation in force in the host territory of establishment) in the territory of the Republic of Montenegro and the Community respectively, employees who are nationals of the Member States or nationals from Montenegro respectively, provided that such employees are **key personnel** (persons working in a senior position with an organisation, persons that in the organisation have special knowledges important for the operations of the companies and persons transferred within the company).

**Article 59 of the Stabilisation and Association Agreement** - The Community and Montenegro undertake, in accordance with the following provisions, to take the necessary steps to allow progressively the supply of services by Community companies, Montenegrin companies or by Community nationals or nationals of Montenegro which are established in the territory of a Party other than that of the person for whom the services are intended. In step with the liberalisation process, the Parties will permit the temporary movement of natural persons providing the service or who are employed by the service provider as key personnel (Article 58), including natural persons who are representatives of a Community or Montenegrin company or national and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service provider, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves. After four years, the Stabilisation and Association Council will take the measures necessary to progressively implement the above mentioned provisions. Account will be taken of the progress achieved by the Parties in the approximation of their legislations.

**Article 60 of the Stabilisation and Association Agreement** - The Parties will not take any measures or actions which render the conditions for the supply of services by Community and Montenegro nationals or companies which are established in a Party other than that of the person for whom the services are intended significantly more restrictive as compared to the situation existing on the day preceding the day of entry into force of the Stabilisation and Association Agreement. If one Party is of the view that measures introduced by the other Party since the entry into force of the Stabilisation and Association Agreement result in a situation which is significantly more restrictive in respect of supply of services as compared with the situation existing at the date of entry into force of the Stabilisation and Association Agreement, such first Party may request the other Party to enter into consultations.

**2. (Ref to Q. 3): The answer only provides current state of play in the country without comparison between MN laws governing the entry and employment of third country nationals as "key personnel" and the laws in force in the Community.**

The Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08) recognises the term "key personnel" which means foreigners employed for a period longer than one year in international companies outside Montenegro, and in their organisation units registered

at the territory of Montenegro at the position of director, manager and expert (namely, it is a transfer of persons within the company), with no distinction between the national of the third country or the national of the Community.

Text of the Law referring to the "key personnel" has been harmonised with the provisions of the Stabilisation and Association Agreement between European Communities and their Member States and Republic of Montenegro.

Provisions of the Agreement the regulation has been harmonised are the following:

Title V, Movement of Workers, Establishment of Companies, Supply of Services, Movement of Capital, Chapter II, Establishment Article 58;

Law on Employment and Work of Foreigners has been harmonised with the European legislation and validated international conventions;

REGULATION (EEC) No 1408/71 of the Council of 14 June 1971 on the application of the social security schemes to employed persons and their families moving within the Community – Official Journal L149 05/07/1971 p. 0002-0050;

Council Regulation (EEC) No 2434/92 amending Part II of Regulation (EEC) 1612/68 on freedom of movement for workers within the Community;

Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;

Directive 2004/58/ of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 90/364/EEC and 90/365/EEC and 93/96/EEC;

Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community – Official Journal L209, 25/07/1998, pp. 0046-0049;

Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (32000L0043);

Council Directive 2000/78/EC determining general framework of equal treatment in employment and occupation (32000L0078);

Convention No 97 on Migration for Employment;

Convention No 111 on Discrimination in Employment and Occupation and Recommendation No 111 regarding Discrimination in Migration for Employment;

The Law on Foreigners (Official Gazette of Montenegro 82/08), entered into force on 8 January 2009, regulating conditions for entry, movement and residence of foreigners at the territory of Montenegro.

Regarding comparison of the Law on Foreigners with the laws applicable in the Community, we may stress out that the Ministry of Interior Affairs and Public Administration, in the procedure of preparation of the text of the Law, made comparison on harmonisation of it with the adequate regulations of the European Union.

To this regard, we would like to highlight regarding primarily sources of the law of the European Union, the Law on Foreigners has been harmonised with the Treaty of Lisbon, Title V – Area of Freedom, Security and Justice, Chapter 2 – Policies on Border Checks, Asylum and Immigration; Article 79, Paragraph 2.

Regarding the secondary sources of the law of the European Union, the Law has been harmonised with the following secondary sources of law:

- Council Resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes;

- Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience (97/C 382/01);
- Council Recommendation of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community (2005/762/EC);
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals;
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence;
- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals;
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing Schengen Agreement of 14 June 1985;
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents;
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air;
- Council Directive 2002/333/EC of 18 February 2002 on a uniform format for forms for affixing the visa issued by member states to persons holding travel documents not recognized by the Member State drawing up the form.

**3. (Ref to Q. 4): Is it necessary for a branch (not having legal personality) of a company established in the EU to register in Montenegro if it only wants to carry out cross-border services there or does the need for registration only apply to subsidiaries of EU companies wanting to perform permanent or cross-border services in Montenegro?**

Representation (branch) of the company established in the EU is necessary to be registered in Montenegro if it only wants to provide cross-border services as a part of the foreign company (that does not have the capacity of legal person) in compliance with the Article 80 of the Law on Companies. In further detail answered to the question 1.

**4. (Ref to Q. 5): Please provide clear answer to the questions: How is the information on regulated services made available? Is there a point of single contact (PSC), where the information on requirements applicable to companies who wish to provide services are available to companies electronically? From the provided answer, we can conclude that the answer is NO, but it is not specifically said.**

At the moment, there is no contact address, but as we stated in the Report of the Working Group for accession of Montenegro to the World Trade Organisation, within two years from the moment of accession, Montenegro will establish or determine an official gazette or a web page, that would be regularly published or updated and easily available to the Member States of the WTO, as well as their individuals and companies. These will be dedicated to publishing, before their adoption, of regulations and other measures referring to the trade in goods, services or to the TRIPS or affecting them. In addition to this, within two years from the accession to the World Trade Organisation (WTO), Montenegro will establish an information center (enquire point) that would correspond to the request and provide specific information to other members of the WTO as well

as to individuals and companies from these member states. This inquire point will be put under the competence of the Ministry of Economy.

Upon its accession to the WTO, Montenegro will publish the list of all the organisations responsible for authorisations, approvals and regulation of the service activities for each service sector, and in addition to this, it will publish, in the official gazette, all procedures and requirements for issuance of permits it applies.

At the moment, there are contact addresses for certain areas, such as for example conduct of drafting planned documents and construction of structures:

Law on Spatial Development and Construction (Official Gazette of Montenegro 51/08) prescribes rather liberal conditions for conduct of activities regarding preparation of planning documents and construction, ie. issuance of licenses. The manner and procedure for issuance and withdrawal of licenses have been regulated by the secondary legislation, Rulebook on the Manner and Proceedings of Issuing and Withdrawal of License and Manner of Maintenance of the License Registry (Official Gazette of Montenegro 68/08).

These refer to the foreign persons (legal and natural) as well, to which the national treatment is provided by the Law – in terms of prescribing the terms for conduct of activities on preparation of planning documents and construction. Namely, the Law prescribes the same terms for foreigners as for national legal and natural persons (Articles 37, 85 and 108). This Law, as well, provides the possibility for the use of the license issued to the foreigner in its home country, and this license should previously be certifies pursuant to the obligation provided by the Law (Article 136) and based on the documents provided by the Rulebook on the Terms and Manner of Certification and Withdrawal of the Verification of the License of the Foreign Entity (Official Gazette of Montenegro 68/08). Information on procedures, as well as on documents required for issuance, ie. verification of the licenses, in compliance with the above regulations, may be found at the web site of the Ministry of Environmental Protection and Physical Planning. In addition, addresses and contacts of officials working on issuance and verification of licenses where interested parties may get information on all matters of interest may also be found at the web site of the Ministry.

Licenses issued pursuant to the Article 138 of the Law on Spatial Development and Construction may also be found at the web site of the Ministry of Environmental Protection and Physical Planning.

**5. (Ref to Q. 6): Clarifications are needed. The question did not only refer to requirements on registration of companies but to those requirements that grant access to or govern the exercise of a service activity (such as for example, the approval for conduct of business activity, the prior declaration that is laid down by the Law on Trade and any other licensing scheme applicable to a specific service activity). Do cross-border service providers (those companies or individuals not established in Montenegro) need to comply with these requirements too?**

All regulations providing approvals or regulating conduct of service activities are equally applied to national as well as to international providers of services.

## 6. B. Horizontal regimes

7. (Ref to Q. 7): With reference to this question, please clarify the following points:

**a) You refer to an approval for conduct of business activity in 7e). Is this a horizontal authorization scheme? Please explain the conditions necessary to obtain such an authorization under the general and the special procedure (that requiring a special investigation procedure). Does it apply to cross-border service providers (those companies and individuals not established in Montenegro?)**

Yes. Horizontal requirements applied on obtaining the approval for conduct of activities are regulated by the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03).

Pursuant to the Law on General Administrative Procedure decision in the administrative procedure, encompassing the permission for conduct of business activities must be adopted no later than 30 days, if it is not necessary to conduct special examination procedure that is no later than 60 days if it is necessary to conduct examination procedure for determination of evidences. Specific deadlines for issuance of permissions for conduct of business activities have been determined by the special laws and they are, as a rule, within deadline determined by the Law on General Administrative Procedure and relate to all the entities that want to conduct such activity, regardless of the manner of their registration, ie. the treatment is equal for both international and domestic legal persons, therefore it refers to relations and to entities providing cross-border services as well.

**b) With regard to the authorization schemes laid down in special laws and referred to in h), specify whether each of the authorization schemes apply both to businesses wanting to establish in your market and to businesses established in the EU supplying cross-border services. If not, what are the differences between the regime applying to establishment and the regime applying to service provision?**

Every issuance of permissions for conduct of service activities is equally applied to companies that want to register themselves in Montenegro and to the companies registered in the European Union for provision of the cross border service.

**c) Please describe in detail (some of) the procedures for obtaining the authorizations in question laid down by special laws: How long does it take to obtain each of the identified authorizations? Is there a fee for the authorizations? If so, please provide information on its amount. Is the licensing requirement combined with mandatory membership of a chamber of commerce, trade association or other body? If this membership involves a fee, please provide information on its amount**

Requirements which must to be fulfilled in order to acquire a license or approval for conduct of business activity depend on the type of business activity they refer to.

Membership in the Chamber of Commerce of Montenegro does not represent a requirement for entry, establishment or change of data at the Central Registry of the Commercial Court, as well as for, generally speaking, launching of the conduct of the business activity, and the membership itself does not represent a requirement for acquisition of any type of permit.

The following are some of the procedures:

**I. Law on Foreign Trade in Armament, Military Equipment and Dual-Purpose Goods**  
(Official Gazette of Montenegro 80/08)

Procedure for issuance of licenses for armament, military equipment and dual-purpose goods:

- Pursuant to the Article 11 of the Law, person that want to trade this type of goods needs to be previously registered at the competent authority – Ministry of Economy.
- The request for issuance of the license is submitted pursuant to the Article 14 of the Law. With the request for issuance of the license, certificate on payment for the license in compliance with the Tariff number 105 of the Law on Administrative Taxes (Official Gazette of Montenegro 03/09) is submitted. The tax amounts 100 euro;
- When the request is completed and it is determined there are no deficiencies, it is send for approval to the authorities in competence for the interior affairs, foreign affairs and defence, in compliance with the Article 17 of the Law. As necessary, and depending on type and use of the controlled goods, the Ministry will provide opinion of other competent authorities as well;
- The Ministry will decide upon the request on issuance of the license within seven days from the day of obtaining the opinions from the Ministries mentioned in the previous paragraph, or at latest within 90 days from the day of the reception of the duly submitted request for issuance of the license;
- The license is, as a rule, issued for the period up to one year. If the realisation of the foreign trade lasts longer than one year, the Ministry may determine validity of the license by the period provided for the completion of the work, provided in the contract, but not longer than three years.

Foreign trade in controlled goods may be conducted by the person entered into the Register of persons for conduct of foreign trade in controlled goods, therefore there is no obligation of the membership in any other organisation or institution to conduct specific work. Therefore, there is also no obligation for payment of membership.

**II. Pursuant to the Law on Foreign Trade** (Official Gazette of the Republic of Montenegro 28/04, 37/07), foreign trade is free and it may be limited exclusively under the conditions prescribed by this Law.

Pursuant to the Articles 20 and 21 of the Law, the Government prescribes permits for import, export or transit of certain goods, based on the objective and rational criteria, terms and procedures. The permits are issued by different authorities depending on the type of the work as defined by the Article 22 of the Law and Decision on Control List for Import, Export and Transit of Goods (Official Gazette of the Republic of Montenegro 12/10).

Procedure for issuance of licenses of the Ministry of Economy:

**a) REGULAR LICENSES**

- For the company conducting foreign trade, it is sufficient to be registered at the Commercial Court of Montenegro and as such it may submit the request for issuance of the license, for the goods mentioned in the previous Decision;
- With the request, submitted in compliance with the Article 5 of the Decree on Implementation of the Law on Foreign Trade (Official Gazette of the Republic of Montenegro 52/04, 44/07), it is necessary to submit an invoice and payment slip to the amount of 5 euro, in compliance with the Tariff Number 1 of the Law on Administrative Taxes;
- Term for taking decision upon the request for issuance of the license for import, transit or export may not be longer than 15 days from the day the request is submitted;
- The license is valid for a period it is issued for, and in any case no longer than one year. The number of shipments during this period is not limited.

**b) AUTOMATIC LICENSE**

- An automatic license is issued to every applicant that with the request, submitted at any time before the good enters adequate customs procedure, submits the evidence on

- payment of the license fee;
- Automatic license is issued immediately upon the reception of the request, if possible, and in any case within 10 working days upon the reception of the request;
- Automatic license is valid for a period of one year, and its validity, at the request of the person it is issued to, may be automatically extended for the next one-year period. The validity may be extended for an unlimited number of times;
- The amount of the fee for issuance of such license is also 5 euro.

The amount of the taxes payed reflects the actual costs of services provided.

The obligation of the Ministry of Health, Labour and Social Security for adoption of the decision on fulfillment of requirements regarding space, personnel and equipment for conduct of activities of health facilities has been prescribed by the provision of the paragraph 2 Article 54 of the Law on Health Care (Official Gazette of the Republic of Montenegro 39/04).

In the procedure for obtaining licenses for establishment and work of all private health facilities prescribed by the Law on Health Care, the following regulations are applied in addition to the provisions of the Law on General Administrative Procedures (Official Gazette of the Republic of Montenegro 60/03):

- Rulebook on detailed conditions regarding standards, norms and manner of realizing primary health care over selected team of doctors or selected doctor (Official Gazette of Montenegro 10/08);
- Rulebook on requirements the pharmacies need to fulfill regarding space, necessary personnel and medical technical equipment (Official Gazette of the Republic of Montenegro 40/07);
- Rulebook on detailed conditions regarding provision of health care services in hospitals and natural treatment centers (Official Gazette of Montenegro 74/08);
- Decision on requirements health facilities need to fulfill regarding space, personnel and equipment and on manner of implementation of special social interest (Official Gazette of the Republic of Montenegro 2/91 and 21/91 and Official Gazette of the Republic of Montenegro 44/93).

Prescribed period of 30 days from the day of submitting of the request is the period necessary for acquiring each individual license.

Therefore, for the applicant to obtain permission for establishment and work, is decision on fulfillment of requirements for conduct of business activities of certain type of health facility, it needs to provide fulfillment of requirements regarding space, personnel and equipment prescribed by the stated regulations.

Documents the applicant (ie. establisher) is obliged to submit in the procedure for obtaining permission for establishment and work, ie. decision on fulfillment of requirements for conduct of certain business activity of the prescribed health facility are the following:

- Request for determination of fulfillment of the requirements for issuance of the decision on conduct of business activities;
- Fee for issuance of the permission for establishment and work of all health facilities prescribed by the law, except pharmacies, amounts 767 euro, and the same fee for the pharmacies amounts 100 euro.
- In Article 20 of the Amendments to the Law on Health Care, adopted by the Parliament of Montenegro, at its session held on 3 April 2010, it is prescribed that the establisher of the health facility bears the actual costs raised in the procedure of establishment.
- Study on fulfillment of minimum technical and construction requirements in the facility for provision of certain health care activity;
- Certified design of the space with the legend of rooms in the certain facility;
- Lease agreement (in the case that the applicant is not the owner of certain premises);
- Property deed;
- Decision on sanitary approval for use of the certain facility;

- Appropriate documents regarding personnel, depending on actual type of health care activity.

For personnel with the university degree, the following documents are required:

- certified copy of faculty diploma;
- certified copy of degree of specialization (if required by certain activity);
- certified copy of certificate on passing the professional exam;
- certified copy of the License issued by the Medical Association of Montenegro, that is Pharmaceutical Commerce of Montenegro.

For personnel with the secondary school education, the following documents are required:

- certified copy of secondary school diploma, and
- certified copy of certificate on passing the professional exam.

Licenses for activities referring to preparation of planned documents and construction are issued by the Ministry of Environmental Protection and Physical Planning, upon procedures and terms providing effectiveness and efficiency. The license is an administrative document (Article 134 of the Law on Spatial Development and Construction) issued upon the request submitted by interested natural or legal person – activities referring to preparation of planned documents, preparation of technical documents, construction may not be conducted without the license.

When prescribed documents are submitted, the license is issued within periods shorter than prescribed by the Law on General Administrative Procedures (30 days). However, when interested party (legal or natural person) does not submit all the prescribed documents, the period provided for issuance or certification of the licenses will depend upon the update of the documents.

For issuance and certification of the licenses, for domestic as well as for foreign natural and legal person, no monetary compensation is paid to the Ministry of Environmental Protection and Physical Planning.

Legal requirement for issuance of the license to a natural person is membership in the Engineering Association, and membership fee (for the Engineering Association) amount 150 euro for domestic and 2,500 euro for foreign persons.

Pursuant to the Article 6 of the Rulebook on conditions and requirements for certification and cancellation of the certification of the license, the following is submitted in addition to the request:

- 1) evidence on registration in the home country;
- 2) certified copy of the license;
- 3) license of natural persons based on which the license has been issued (certified).

Pursuant to the Article 5 of the Rulebook on conditions and requirements for certification and cancellation of the certification of the license, for certification of the license, foreign natural person submits the following in addition to the request:

- 1) certified copy of the passport;
- 2) certified copy of the license;
- 3) certified copy of diploma on professional qualification.

For issuance of licenses for preparation of planned documents and construction, the following is required:

**I.**

Company, entered into the Central Registry of the Commercial Court and registered for conduct of business activities regarding development of planned documents and fulfilling requirements prescribed by the Law on Spatial Development and Construction (Official Gazette of Montenegro 51/08) – to employ a responsible engineer (Article 35 of the Law) may conduct development of planned documents.

For legal person – company to obtain the license, it is necessary for it to submit the request as well as the documents provided in the Article 6 of the Rulebook on the manner and procedure for

issuing and withdrawal of licenses and manner of keeping the license register. These documents encompass the following:

- 1) excerpt from the Central Registry of the Commercial Court;
- 2) evidence on employment of the responsible engineer; and
- 3) certified copy of diploma.

Natural persons have the same status regarding responsible engineer and engineer, and the Rulebook on the manner and procedure for issuing and withdrawal of licenses and manner of keeping the license register (Article 5) provides the following documents to be submitted in addition to the request for issuance of the license:

- 1) certified copy of identification card or passport for foreign person;
- 2) certified copy of diploma on professional education;
- 3) evidence on, at least three years of, working experience in preparation, development and implementation of at least two planned documents;
- 4) certified copy of passing the professional exam; and
- 5) evidence on the membership in the Engineering Association in the area of spatial development and construction.

## II.

Requirements for issuance of licenses for development of technical documents and for construction, or execution of certain work on the buildings (architectural or engineering services) have been determined by the Articles 84 and 107 of the Law, as well as by the Articles 7 and 9 of the Rulebook on the manner and procedure for issuing and withdrawal of licenses and manner of keeping the license register.

License for the leading designer, that is responsible designer for development of certain parts of technical documents, is issued to the natural person based on the following:

- certified copy of identification card or passport for foreign person;
- certified copy of diploma on professional education;
- evidence on, at least three years of, working experience in preparation, auditing, supervision, control or assessment of technical documents;
- certified copy of passing the professional exam;
- evidence on the membership in the Association.

License for the chief engineer, that is responsible engineer, has been issued to the natural person based on the following:

- certified copy of identification card or passport for foreign person;
- certified copy of diploma on professional education;
- evidence on, at least three years of, working experience in works regarding designing, construction, supervision or technical assessment of buildings;
- certified copy of passing the professional exam and evidence on the membership in the Association.

Requirements for issuance of the licenses for development of technical documents and for construction, that is for execution of certain works on building (architectural and engineering services) for companies (domestic or foreign) have been determined by the Articles 83 and 106 of the Law, as well as by the Articles 8 and 10 of the Rulebook on the manner and procedure for issuing and withdrawal of licenses and manner of keeping the license register.

The license for conduct of activities regarding development of technical documents, that is certain parts of technical documents has been issued to the company based on the following:

- excerpt from the Central Registry of the Commercial Court;
- evidence on employment of the responsible designer;
- certified copy of the license regarding the responsible designer.

License for conduct of activities regarding construction of building, that is for execution of certain works on the construction of buildings has been issued to the company based on the following:

- excerpt from the Central Registry of the Commercial Court;
- evidence on employment of the responsible engineer;
- certified copy of the license regarding the responsible engineer.

**8. (Ref to Q. 7): with reference to requirements applicable to service providers established in Montenegro, please clarify the following points:**

**9. Is the exercise or access to a service activity subject to any of the following requirements (be it through an authorization procedure (see below) or separately)? If yes, to which services do each of them apply? Are these requirements applicable to those service providers not established in Montenegro?**

**i. requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular( a) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies; (b) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident within the territory. An example of this requirement was the one mentioned in the reply 2 on the Law on Banks.**

Legislation in Montenegro does not contain any discriminatory provisions in terms of requirements regarding the language, nationality or seat that may affect the right of industrial entities from the European Union to establish a company in Montenegro.

**The following are the exceptions from this general rule:**

- Pursuant to the Law on Advocacy (Official Gazette of the Republic of Montenegro), advocacy may be practice by the attorneys-at-law registered in the directory of the Bar Association. The right to be registered in the directory of the attorneys-at-law has the person that, inter alia, fulfills the requirements to be the citizen of Montenegro. Foreign attorneys-at-law may freely provide consulting services regarding international law and law of the third countries, but the right on representation before administrative and court tribunals is subjected to the principle of reciprocity.
- Pursuant to the Law on Notaries (Official Gazette of the Republic of Montenegro 68/05), only person that is a citizen of Montenegro may be appointed as notary.
- Law on Foreign Investments (Official Gazette of the Republic of Montenegro 36/07) treats equally domestic and foreign investors, with the exception regarding production and sale in armament and military equipment, where foreign investor is not allowed to own more than 49% of total shares.
- Pursuant to the Law on Banks (Official Gazette of Montenegro 17/08), at least one member of the Board of Directors of the bank, as well as at least two executive directors of the bank must know the language in official use in Montenegro and have the place of residence in Montenegro during their duty.
- In compliance with the Montenegrin List of specific obligations, private primary schools may be established solely by domestic natural or legal persons.
- Executive Director of the entities at the insurance market needs to be permanently

employed at the relevant company, and in the case this person is foreigner he/she needs to have working permit and certificate on registration in Montenegro.

**ii. a prohibition on having an establishment in a state different than Montenegro or on being entered in the registers or enrolled with professional bodies or associations of other States;**

There is no prohibition on ownership of the company in the country which is not Montenegro nor entry into the register or membership in the professional bodies or association of other countries.

**iii. restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in Montenegro, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;**

Regarding branches of the foreign legal persons conducting business activities related to securities in Montenegro, the Law on Securities prescribes special conditions. The Law on Securities prescribes that foreign legal persons, authorised by the **foreign** competent authorities to conduct activities related to the securities may, in Montenegro, in compliance with the regulations, establish a **branch** for conduct of the activities regulated by this Law and custody activities, pursuant to the permission issued by the Securities Commission of Montenegro. Provisions of this Law related to the authorised participants as well as the provisions of the Law regulating companies regarding parts of the foreign companies are applicable to the branches.

The Law on Investment Funds prescribes that the seat of the company for management of the investment fund established and conducting business activities in compliance with this Law must be at the territory of **Montenegro**.

**iv. the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority;**

There is no application of the economic analysis as a prerequisite for issuance of the approval.

**v. the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority; this prohibition shall not concern the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large;**

There is no direct or indirect participation of the competitive operators, including consulting bodies, in the issuance of approvals or adoption of other decisions of the competent authorities.

**vi. an obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in Montenegro**

Brokerage insurance companies are obliged to obtain insurance policy from the responsibilities arising from their business activities in the amount of at least 100,000 euro concluded with the insurance company with its seat in Montenegro and unconditional bank guarantee for this amount.

Property and persons in Montenegro may be insured solely at the insurance companies established pursuant to the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06, 19/07 and Official Gazette of Montenegro 53/09).

As an exception of the above mentioned, the following may be insured at the foreign insurance company:

- 1) aviation and maritime transport above obligatory traffic insurances;
- 2) foreign persons living and staying in Montenegro as well as the property of such persons, except compulsory insurance.

**vii. an obligation to have been pre-registered, for a given period, in the registers held in their territory or to have previously exercised the activity for a given period in Montenegro.**

Pursuant to the Law on Road Transportation (Official Gazette of the Republic of Montenegro 45/05), the license for transportation in international road traffic is issued at the request of the **domestic** carrier that conducted appropriate type of transportation in Montenegro for at least two years, unless the transportation was conducted in line urban and suburban taxi transportation.

In the sector of financial services and its part referring to the conduct of activities related to the securities, there is no prescribed obligation for previous registration in the home country for determined time period before submitting the request for issuance of the license for conduct this activity. The only requirement is for the company with its seat abroad to be registered abroad as a legal person if it appears as the establisher of an entity conducting business activities related to the securities in Montenegro. If the applicant for conduct of business activities related to the securities over its branch submits its request, it must be registered and own a license of the foreign authority for conduct of such activities. There is no prescribed time period in which the company must be registered before submission of the request for issuance of the license for conduct of business activities with the securities.

**10. Please identify whether your legal system makes access to or exercise of a service activity subject to compliance with any of the following non-discriminatory requirements and explain the justification behind each of the requirements. To which services do they apply? Why are they necessary? Do they also apply to cross-border service providers?**

**i. quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers;**

There are no quantitative or territorial restrictions.

There are no restrictions determined according to the population or minimal geographic distance between the entities providing the services.

**ii. an obligation on a provider to take a specific legal form;**

Pursuant to the **Law on Insurance** (Official Gazette of Montenegro 78/06, 19/07, 53/09), foreign insurance companies need to establish an insurance company that needs to be in the form of the shareholders company, and insurance agencies, brokerage insurance companies and agencies providing other insurance services are established either as shareholders companies or as limited liability companies.

Pursuant to the **Law on Banks** (Official Gazette of Montenegro 17/08), foreign banks may establish subsidiaries, branches or representations at the territory of Montenegro. Representations of the foreign companies may provide only preparatory activities such as market research and they may not provide banking services. Brokerage and dealer companies, credit guarantee funds, investment funds and stock markets must be registered as shareholders companies. Micro-financial institutions and legal persons providing consulting services in the area of investment must be registered in the form of limiter liability company or as shareholders company.

Pursuant to the **Law on Investment Funds** (Official Gazette of the Republic of Montenegro 49/04), companies for management of the investment funds need to be registered as shareholders companies or limited liability companies.

Pursuant to the **Law on Voluntary Pension Funds** (Official Gazette of the Republic of Montenegro 78/06), companies for management of financial funds, conducting activities of management and organisation of the pension funds must be established as shareholders companies.

Entities providing services regarding conduct of activities with **securities**, regardless of the status of the establisher (that may be either natural or legal persons) need to be registered as the shareholders company. Foreign legal persons, authorised by the foreign authorities for conduct of business activities with securities, may in Montenegro, in compliance with the regulations, establish branch for conduct of activities and custody activities, pursuant to the license issued by the Securities Commission. Therefore, the requirement prescribed by the Law on Securities (Official Gazette of the Republic of Montenegro 59/00, 10/01, 43/05, 28/06, Official Gazette of Montenegro 53/0)) for foreign company having license for conduct of business activities with securities is to be organised as legal person.

**iii. requirements which relate to the shareholding of a company;**

The **Law on Foreign Investments** (Official Gazette of the Republic of Montenegro 36/07) treats equally domestic and foreign investors, with exception to the investments in the area of production and sale of armament and military equipment, where foreign investor is not allowed to own more than 49% of total shares.

Pursuant to the Article 23 of the **Law on Insurance**, one person, directly or indirectly, may not gain the qualified participation in the insurance company, without previously obtained approval issued by the regulatory authority.

The person having the qualified participation in the insurance company may not, without approval issued by the regulatory authority, increase its participation in the insurance company, if this increase reaches or exceeds its overall share in the insurance company by 20%, 33% or 50% of the capital or voting shares.

Person referred to in the paragraph 1 of this article (hereinafter: qualified owner), intending to sell or in any other way alienate its shares under the level it has approval for is obliged to previously inform the regulatory authority on its intentions.

**iv. requirements, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;**

There are no requirements limiting the access to conduct certain service to certain entities conducting such service, due to the specific nature of the service.

**v. a ban on having more than one establishment in the territory of Montenegro;**

There is no prohibition for establishment of more than one company at the territory of Montenegro.

**vi. requirements fixing a minimum number of employees which are mentioned in your reply to 7c);**

There are no requirements for determination of the minimal number of employees.

**vii. fixed minimum and/or maximum tariffs with which the provider must comply;**

Terms of insurance and premium tariffs, that is their amendments are determined by the insurance companies in compliance with the basis for calculation of premiums and structure of the premium (premium system) for obligatory insurance in traffic determined by the National Bureau of Insurers of Montenegro, legal person established with the aim of accomplishing common interests of the insurance companies conducting activities regarding obligatory insurances in traffic in Montenegro.

Insurance Supervision Agency provides approval to the terms of insurance and premium tariffs for obligatory insurances in traffic, without which specified terms and premium tariffs may not be implemented.

Regulatory authority publishes in the "Official Gazette of Montenegro" the lowest insurance premium tariffs of insurance.

**viii. an obligation on the provider to supply other specific services jointly with his service.**

There is no obligation of the entity in provision of services to provide other specific services with its service.

**11. (Ref to Q. 7): with reference to requirements applicable to cross-border service providers (companies and individuals providing cross-border services in Montenegro from an establishment in another Member State), please clarify the following points:**

**12. Does your legislation distinguish between the requirements applicable to EU companies wishing to provide services from an establishment in your country and those who wish to provide cross-border services there from an establishment in an EU Member State? If it does, what is the distinction? Please provide examples by sectors (for example by referring to authorization in special sectors)**

Our legislation does not distinguish between the requirements applicable to EU companies wishing to provide services over the company registered in Montenegro and those who wish to provide cross-border services from the companies registered in an EU Member State except companies for management of investment funds and companies for management of voluntary pension funds, the seat of such company established and working in compliance with provisions of the Law on Investment Funds (Official Gazette of the Republic of Montenegro 49/04) and the Law on Voluntary Pension Funds (Official Gazette of the Republic of Montenegro 78/06, 14/07) is in Montenegro.

**13. In general, are service providers (companies or individuals) not established in Montenegro subject to any of the following requirements? If yes, which are the reasons that justify the application of these requirements?**

**i. an obligation on the provider to have an establishment in Montenegro;**

Companies for management of investment funds, as well as companies for management of financial funds, conducting activities regarding management and organisation of pension funds, must have their seats in Montenegro.

Business activities regarding securities are conducted by the authorised participants at the securities market, whose only business activity is conduct of these activities in compliance with their work permit.

Authorised participants are established as shareholders companies in compliance with the provisions of the laws regulating companies and the Law on Securities. Activities of the investment counselor may be conducted by legal person established also as limited liability company or natural person if they fulfill detailed requirements prescribed by the Securities Commission.

Natural persons who hold the title of broker, dealer or investment manager recognized by the Securities Commission may conduct activities of the investment counselor as natural persons, and, on the other hand, for conduct of activities of broker and dealer they need to have a contract with some shareholders company with the permit for conduct of business activities regarding securities.

**ii. an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;**

In legal services, the attorney-at-law registered in the directory of the national Bar Association has the right to proceed before judicial and other state authorities in Montenegro, under the condition of reciprocity.

Natural persons may conduct business activities regarding securities if they passed the exams for obtaining the title of broker, dealer or investment manager of the investment or pension fund before the Securities Commission of Montenegro or, if they passed this exam in some other country, upon recognition of foreign diploma on obtaining the title, that is upon obtaining the approval for conduct of activities regarding securities. If a person did not pass these exams and it is not registered in home country, it may, without any limitation or necessary requirements, pass this exams for obtaining the title in Montenegro.

**iii. a ban on the provider setting up a certain form or type of infrastructure in their territory, including an office or chambers, which the provider needs in order to supply the services in question;**

There is no prohibition for the entity conducting provision of services to set certain form or type of infrastructure in its area, including office or business premises, that is necessary for such entity for provision of certain service, but it needs to obtain necessary approvals as all the other domestic legal persons, that is all the regulations providing approvals or regulating provision of services are equally applied to both domestic and foreign providers of services.

**iv. the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;**

There is no application of special agreements between the entities providing services and recipients of services that would prevent or restrain provision of services by independent entrepreneurs.

**v. an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;**

There is no obligation for the entity providing services to have an identification document issued by the competent authorities specially for provision of services.

**vi. requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;**

There is no requirement, except those necessary for health care protection and safety at work, influencing special equipment and materials that represents integral part of the provided service.

**vii. restrictions on the freedom to provide the services imposed on Montenegrin service recipients.**

There are no restrictions regarding the freedom to provide services imposed to the users of services in Montenegro.

**14. (Ref to Q. 7): with reference to the Point of Single Contact for service providers, please clarify the following points:**

**15. Is there a point of single contact (PSC), where the information on requirements applicable to companies who wish to provide services is available electronically? [The question does not only refer to the creation and registration of a company as such or to the registration at the CRCC but to all the requirements that are necessary, once the company has been created and registered, to have access to and to exercise a specific service provision – for example, the obtention of an authorization, the submission of a prior declaration, etc...]**

At the moment, there is no contact address where the company that wants may get information by electronic means on requirements necessary to fulfill for provision of services.

However, they may be informed for certain areas, such as information on procedures, as well as on documents required for issuance, or verification of the licenses, in compliance with the stated regulations, at the web site of the Ministry for Spatial Development and Environmental Protection. In addition, the web site contains addresses and contacts of officials dealing with the issuance and verification of licenses, who may inform the interested persons on all the matters of interest for them.

The web site of the Ministry for Spatial Development and Environmental Protections contains issued licenses, pursuant to the Article 138 of the Law on Spatial Development and Construction.

**16. Are service providers able to complete by electronic means and at the distance any procedures that may be deemed necessary for the provision of a service?**

At the moment, entities providing services may not by electronic means from afar terminate the procedure necessary for provision of services. However, software support has been prepared and its implementation will start upon adoption of the amendments of the Law on Electronic Signature. The Law on Electronic Signature regulates the use of the electronic signature in legal matters, administrative, judicial and other procedures, as well as the rights, obligations and responsibilities of legal and natural persons regarding electronic certificates. Adoption of the amendments of the Law is expected in the second half of 2010.