

Government of Montenegro

Ministry of Interior and Public Administration

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 –

24 Justice, freedom and security

Minister:

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

24: Justice, freedom and security**Migration****1. Ref to Q.7: Please specify "other justified reasons" in the data provided, regarding the review of temporary residence granted to foreigners.**

The statistics indicate the number of approved temporary residence based on "other justified reasons", which are incorporated within the answer given to the question no. 7 (Annex no. 1) referring to temporary residence granted pursuant to the Law on Movement and Residence of Foreigners (Official Gazette of the Socialist Federal Republic of Yugoslavia 56/80, 53/85, 30/89, 26/90 i 53/91 and Official Gazette of the Federal Republic of Yugoslavia 24/94 and 28/96). The mentioned Law was passed and several times amended during the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia, and it is not valid since the entry into force of the Law on Foreigners (Official Gazette of Montenegro 82/08).

The Law on Foreigners entered into force on 8 January 2009. Pursuant to Article 105 paragraph 2 of the Law, an approval of temporary residence granted before entry into force of this Law is valid till the expiry of the temporary residence validity term.

Pursuant to Article 33 paragraph 2 of the Law on Movement and Residence of Foreigners, approval of temporary residence was granted for one year term, which means that all temporary residence approvals granted pursuant this Law expired on 8 January 2010, and that they had to be extended, i.e. granted pursuant to the Law on Foreigners.

Other justified reasons within the meaning of Article 35 paragraph 1 item 10 of the Law on Foreigners, mostly refer to the residence of: foreigners dealing with businesses in Montenegro based on international treaties concluded between Montenegro and a country, international organisation or European Union on expert – technical assistance, or based on ratified international treaties; founders, procurators, management bodies members and a legal person auditors, engaged in a business activity within the legal person; academic staff invited as a professor or lecturer and a scientist participating in a scientific-research project significant for Montenegro; international missions members engaged in research activities in Montenegro, approved by the Government of Montenegro; correspondents accredited to Montenegro or foreign media reporters; a ship crew members or an aircraft crew members, or a road and railway traffic business organisation staff, with a registered office abroad; religious staff while conducting religious service; a foreigner within the capacity of registered humanitarian organisations; civil and military staff of other countries governments arriving in Montenegro based on cooperation agreement with the Government of Montenegro.

Due to other justified reasons, foreigner shall be granted temporary residence if he/she: has means of subsistence; has accommodation provided; has health insurance; fulfils the conditions for entry and movement within the territory of Montenegro; has submitted the evidence on justification of the temporary residence application. The approval of temporary residence in Montenegro is issued by the Ministry of Interior and Public Administration, subjected to prior consent given by the Police Directorate. A foreigner submits the temporary residence application for the first time to the diplomatic or consular mission of Montenegro, whereas those not required visa for entry in Montenegro submit such an application to the organisational unit of the Ministry of Interior and Public Administration in the place of residence.

In a case the temporary residence application is denied, foreigner may appeal the decision to the Ministry within eight days from the date of receiving the decision.

Temporary residence can be granted for one year time period. A temporary residence approval is affixed in a foreigner valid travel document.

A foreigner submits an application for extension of the temporary residence to the Ministry of Interior and Public Administration in the place of his/her residence, not later than 30 days prior to

expiry of the approved temporary residence. The temporary residence of a foreigner can be cancelled, if it is subsequently determined that he/she: does not fulfil the conditions for stay and movement on the territory of Montenegro; is employed or works contrary to the law provisions regulating employment and work of foreigners; does not use the residence for intended purpose. When deciding upon cancellation of temporary residence, facts particularly taken into consideration are: duration of residence; personal, family, economic and other circumstances; the deadline given to a foreigner to leave Montenegro, not exceeding 30 days; duration of the prohibition from entry in Montenegro. The decision on cancellation of temporary residence is issued by the Police Directorate. An appeal against the decision on cancellation of temporary residence may be lodged to the Ministry of Interior and Public Administration within eight days from the date of receiving the decision.

A foreigner temporary residence is terminated in a case of: cancellation of his/her temporary residence; imposing protective measure of removal or security measure of expulsion; expiry of temporary residence; the reasons for temporary residence approval have ceased to exist; residing out of Montenegro more than 90 days during the approved temporary residence. Appeal against the decision on termination of temporary residence may be lodged to the Ministry of Interior and Public Administration, which decides upon the appeal.

Asylum

2. Ref. to Q. 15: In the case of accelerated procedures, what are the first and second instance bodies of appeal? Are there any differences between those in normal procedures?

An asylum application is submitted to the Asylum Office within the Ministry of Interior and Public Administration. A decision upon asylum application, both in regular and accelerated procedure is issued by the Ministry – the Asylum Office. A decision upon an appeal in regard to the decision issued by the Ministry, both in regular and accelerated procedure is issued by the second instance body, the State Asylum Appeals Commission.

Accelerated procedure is applied when asylum application is manifestly unfounded. In such a case, the Law on Asylum provides for application examination, running of a procedure by the body competent for establishing refugee status, conducting interview with an official running the procedure, and it provides for the right to appeal, meaning it does not simplify the procedure in regard to the regular one, however, it establishes the obligation to accelerate the procedure by shortening the time period within which the Ministry – Asylum Office is obliged to issue a decision (from 90 to 15 days), the time period within which the second instance body - the State Asylum Appeals Commission is obliged to issue a decision upon appeal (from 30 to 15 days), as well as the time period within which an appeal may be lodged (from 15 to 8 days).

An administrative dispute may not be lodged against a decision of the second instance body which is final.

Visa policy

3. Ref. to Q. 29: What checks are being performed when visas are issued at the borders?

The Law on Foreigners (Official Gazette of Montenegro 82/08), provides for, exceptionally, for humanitarian, personal and professional reasons, issuing of visas at the borders by the Border Police Department – Police Directorate.

The following types of visa can be issued at the borders: short stay visa (C visa), single entry and residence up to 15 days, transit visa (B visa) for single transit up to five days, and transit visa (B visa), to a sailor or a group of sailors.

A foreigner who is issued visa at the borders has to fulfil general conditions for visa issuing, and along with the application form, he/she has to submit necessary documents, in a way laid down in the Rulebook on visas and visa forms (Official Gazette of Montenegro 64/09).

An officer in charge of border check immediately informs the Police Directorate – Border Police Department on the submitted application for issuing visa at the borders, as well as on submitted documents.

After the check of the facts stated in the application, as well as of the documents justifying the application for issuing visa at the borders (serious illness or sudden death of a family member; participation of foreign delegates in events and meetings in Montenegro; change of air and other transportation; necessity for urgent medical treatment; need for humanitarian care due to a natural and other disasters; donation of human organs, etc.). The Police Directorate – Border Police Department gives approval to the officer to issue visa at a border crossing point.

If a foreigner applies for transit visa, conditions for entry into third country are checked (such as whether he/she has visa of a country he/she is travelling to, if needed).

All persons applying for visa are checked against databases and registers of the Police and Interpol, after which their visa can be issued at the borders.

External borders and Schengen

4. Ref. to Qs. 38-62 :

- Please provide further information with regard to the necessary measures adopted with a view to implement the legislation mentioned in the replies.

Montenegro adopted a set of laws and secondary legislation fully harmonised with the European Union legislation, and they are the following:

- Law on Border Control (Official Gazette of Montenegro 72/09);
- Law on Confirmation of the Agreement between the Government of Montenegro and the Government of the Republic of Serbia on Border Control in Railway Traffic;
- Decree on standards and conditions to be fulfilled by the border crossing points (Official Gazette of Montenegro 12/10);
- Rulebook on general hygienic requirements for food of animal and plant origin (Official Gazette of Montenegro 14/09);
- Rulebook on allowed amount of metal, micro-tocsin and other substances in food (Official Gazette of Montenegro 81/09);
- List of active substances allowed to be used in plant protection of products (Official Gazette of Montenegro 70/09);
- Programme on monitoring of pesticide residue in plant origin food for 2009 (Official Gazette of Montenegro 57/09);

Also, the following international agreements were signed:

- Agreement on state border between Montenegro and Bosnia and Herzegovina;
- Agreement between Montenegro and the Council of Ministers of Bosnia and Herzegovina on border crossing points in international traffic;

- Agreement between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina on border crossing points in border traffic;

Agreement between the Government of Montenegro and the Council of Ministers of the Republic of Albania on reconstruction, repair and maintenance of pyramids, inter-pyramids and other border marks along the state border of Montenegro and Albania was concluded.

For the future, we are to prepare and conclude agreements on state border between Montenegro and the neighbouring countries: the Republic of Serbia, Republic of Croatia, Republic of Kosovo and signing agreement with Bosnia and Herzegovina. Deadlines for conclusion of international agreements on state border with the stated neighbouring countries depend on dynamics of agreements preparation.

Deadline for signing agreement on border between Montenegro and Bosnia and Herzegovina is September 2010, as the annexes to the agreement are to be prepared, as well as topographic map with marked border line and textual description of the border line between the two states.

In cooperation with the Republic of Croatia, joint expert commission is preparing documents for demarcation between the two states in the area of Prevlaka, which will be decided by the International Court of Justice in the Hague.

The Republic of Serbia initiated negotiations on demarcation with Montenegro.

Negotiations on preparation of the agreement on state border with the Republic of Kosovo are not held so far.

- With a view to the references to the Law on the State Border Surveillance and the new Law on Border Control, please specify if the new law modified the first one and if yes, to what extent.

New Law on Border Control introduced new standards which provide for prompt flow of people and goods at the border of Montenegro, by respecting requirements for entry and exit of Montenegro.

Innovations mostly refer to the conducting of border check, precise identification of persons which are subjected to minimal and those subjected to detailed border check while entering/exiting Montenegro, and persons who are not subjected to border check, special rules are established in regard to specific categories of persons, as well as for crossing of the state border for various types of traffic, and duties of those driving individual transportation means, etc.

New Law provides for border control involving border surveillance, border check and state border security threat assessment.

Minimal border check involves identity check based on presented travel document. It is conducted for Montenegrin nationals, foreigners allowed to enter Montenegro pursuant to international treaty and legislation on visa regime based on ID card and foreigners who are European Union member states nationals.

Detailed border check is conducted for all other persons not being covered by minimal border check.

When conducting detailed border check upon entry in Montenegro, or upon exit of Montenegro, it is precisely laid down that those checks involve direct check of data and alarms on persons and items, and actions to be undertaken in case of the alarms. It is laid down that a police officer conducting detailed check has to inform persons subjected to this kind of a check, about the purpose and procedure of the check.

Moreover, special rules are set for checks of persons under specific categories, which is innovation in regard to the current law.

It is laid down that the following persons are not subjected to the border check: representatives of states and member of delegations about whose entry and exit the Police was notified through diplomatic channel, pilots, holders of pilot permit and other crew members with crew member certificate, as well as the cross-border staff are subjected to minimum of border check while conducting their duties.

Sailors, holders of sailor identification documents are not subjected to the border check under condition they are listed on the crew list of the ship they are attached to, which was sent to the Police for check in advance.

Detailed border check is conducted in a case of unaccompanied minor, in order to establish whether he/she is leaving Montenegro without parents approval, i.e. legal guardian.

Current law solutions are amended in regard to border checks in international railway, air, maritime, lake and river traffic.

Such a concept is based on Annex VI to Schengen Borders Code, which in addition to duties of those driving certain transportation means, also provides for special rules while conducting border check.

In international railway traffic, border check of all train passengers and railway staff crossing the state border is conducted, in train station, in the first station of arrival or departure, as well as on board the train till the state border crossing.

In addition, exception is provided for border check to be conducted on board of the train till first station in other country, pursuant to international treaties.

Regarding international air traffic, it is a rule that border check should be carried out at airport in designated area, exceptionally on the aircraft or while exiting aircraft, on the basis of a threat assessment related to the country border security and illegal migration.

Border check in maritime traffic is laid down in details, and it involves general procedures referring to all types of vessels, and special procedures for border check of a cruise ships, free sale ship and a ferry.

- Please inform if other laws have been also adopted.

See the answer to the question 4 subtitle 1.

5. Ref. to Q. 39: Please provide further information with regard to the Action Plan and the measures and activities to be implemented.

Strategy on integrated border management and Action Plan for its implementation create conditions for harmonised undertaking of activities of all border agencies aimed at reaching necessary level of the border security, as a part of overall security system of Montenegro.

The Action Plan defines priority activities and time frameworks of the Ministry of Interior and Public Administration, as well as of other agencies involved in border security in 2010, aimed at further implementation of the Strategy, mainly:

- Analyses of achieved implementation of the Strategy and preparation of the innovated Strategy and Action Plan in this field, in second quarter of 2010;
- Preparation of Joint manual on border check procedures, harmonised with the European Union standards and the new Law on Border Control, in second quarter of 2010;

- Adoption of the following secondary legislation for implementation of the new Law on Border Control: Rulebook on manner of conducting border surveillance and Rulebook on form and content of markings and signs for warning of approaching border line and content, form and appearance of markings and signs of the border crossing points and their area, in third quarter of 2010;
- Finalisation of construction of the border crossing point “Dobrakovo” and “Dracenovac”, is expected in 2011;
- Finalisation of construction of the Asylum seekers reception centre, facility “B” is planned by the end of 2010;
- Activities on preparation and harmonisation of agreements on border crossing points for international and border traffic with the neighbouring countries. The Ministry of Interior and Public Administration initiated negotiations on conclusion of those agreements;
- Implementation of signed agreements on cross-border police cooperation with the neighbouring border police services is permanent obligations.

6. Ref. to Qs 42&44: Please specify if there is any special situation centre at any level, if yes, give details.

Pursuant the Strategy on integrated border management, Inter-agency commission for implementation of the Strategy on integrated border management and the Action Plan for its implementation at the national level, and coordination teams at regional and local level, perform their activities in an harmonised way in line with their competences, thus providing efficient vertical and horizontal cooperation, division of duties and responsibilities, harmonisation of procedures, joint risk assessment, information exchange, use of equipment and emergency procedures.

There is no national coordination centre operating round-the-clock at the national level, to coordinate activities of all border checks bodies.

However, pursuant to Special agreement on setting up the coordination teams for implementation of the Strategy, concluded between the Ministry of Interior and Public Administration, Police Directorate, Customs Administration, Veterinary and Phytosanitary Administration of 5 May 2009, expert teams for integrated border management operate round-the-clock at the local level, at all of 28 border crossing points.

Expert teams at local level report to coordination teams at regional level, and coordination teams at regional levels report to Inter-agency commission at national level.

Tasks of the expert teams are established by the Work methodology adopted on 09 June 2009, which i.e. provides for the following:

- Coordination of border agencies activities;
- Exchange of information relevant for suppression of all types of organised crime, especially illegal migration and smuggling, and
- Detection of criminal offences and misdemeanours, location and arrest of wanted persons.

Electronic surveillance system of the blue border is established on the Adriatic Sea, Skadar Lake and River Bojana, which additionally, in the real time, provides awareness of the situation in Montenegrin waters and coastal line.

Border surveillance on the Adriatic Sea, Skadar Lake and River Bojana is under the competence of Border Police Maritime Unit.

Instalment of electronic surveillance system is carried out in phases, currently the second phase is finalised, whilst the third one (out of the five planned) is ongoing.

Reached level of electronic surveillance system involves two “special situation centres”, and they are the following:

1. **Main Communication-operational centre of Border Police Maritime Unit**

Situated in Bar (functional since 25 June 2009, GPS position $\varphi= 42^{\circ}05.815'N$ and $\lambda=019^{\circ}05.678'E$).

This Centre round-the-clock performs remote monitoring which is done by two Border Police Maritime Unit officers of:

- Waters and coastal area of the Adriatic Sea by two television cameras "Pelco ES 31c Esprit", installed on stationary stations for electronic surveillance "Obosnik" and "Crni Rt", and AIS system (Automatic Identification System);
- Waters and coastal area of Skadar Lake by two television cameras "Pelco ES 31c Esprit" installed on stationary stations for electronic surveillance "Bozaj" and "Obostnik";
- Waters and coastal area of the River Bojana by one television camera "Pelco ES 31c Esprit" installed on stationary station for electronic surveillance "Fraskanjel", and
- Land part of green border towards the Republic of Albania over the territory between Skadar and Sasko lakes.

There is a duty office within the main communication-operational centre at the level of Border Police Maritime Unit.

2. **Local communication-operational centre of the local border police maritime unit**

Podgorica on the Skadar Lake, with the headquarters in Bozaj, represents also reserve communication-operational centre of the Border Police Maritime Unit, as it can be used, if needed, for surveillance of waters and coastal area of the Adriatic Sea and Skadar Lake (it is operational since 06 November 2008, GPS position $\varphi= 42^{\circ}18.829'N$ and $\lambda=019^{\circ}23.622'E$)

This Centre performs round-the-clock remote monitoring which is done by two Border Police Maritime Unit officers of:

- Waters and coastal area of the Skadar Lake by two television cameras "Pelco ES 31c Esprit", installed on stationary stations for electronic surveillance "Bozaj" and "Obosnik".

There is a duty office within the local communication-operational centre at the level of the local Border Police Maritime Unit.

Border Police Maritime Unit staff, engaged in main and local communication-operational centre through remote monitoring by the means of surveillance centres, performs electronic surveillance of the Montenegrin waters and coastal area, by guiding in real time patrol boats and land patrols of the border police during undertaking activities of state border surveillance.

Operating procedure during sensor registering of items and events (vessels, vehicles, persons), being of interest for border security, and other police activities by Communication-operational centre of Border Police Maritime Unit is the following:

- I. Sensor detection (detecting target);
- II. Sensor qualification (identification, type of vessel, vehicle, person);
- III. Sensor identification (single identification of vessel, vehicle, person);
- IV. Situation assessment – risk analyses;
- V. Decision making, and
- VI. Undertaking necessary activities by engaging patrol boats and motorised land patrols in coastal area in real time.

Third phase of the system involves designing and installing of a special software which will enable software connection and management of all observation sensors and other system components, operational use and remote monitoring of long range radars "Furuno FAR 21379/12" installed on stationary centres for electronic surveillance "Obostnik" and "Crni Rt" from Communication-operational centre of Border Police Maritime Unit.

Planned time framework for implementation of third phase is second quarter of 2010.

Moreover, two mobile centres for electronic surveillance from land are operational since 28 September 2007, and they are used for multi-sensor observation of Montenegrin waters, coastal

area and territory, as well as for guiding patrol boats and border police land patrols in real time during conducting state border surveillance.

Mobile centre is used based on risk analyses products. The crew involves two Border Police Maritime Unit officers.

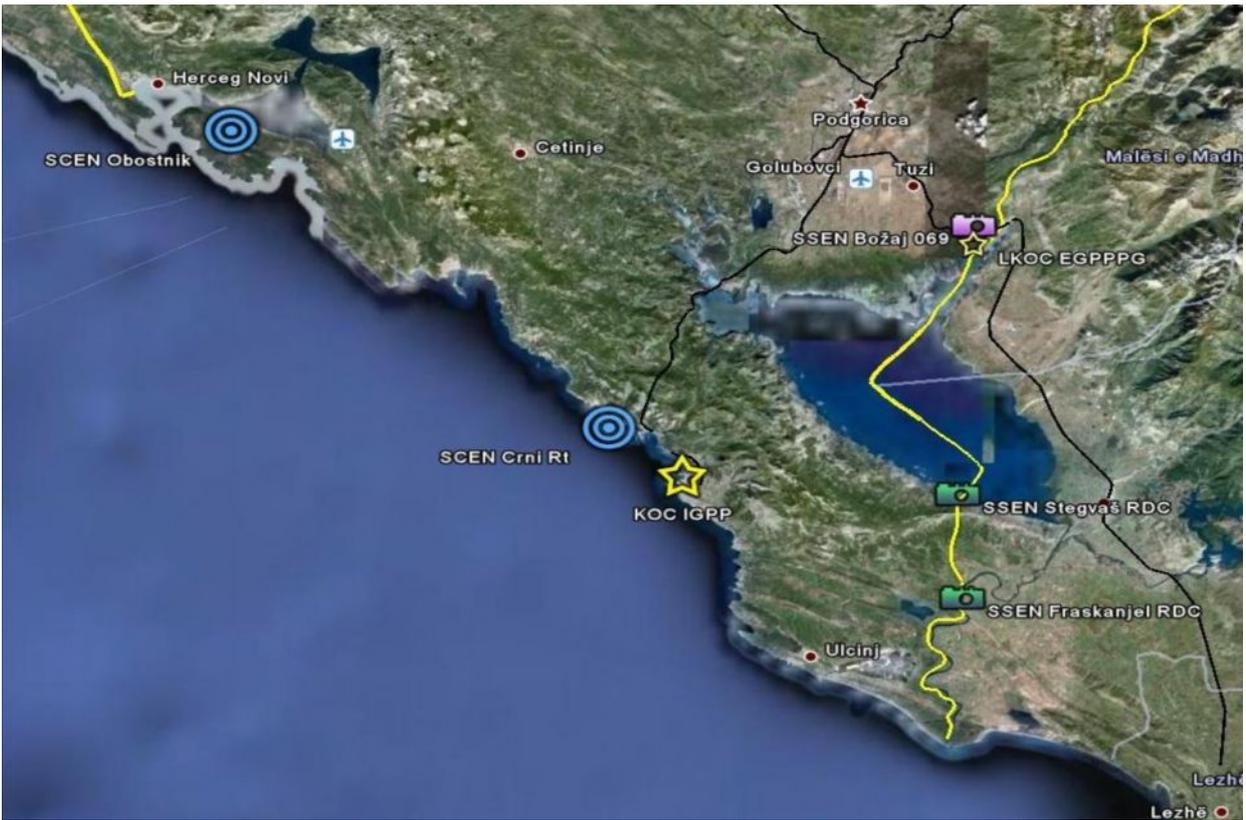
Terrain motor vehicle "TAM 110T7" is used as an observation platform of the mobile centre for electronic surveillance, having installed in its cabin the following observation sensors:

- Short range radar ("Furuno 1933 c/NT");
- Thermo-vision camera ("ELOP Artim-AD"), and
- Television camera ("PELCO ES 31c Esprit").

Operating procedure during sensor registering of items and events (vessels, vehicles, persons), being of interest for border security and other police activities, by Mobile centre for electronic surveillance is identical as the Communication-operational centre of Border Police Maritime Unit one.



Main communication-operational centre of the Border Police Maritime Unit



Achieved level of development of blue border electronic surveillance system



Mobile centres for electronic surveillance 1 and 2



Observation by Mobile centre for electronic surveillance during night

7. Ref. to Qs 45-52: Please elaborate on the role and powers of the Border Police in detecting and investigating cross border crime.

The role and powers of the border police in detecting and investigating cross-border crime are reflected in the following:

- Recognising of subjects dealing with criminal actions with elements of cross-border crime (this refers to all types of crime)
- Defining MOS of the subjects
- Defining their collaborators
- Defining routes used for specific types of cross-border crime
- Defining trends regarding individual types of cross-border crime
- Defining all useful knowledge relevant for suppression of cross-border crime
- Making risk analyses.

In regard to the above-mentioned, intelligence is collected which is, after being checked, used as basis for making intelligence reports on a criminal activity, by using 4x4 system.

Based on intelligence reports, planned conduction of actions is done, as well as of ambushes and other actions necessary to arrest those involved in criminal activities, and to gather evidence on the activity (seizure of smuggled goods).

Persons and evidence are subsequently handed over to Criminal Police Department for further processing (filing criminal charges, handing over to the competent judge and possibly conducting investigation within further procedure).

Border Police Department independently makes decision and files charges to the competent judge for offences of illegal crossing of the state border and illegal staying of foreign nationals, and Criminal Police Department is competent for filing charges for all other criminal offences.

Based on available information and risk analyses system, Border Police Department identifies level of threat to border by some types of crime. In doing so, trends of some types of crime are identified, and measures are undertaken to suppress those activities.

Example: In few cases, border police was at disposal of information on persons being organisers of human smuggling, routes, modus operandi and time of their actions to transfer larger number of Albanian nationals across the territory of Montenegro and the Adriatic Sea to Italy.

Through conduction of planned activities, border police observed organisers, the vessel which were used, and positions they were supposed to go to Italy. Also, the movements of the group of 19 Albanian nationals were observed (they were in Montenegro staying legally as they entered the country legally and they do not need visa).

After they boarded the vessel and started travelling to Italy, nearby the territorial waters border the vessel was stopped, taken back and together with Albanian nationals and organisers handed over to the criminal police to file the charge and possible further investigation.

Reports were made on all activities conducted by the border police, and they are used as evidence in the procedure.

Border Police Department exchanges intelligence daily with the Criminal Police Department, and it participates within its competences in investigations led by Criminal Police Department.

Pursuant to the Criminal Procedure Code, Law on Police and Law on Border Control, border police has powers to conduct the following investigative actions: gathering information, conducting observation, searching of persons, searching of vehicles, seizure of items, arrest, etc, and it has powers to act in the whole of Montenegro.

8. Ref. to Qs 45-47: Please provide further information regarding the training on border control to relevant policy (scope of courses, frequency and relevance to functions performed by the police).

The Police Academy in Danilovgrad organises border police training through implementation of the basic police training, supplementary training for the border police, professional and specialised training of the border police staff.

Through implementation of the basic police training, which is developed based on training programme for acquiring the rank of a policeman in duration of two years or 2 625 lessons of theoretical, practical and simulation training, future policemen are obtaining knowledge, competences and skills for performing the following duties:

- General policing;
- Traffic safety;
- Border policing;
- VIP and facilities security;
- Community policing, and
- Duty service.

In addition, this kind of training enables obtaining basic knowledge for performing activities in the following fields:

- Special anti-terrorist unit;
- Special police unit, and
- Criminal police.

Training programme involves 27 teaching areas divided into five subjects. Within the group of service related subjects, the training is also delivered within the teaching field of “**State border**

surveillance and border affairs” through the total number of 155 lessons (55 lessons of theory in I module, 80 lessons of practice in II module and 22 lessons of supplementary training in III module).

Delivery of theoretical and practical training in the field of state border surveillance and border affairs enables for the police officers to obtain knowledge and skills in the field of:

- Structure and functioning of the European Union, importance of European integration and European security strategy,
- International regulations in regard to border control (Schengen Convention, Schengen Catalogue, Schengen Borders Code, Dublin Convention, etc.),
- Border control related national legislation,
- Check and examination of documents,
- Prevention of smuggling across the state border (prevention of narcotic drugs smuggling, prevention of human smuggling, prevention of vehicles smuggling, etc.),
- Border check,
- State border surveillance,
- Intelligence,
- Risk analyses (term, forms and content of risk analyses, tactical risk analyses, etc.),
- International police cooperation,
- Integrated border management,
- Entry, movements and stay of foreigners,
- Use of equipment during border check and border surveillance.

Supplementary training for the border police is implemented based on special curriculum, which is delivered through 22 working weeks or 780 lessons of theory, practice and situational training. Supplementary training is delivered to the border police officers working in the organisational units (border police stations) without passing basic police training.

In regard to the topics and content, the curriculum in the field of “State border surveillance and border affairs” is harmonised with the curriculum covering this field in training programme for acquiring the rank of a policeman.

The Academy, in cooperation with the Border Police Department, organises professional and specialised training of the border police staff. Namely, The Academy, in cooperation with the Department, prepares annual programme of professional and specialised training involving set of courses and seminars on the topics being of relevance from the aspect of border policing.

Significant number of courses and seminars is delivered by engaging foreign experts (they are engaged through cooperation with international organisations and association dealing with border services reform: DCAF, US Department of Defence and their programmes EXBIS and DTRA, OSCE, IOM, MARI, etc.).

The courses are organised on the following topics:

- Identification of narcotic drugs and prevention of cross-border smuggling;
- Illegal migration and trafficking in human beings;
- Document forgery;
- Prevention of weapons for mass destruction proliferation;
- Crisis management in situations involving weapons for mass destruction proliferation;
- Visa regime;
- Cross-border cooperation in suppressing organised crime;
- Detection of drugs during inspection and search;
- Prevention of stolen vehicles transportation across the border;
- Procedures of counter diversion inspection of passengers and luggage;
- Conducting criminal investigations;
- Risk analyses and profiling in border control and surveillance;
- Tactics of conducting border control on land and water;

- Techniques of conducting interviews;
- Schengen area and *acquis*;
- Methods of detection of border violations, etc.

For the needs of the border police, the Academy organises on average 20-25 courses and seminars in the field of professional training, and 10-15 courses and seminars in the field of specialised training. Annually, from 460 to 520 border police officers attend those courses and seminars.

Duration of the above-mentioned and other training courses in the field of professional and specialised training is different. Most often, the courses are organised for one working week. Some of them are organised based on licensed programmes and they last up to five working weeks (Procedures of counter diversion inspection of passengers and luggage, etc.).

We would like to underline that mid and high level managers of the Border Police Department are participating in a set of international training programmes referring to leadership and management, risk analyses and assessment, border policing organisation and functioning, cross-border police cooperation, etc.

We would like to underline as especially relevant “Border police station commanders training programme” and “Regional commanders training programme” being delivered by DCAF. This kind of training (regional one) involves combination of electronic and direct learning, and is developed through five modules:

1. Basis of European Union, Schengen and police cooperation;
2. Leadership and management;
3. Criminal intelligence and investigations;
4. Border check and foreigners issues;
5. Border surveillance.

The programme is drafted by competent experts from European Union member states (Germany, Austria, Estonia and Slovenia).

First generation training will also train regional trainers which will in future under the auspice of “Consortium of police training institution of South-East Europe”, by using the same training programme, train border police commanders.

9. Ref. to Q. 62 d):

- How big are the local border areas?

Border crossing points can be open for international and local border traffic.

Border crossing point opened for international traffic is a point for crossing of the state border of Montenegrin and foreign nationals.

Border crossing point opened for local border traffic is a point for crossing of the state border for the stay of Montenegrin nationals from specific border zone of Montenegro in specific border zone of the neighbouring country, and for the stay of the neighbouring country nationals from specific border zone in specific border zone of Montenegro, pursuant to international treaties.

Border area covers the territory of municipalities exiting in the border line in depth of up to 10 kilometres, in order to facilitate for the population inhabited in the border area movements between border areas and crossing across the joint border.

Boundaries of the border area are defined pursuant to the agreements concluded between Montenegro and the neighbouring countries.

- Are local border traffic permits established and with what validity?

Pursuant to the agreement on border crossing points between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina on border crossing points in local border traffic, special border passes are defined, which are used for crossing the border at the border crossing points for local border traffic, and which are issued by the Police, being valid for five years.

Judicial co-operation in civil matters

10. Ref. to Q. 67: Please explain why out of 9 applications the child has been returned only in 3 cases. What was the motivation of the non-return decisions?

The reasons why some of the applications for the return of children pursuant to the Hague Convention are not positively resolved are different.

In two cases, the children requested to be returned were not in Montenegro, in two cases final and enforceable judgements were issued on divorce of the parents marriage before the court in Montenegro, which established that the parental right should be exercised by the parent having residence in Montenegro, and in the rest of the cases due to the long lasting procedures, return of the children was not ordered, as pursuant to the Article 12 paragraph 2 of the Convention, it was assessed that the children adapted themselves to the new surroundings.

11. Ref. to Q.89: How is confiscation dealt with? Please provide statistics on confiscations.

The procedure of seizure (freezing) of material benefit and proceeds whose legal origin has not been proved is laid down in the Criminal Procedure Code (Official Gazette of Montenegro 57/09), Title VII, Chapter 2 – Seizure of objects and material benefit.

Confiscation of so called fruits of a concrete criminal offence subjected to the procedure is provided for in Articles 478-485 of the Criminal Procedure Code, whilst the provisions on confiscation of the property whose legal origin has not been proved (extended seizure of property and related reverse burden of proof) are incorporated in Articles 486-489.

The system and procedure of seizure of property whose legal origin has not been proved (extended seizure), can be divided in three phases:

- 1) investigative phase, in which the material benefit and property are established, located and evidence on the owner is gathered. This phase can result in temporary measure (temporary seizure, freezing), in order to ensure subsequent seizure upon the court order;
- 2) judicial phase, in which the material benefit and property are permanently seized (final seizure, confiscation);
- 3) disposal phase, in which the property is disposed of pursuant to the law.

1) Seizure (freezing)

One of the phases within the procedure of seizure of the material benefit and property whose legal origin has not been proved is investigative phase (pre-trial investigation and pre-trial procedure) which is used to establish the proceeds from crime and gather the proceeds related evidence. In order to establish proceeds from crime, and to gather proceeds related evidence, it is necessary to conduct the financial investigation. The financial investigation can result in temporary measure, i.e. temporary seizure (freezing) to ensure subsequent seizure upon the court order.

Public prosecutor initiates the procedure for establishing temporary seizure of the material benefit and property whose legal origin has not been proved. Temporary seizure is decided by investigative judge immediately or within eight days from the day the request was received, or by the President of the chamber of judges, before which the main hearing is conducted. Pursuant to the Law on Enforcement Procedure, the court competent for enforcement, enforces the order on temporary seizure, and is at the same time competent for disputes in regard to the enforcement.

Temporary seizure can last at the latest till the decision is made by the chamber of three judges upon the request of public prosecutor for final (permanent) seizure of the property whose illegal origin has not been proved. If temporary seizure is ordered in pre-trial investigation, it will be terminated *ex officio* if the investigation is not initiated within six months from the day the order on temporary seizure is issued. Court can revoke the order on temporary seizure *ex officio* or upon the request of public prosecutor or concerned person, if it is shown that the seizure is not necessary or justified, taking into account the severity of the crime, property situation of the person concerned, or the individuals he/she is obliged to support pursuant to the law.

2) Permanent seizure (confiscation)

Permanent seizure (confiscation) based on final and enforceable court order is the second phase of the seizure of the material benefit and property whose legal origin has not been proved. Within pre-trial investigation and pre-trial procedure, as well as at the main hearing, judicial and other authorities are obliged *ex officio* to gather evidence and establish circumstances, relevant for establishing proceeds.

The following can be confiscated: a) material benefit obtained from a crime (fruits of a concrete criminal offence subjected to the procedure), and b) the proceeds whose legal origin has not been proved within the extended seizure procedure.

a) Material benefit presents the gain reflected in surplus of property owned by perpetrator, obtained from a crime commission. The Criminal Code contains the principle that nobody is allowed to keep proceeds from crime. Money, valuable items and all other kind of property obtained from a crime shall be seized from a perpetrator, and if a seizure is not possible, a perpetrator shall be obliged to pay the amount corresponding to the obtained property. Proceeds from crime are established within a criminal procedure *ex officio*, and the judicial and other authorities competent for running criminal procedure are obliged during the procedure to gather the evidence and examine the facts relevant for establishing the proceeds. The proceeds are seized by the court order which establishes commission of the crime.

b) Confiscation of the property whose legal origin has not been proved (extended seizure) is possible only following the final and enforceable judgement pronouncing the convicted person guilty of a crime for which pursuant to the Criminal Code extended seizure of the proceeds can be applied, and related reverse burden of proof. The proceeds can be seized not only from the convicted person, but also from other persons: legal successor of the accused, or the person to whom the property has been transferred. The procedure is initiated upon the public prosecutor request. Request for confiscation of the proceeds is submitted within the preclusive period of one year, being calculated from the date the judgement became final and enforceable. The request involves data on the convicted person, his/her legal successor, or the person to whom the property has been transferred, indication of the proceeds to be seized, proofs on the property owned by the convicted person, his/her legal successor, or the person to whom the property has been transferred, and on their legal proceeds, as well as circumstances indicating the obvious discrepancy between the total property and the legal proceeds of the convicted person, his/her legal successor and the person to whom the convicted person has transferred the property. The request is submitted without delay to the above-mentioned person, along with a notice of the obligation to prove the legal origin of the property before the chamber of three judges, as well as that the property will be seized if its legal origin has not been proved. The following persons are invited to the chamber of judges session: Public Prosecutor, convicted person, his/her legal successor, or a person to whom the convicted person has transferred his/her property, and his/her proxy. Depending on the evidence procedure results, the chamber of judges session is finalised by passing the order on confiscation of the proceeds, or by rejecting the prosecutor request. The

chamber of judges can reject the prosecutor request partially, if the person subject of the procedure for confiscation of the proceeds proved their legality to a certain extent. The chamber of judges appraisal of proving legality is based on the principle of free assessment of evidence and judicial discretion. If the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property does not prove by valid documents or in absence of valid documents, in some other manner fails to prove the legal origin of the property, the chamber of judges shall issue an order on the confiscation of the proceeds.

The order on confiscation of proceeds whose legal origin has not been proved contains data on the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, the property to be seized, and decision on costs of handling and managing seized property. The order will exclude a part of the proceeds from confiscation, if the confiscation would question subsistence of the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, or the persons they are obliged to support. The order on proceeds confiscation shall be delivered to the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, his/her proxy, Public Prosecutor, and the state body which, pursuant to the law, administrates the seized proceeds. Convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property and his/her proxy may appeal against the order on proceeds confiscation within eight days, whereas the Public Prosecutor may lodge an appeal against the order on total or partial rejection of the request for proceeds confiscation.

3) Disposal of the proceeds seized in a criminal procedure

Managing frozen and confiscated proceeds is entrusted to the Public Property Administration pursuant to the Law on Managing Seized and Confiscated Proceeds (Official Gazette of Montenegro 49/08). The Law provides for the manner of handling and managing frozen and confiscated proceeds in a criminal procedure. Among other, handling and managing involves the following: value assessment, storage, keeping, recovery, selling, depositing funds obtained from selling, and keeping records on seized proceeds.

Within the procedure of seizure of proceeds and the proceeds which illegal origin has not been proved, all kinds of property can be seized: material or non-material, movable or immovable, assessable or non-assessable, being of a high value, as well as documents of any form which prove the right or interest regarding the proceed. Within the meaning of the Law on Managing Seized and Confiscated Proceeds, the proceeds are: money, movables, immovables, precious items (gold, noble metals, precious stones, semi precious stones, pearls and other valuable items), other real property rights, securities pursuant to law, other documents for proving the property rights, and other proceeds from crime.

The proceeds seized within the procedure, is managed by the Public Property Administration in a way which guarantees the highest level of preserving their value, with the lowest costs. Public Property Administration is obliged to take care of the interest of owners, diligent holders, and persons from whom the proceeds are temporary seized. In order to preserve the property value, the competent authority can sell the seized property pursuant to the law. The Public Property Administration can entrust managing of the seized proceeds to an registered organisation or institution, and the one fulfilling conditions provided by law for managing that kind of property. The organisation or institution is obliged to manage entrusted property pursuant to the law.

The Court is obliged to send without delay to the Public Property Administration final and enforceable order on freezing or confiscation. For the needs of the procedure, the Public Property Administration can be entrusted by the court with assessing value of seized proceeds. The seized property keeping and maintenance costs are covered by the Public Property Administration till the order is final and enforceable. The Administration is competent for selling of seized proceeds, and the selling procedure is done pursuant to the relevant provisions of the Law on Enforcement Procedure.

Funds obtained from the sale of confiscated proceeds, after covering costs of storage, keeping, sale and other similar costs, are paid to the Budget of Montenegro, and are used for funding projects on strengthening capacities of judiciary, public prosecution office and police.

Please provide statistics on confiscations.

According to the statistics of the High Courts, which are competent for provision of international legal assistance, there were no cases of confiscations (permanent seizure) within international legal assistance requests.

Police cooperation and fight against organised crime

12. Ref. to Q.104: Please state the two types of organised crime which are of most concern for Montenegrin authorities and explain why this is the case.

Out of the criminal activities registered in Montenegro, the following two ones should be underlined: illegal migration – human smuggling and trafficking in narcotic drugs.

Regarding illegal migration – human smuggling, from geographical point of view, Montenegro as the other countries in the region, is on the cross-section between the east and west in transit area, and it borders: Republic of Croatia, Bosnia and Herzegovina, Republic of Albania, Republic of Serbia and Kosovo, and through the territorial waters of the Adriatic sea, Montenegro borders Republic of Italy, which present potential area for illegal migration, for migrants from undeveloped countries towards developed countries of Western Europe.

Taking into account that Montenegrin bordering area towards Republic of Albania from one hand, as well as towards Bosnia and Herzegovina on the other hand, involves a large number of side forest-mountain roads along green boundary, it simultaneously presents possibility for illegal migrants to cross the border of Montenegro, both alone, independently or assisted by guides. Moreover, this criminal offence is possible to be committed at the official border crossing points too, by using forged travel documents. Previous practice showed that modus operandi is also reflected in smuggling of illegal migrants through territorial waters on sea, or by aircrafts towards Western European countries, and the most usual modus operandi of this criminal offence is smuggling by using land routes, by using various transportation means, or combined modus of smuggling by land routes firstly, then by vessels on sea, or by aircrafts.

In addition, possibility of human smuggling by using south route is recognised, which presents possibility of transit of illegal migrants from the Republic of Albania to Montenegro, by land or water route, to Ulcinj, and then towards other coastal towns of Montenegro, aimed at illegal transfer from Herceg Novi to the Republic of Croatia or Bosnia and Herzegovina, as Herceg Novi is positioned between Dubrovnik and Trebinje.

The processed cases and collected intelligence at the national and international level indicated the following migration routes:

- From Kosovo through the territory of Montenegro, Bosnia and Herzegovina, Republic of Croatia and Slovenia, to the Republic of Italy and other EU countries;
- From Kosovo through the territory of Montenegro and Republic of Croatia, to the Republic of Italy and other EU countries;
- From Kosovo through the territorial waters of Montenegro to the Republic of Italy;
- From Albania through the territory of Montenegro, Bosnia and Herzegovina, Republic of Croatia and Slovenia, to the Republic of Italy and other EU countries;
- From Albania through the territory of Montenegro and Republic of Croatia, to the Republic of Italy and other EU countries;

- From Albania through the territorial waters of Montenegro, to the Republic of Italy;
- From Turkey to Montenegro by air, and further on to Bosnia and Herzegovina, Republic of Croatia and Slovenia, and other EU countries by land;
- From Turkey to Montenegro by air and further on to the Republic of Croatia and Slovenia and other EU countries by land;
- From Turkey to Montenegro by air and further on to the Republic of Serbia, Republic of Croatia, Slovenia and other EU countries by land;
- From Turkey through Macedonia, Albania, Montenegro, Bosnia and Herzegovina, Republic of Croatia and Slovenia, to other EU countries;
- From Turkey through Macedonia, Kosovo, Montenegro, Bosnia and Herzegovina, Republic of Croatia and Slovenia, to other EU countries;
- From Turkey through Macedonia, Albania, Montenegro, Republic of Croatia and Slovenia, to other EU countries;
- From Turkey through Macedonia, Kosovo, Montenegro, Republic of Croatia and Slovenia, to other EU countries;
- From Turkey through Macedonia, Albania, Montenegro, Republic of Serbia, Republic of Croatia and Slovenia, to other EU countries;
- From Turkey through Macedonia, Kosovo, Montenegro, Republic of Serbia, Republic of Croatia and, to other EU countries.

According to police analyses, 90% of illegal immigrants arrives in Montenegro due to economic reasons. However, Montenegro is not their final destination, only a transit country.

In past years, illegal immigrants were mostly nationals of the Republic of Albania, Kosovo, Tunisia, Republic of Turkey.

Also, obtained intelligence both at national and international level, indicates that illegal immigrants originating from the Republic of Turkey, the Kurds, abuse visa free regime signed in the past between Turkey and Montenegro, Republic of Serbia, Bosnia and Herzegovina, Republic of Croatia, for economic migration to EU countries.

Montenegrin police is making great efforts to prevent illegal crossing, register illegal migrants and undertake measures provided by law, as we are aware that well guarded and secure borders present factor of internal security of a country, as well as an obstacle for all forms of cross-border crime. The police develops bilateral cooperation with border services of the neighbouring countries, as well as multilateral cooperation, and cooperation with the following international organisations IOM, MARRI, OSCE, UNHCR, ICMPD, etc.

Statistics

2007

In 2007, **ten** criminal charges were filed for a criminal offence referred to in Article 405 of the Criminal Code of Montenegro - Illegal Crossing of the State Border and Smuggling of Persons, out of which six cases committed in an organised way, where criminal charges were filed to the Special public prosecutor for suppressing organised crime, and the others to Basic Prosecutor's Office. The total number of perpetrators is 30, out of which 21 were covered by criminal charges under the jurisdiction of Special Prosecutor, and nine of them were covered by criminal charges under the jurisdiction of Basic Prosecutor.

2008

In 2008, the total number of **six** criminal charges were filed against 21 persons, two of them under the jurisdiction of Special Prosecutor for suppressing organised crime, one criminal charge against three persons under the jurisdiction of High Public Prosecutor, and three criminal charges under the jurisdiction of Basic Prosecutor, due to a reasonable suspicion that they committed 20 criminal

offences of Illegal Crossing of the State Border and Smuggling of Persons referred to in Article 405 of the Criminal Code of Montenegro.

2009

In 2009, the total number of **seven** criminal charges were filed against 16 persons under the jurisdiction of Basic Public Prosecutor, due to a reasonable suspicion that they committed the criminal offences of Illegal Crossing of the State Border and Smuggling of Persons referred to in Article 405 of the Criminal Code of Montenegro.

2010

In 2010, up to 23 March 2010 **there were no criminal charges filed** for the criminal offences of Illegal Crossing of the State Border and Smuggling of Persons referred to in Article 405 of the Criminal Code of Montenegro.

Regarding narcotic drugs, Montenegro is also a transit country in the following cases:

- Regarding heroin smuggling, by land route from Afganistan through Turkey, Kosovo and Albania towards the region countries and Western Europe;
- Regarding marihuana smuggling, by land route from Albania, when it appears as a manufacturing country of this type of narcotic drugs, towards the region countries and further on towards EU countries, and
- Regarding cocaine smuggling, by sea route from Latin America countries up to Mediterean and Adriatic sea and further on towards Werstern Europe countries.

Therefore, Montenegro as the other counties in and outside the region, is facing narcotic drugs transit issue. Those criminal offences, especially when committed by organised criminal groups, present priorities of the Police Directorate, not only from the point of view of supression of drugs addiction and reduction of drug addicts, but also from the point of view of recognising other criminal offences in relation to this issue, such as criminal offences with elements of violence, property crimes, money laundering, etc.

Having in mind the above-mentioned, activities are conducted continuously in strengthening capacities of secret surveillance measures enforcement in regard to those criminal offences. In 2009, 53 persons were processed to the competent judicial authorities, suspected for drugs smuggling committed in an organised way, which was assessed at the level of the Police Directorate, as well at the international level, as a progress in fighting drugs related to organised crime.

So far, the police of Montenegro achieved significant results in supression of international smuggling channel, through a number of cases being of regional and international relevance. To this end, strengthening international cooperation in this field remains one of priorities in further activities in supression of organised crime.

13. Ref. to Qs. 121 &133:

- Beyond applying international standards, do you have a strategy in place in fighting money laundering? If so, please describe.

Montenegro has not yet adopted a strategic document for prevention of money laundering, which would define a general framework of action to fight terrorism, money laundering and financing of terrorism, and to define goals and measures for enhancing current and developing new measures, mechanisms and instruments, to be in function of stability and security. However, it is certain that

such a document shall be adopted by the Government of Montenegro in the second quarter of 2010. Namely, the activities on drafting the National strategy for prevention and suppression of terrorism, money laundering and financing of terrorism and the Action Plan for prevention and suppression of terrorism, money laundering and financing of terrorism (2010-2012) are ongoing. These strategic documents are being prepared by an inter-agency Working group, established by the Ministry of Interior Affairs and Public Administration, consisted from the representatives of the competent ministries and institutions.

The Strategy shall represent a direct response of Montenegro to the threat assessment related to terrorism, money laundering and financing of terrorism.

The goals shall be further elaborated through the Action Plan, which shall define tasks of all competent authorities responsible for implementation of the Strategy.

- Is the financial crisis having an impact on money laundering trends? If so, how your Anti-Money Laundering policy is taking these new trends into account?

In order to maintain the current level of security and stability of the financial system, all authorities competent for the fight against money laundering and financing of terrorism will even in the financial crisis direct their activities to strengthen risk management and continue implementation of the internationally adopted standards and principles through:

- a) Development of mechanisms and management plans in crisis situations and their implementation, depending on concrete circumstances;
- b) Implementation of the adopted secondary legislation, with a special emphasize on implementation of the standardised approach in deducing capital for credit and other risks, in accordance with Capital Adequacy Directive;
- c) Strengthening supervision based on risk management assessment and determination of the regulatory capital, along with prudential filter for expressing capital, which provides security and stability of banks;
- d) Strengthening market discipline, protection of competition and clients by revealing the data on corporative management, risks management, methods for determining capital adequacy and other data by banks;
- e) Strengthening inter-connection and cooperation with regulatory authorities of the financial system;
- f) Strengthening the control of policies and procedures conformity, in order to fulfil obligations related to prevention of money laundering and financing of terrorism.

- In your opinion, what could be done to further improve your action against money laundering?

Harmonisation of the criminal legislation with European standards, ensured through adoption of the new Criminal Procedure Code and draft Law amending the Criminal Code, being in the parliamentary procedure at the moment of providing this answer, will to a great extent further enhance the capacities and activities for prevention and suppression of money laundering. Namely, in July 2009 the new Criminal Procedure Code was adopted („Official Gazette of Montenegro 57/2009) in which a special attention has been paid to the seizure of revenues, property and material benefit obtained by a criminal activity. Referred to in Article 90 the Code provides for the proceeding of seizure of material benefit and financial investigation for the purpose of extended seizure of property, which introduces proceeding for confiscation of property whose

legal origin has not been proved (Articles 486-489). Stated provisions of the Criminal Procedure Code on seizure of material benefit and financial investigation for the purpose of extended seizure and the proceeding on the confiscation of property, whose legal origin has not been proved, shall become applicable from the day of application of the provisions of the Law amending the Criminal Code.

Proposed amendments of the Criminal Code, innovate criminalisation of the criminal offences of money laundering and financing of terrorism, in accordance with the recommendations of FATF, relevant conventions of the Council of Europe, United Nations and Acquis communautaire. Namely, the criminal offences of abuse of position in business operations and illicit influence have been introduced – which may be predicative to criminal offence of money laundering – in accordance with Moneyval recommendations. Also, in accordance with the recommendations of the Moneyval Committee the definition of the criminal offence "Money laundering" referred to in article 268 of the Criminal Code shall also change. According to the new definition of the criminal offence of money laundering, previous limitation of the criminal offence of money laundering has been abolished, as an action which included „banking, financial and other business operations“. In addition to that, according to the recommendations, the definition of the criminal offence of money laundering includes any form of conversion and transfer, as well as acquisition, keeping and use of money or other property obtained by a criminal activity. It also criminalise concealment and fraudulent representing facts on the nature, origin, place of depositing, movements, disposal of or ownership over money or other property obtained through a criminal offence ensuring its full compliance with the solutions given in Vienna and Palermo Conventions.

Adoption of the Strategy for prevention and suppression of terrorism, money laundering and financing of terrorism with the Action plan for its implementation in the period 2010 – 2012, the adoption of which has been scheduled by the Government of Montenegro for the second quarter of 2010, is also one of the strategic activities which will definitely have an impact on development of the policy for combating money laundering.

Montenegro will continue to develop its national capacities in the field of prevention and suppression of money laundering and financing of terrorism through the model of inter-agency and comprehensive approach in planning and implementation of all measures for preventing and suppressing these phenomena, which requires implementation of additional activities for combating money laundering, as follows:

- **Normative-legal:** within the meaning of normative-legal framework assessment for the purpose of revising current and adoption of the new legislation and continuation of the activities related to accession of Montenegro to international conventions with full and consistent application of international recommendations, initiatives and standards for fighting money laundering and financing of terrorism. To that end, the activities on drafting amendments to the Law on prevention of money laundering and financing of terrorism are ongoing. Proposal for the Law shall be adopted by the Government of Montenegro in the IV quarter of 2010. Proposal for amendments to the Criminal Code is being in the parliamentary procedure.

- **Institutional** within the meaning of permanent development of institutional conditions for efficient detection and proving of smuggling of narcotics, money laundering, financing of terrorism, corruptive and high- tech crimes and consistent seizure of property –proceeds from crime, as a permanent task.

Strengthening the capacities, including: further development of the process of proactive investigations for the purpose of efficient proving and prosecution of organised crime offences; development of material-technical and financial capacities of the state bodies responsible for prevention of money laundering, particularly analytical-operational methods of fight against organised crime, as a permanent task.

14. Ref. to Q. 123: Please provide numbers of persons in bodies, sections and directorates which are charged with fighting organised crime.

Police Directorate counts 65 employees responsible for suppression of organized crime and drugs abuse. Out of the total number, 9 officers are responsible for suppressing drugs abuse in the Police Directorate Headquarters whilst 44 officers work in the Regional Police Units; 12 officers deal with this issue within the Sector for Fight against organised crime and corruption.

The Department for Suppression of Organised Crime, Corruption, War Crimes and Terrorism within the Supreme Public Prosecutor's Office is headed by a Special Prosecutor. Apart from the Special Prosecutor there are five deputy prosecutors working in the Department, who are supported by four employees whilst a position of one Advisor has been systematized.

Special Department for prosecution of organised crime, corruption, war crimes and terrorism in the High Court in Podgorica consists of five judges, while the Department of the High Court in Bijelo Polje consists of three judges. Number of advisors in High Court is decided in accordance with the number of judges.

15. Ref. to Q. 124: Please elaborate on co-operation with the private sector other than the banks. Are there any other mechanisms established? If so, what kind and how do they function in practice? Does the law oblige the private sector to report? If yes, how is compliance ensured?

The Law on Prevention of Money Laundering and Financing of Terrorism (under Article 4) stipulated the number of obligors who are obliged to undertake measures on preventing of money laundering and financing of terrorism. The same Article also defines that Government of Montenegro may identify other obligors obliged to "undertake measures referred to in Paragraph 1 of this Article if taken into consideration the nature and the way of performing their business operations or work, there is a significant risk from money laundering or terrorist financing, i.e. to identify the obligors who are not obliged to undertake measures, when the risk of money laundering and terrorist financing seize to exist".

Lawyers and notaries fall into a special category of obligors and they are obliged to undertake measures and actions for the purpose of preventing money laundering and terrorist financing (an obligation to report suspicious transactions only).

An obligor shall make risk analysis determining the risk assessment of the groups of customers or of an individual customer, business relationship, transaction or product related to the possibility of misuse for the purpose of money laundering or terrorist financing. This analysis is prepared in accordance with the guidelines of the competent authorities.

Competent authorities in Montenegro may control the implementation of the law, i.e. obligation of filing charges by a legal obligor and they may undertake statutory measures in case of failure to report suspicious transactions.

Pursuant to Article 4 of the Law on Prevention of Money Laundering and Financing of Terrorism Measures for detecting and preventing money laundering and terrorist financing, taken before and during the conduct of any business of receiving, investing, exchanging, keeping or other form of disposing of money or other property, or carrying out the transactions for which there are reasonable grounds for suspicion of money laundering or terrorist financing shall be undertaken by business organizations, other legal persons, entrepreneurs and natural persons (hereinafter referred to as: obligors), as follows:

- 1) banks and foreign banks' branches and other financial institutions;
- 2) savings-banks, and savings and loan institutions;
- 3) organizations performing payment transactions,
- 4) post offices,

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- 5) companies for managing investment funds and branches of foreign companies for managing investment funds;
 - 6) companies for managing pension funds and branches of foreign companies for managing pension funds;
 - 7) stock brokers and branches of foreign stock brokers;
 - 8) insurance companies and branches of foreign insurance companies dealing with life assurance;
 - 9) organizers of lottery and special games of chance;
 - 10) exchange offices;
 - 11) pawnshops;
 - 12) audit companies, independent auditor and legal or natural persons providing accounting and tax advice services;
 - 13) institutions for issuing electronic money;
 - 14) humanitarian, nongovernmental and other non-profit organizations, and
 - 15) other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of:
 - sale and purchase of claims;
 - factoring;
 - third persons' property management;
 - issuing and performing operations with payment and credit cards;
 - financial leasing;
 - travel organization;
 - real estate trade;
 - motor vehicles trade;
 - vessels and aircrafts trade;
 - safekeeping;
 - issuing warranties and other guarantees;
 - crediting and credit agencies;
 - granting loans and brokerage in loan negotiation affairs;
 - brokerage or representation in life insurance affairs;
 - organizing and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of € 15.000 or more, in one or more interconnected transactions.

Basic duties of obligors are laid down in the provisions of Article 6 of the Law on Prevention of Money Laundering and Financing of Terrorism, which stipulates that an obligor shall:

1. carry out customer identification;
2. exercise thorough customer due diligence (hereinafter: customer due diligence);
3. report and provide data, information and documentation to the administration body competent for the affairs of preventing money laundering and terrorist financing (hereinafter: the competent administration body), in compliance with the provisions of this Law.
4. apply measures for preventing and detecting money laundering and terrorist financing in its registered office and organizational units outside the registered office;
5. determine a person authorized for undertaking the measures provided for by this Law and his/her deputy;
6. ensure a regular professional training and education of employees and internal control of meeting the obligations provided for by this Law;
7. compile and regularly keep up-to-date a list of indicators for identifying suspicious transactions, for which there are reasonable grounds for suspicion of money laundering or terrorist financing;
8. ensure keeping and protecting data and keeping of required records, and
9. perform other affairs and obligations provided for by this Law and regulations passed on the basis of law.

Pursuant to the Law on Money Laundering and Financing of Terrorism, an obligor shall provide USPNiFT with data on every transaction executed in cash amounting to €15.000 or more, immediately, or the latest within three working days after the transaction is executed.

An Obligor shall, with no delay, provide the USPNiFT with data when there are reasonable grounds for suspicion of money laundering or terrorist financing in regard to the transaction (regardless of the amount and the type) or the customer, before the execution of a transaction and state the deadline within which the transaction is to be executed. The obligation shall refer to planned transactions as well, regardless of whether the transaction has been executed later, or not.

Pursuant to the Law on prevention of Money Laundering and Financing of Terrorism, Supervision of implementation of this Law and regulations passed on the basis of this Law, within established jurisdiction, is carried out by:

The Central bank of Montenegro in relation to obligors: banks and foreign banks' branches and other financial institutions; savings-banks, and savings and loan institutions; organizations performing payment transactions; exchange offices; institutions for issuing electronic money;

The Agency for Telecommunication and Postal Services in relation to post offices

The Securities Commission in relation to obligors: companies for managing investment funds and branches of foreign companies for managing investment funds; companies for managing pension funds and branches of foreign companies for managing pension funds; stock brokers and branches of foreign stock brokers;

The Insurance Agency in relation to insurance companies and branches of foreign insurance companies dealing with life assurance;

The administration body competent for game of chance, through authorized official in accordance with the Law that defines inspection control in relation to organizers of lottery and special games of chance;

The Tax authority in relation to pawnshops;

The Ministry of Finance in relation to audit companies, independent auditor and legal or natural persons providing accounting and tax advice services;

The administration body competent for prevention of money laundering and terrorist financing through an authorized official, in accordance with the Law that defines inspection control in relation to: humanitarian, nongovernmental and other non-profit organizations; other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of:

sale and purchase of claims;

factoring;

third persons' property management;

issuing and performing operations with payment and credit cards;

financial leasing;

travel organization;

real estate trade;

motor vehicles trade;

vessels and aircrafts trade;

safekeeping;

issuing warranties and other guarantees;

crediting and credit agencies;

granting loans and brokerage in loan negotiation affairs;

brokerage or representation in life insurance affairs;

organizing and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of € 15.000 or more, in one or more interconnected transactions.

The Law on Liability of Legal persons stipulates rights and duties of legal entities from the aspect of legality of their work as well as from the aspect of reporting and sanctioning potential irregularities.

As with regard to the field of corruption the procedure of reporting is specially regulated through the body of the Government of Montenegro – Administration for Anti-Corruption Initiative where indications that corruptive criminal offences have been committed can be reported in a written, electronic or in any other form directly or indirectly, not only by natural but also by legal persons. Police Directorate has also adopted a Guideline on reporting corruption cases and protection of persons reporting corruption, providing for the possibility to report the cases related to this phenomenon directly or indirectly.

The Law has not stipulated any norm which would precisely define cooperation of the Police Directorate with private sector and therefore this cooperation has been realised through direct daily activities of the Police Directorate, primarily through exchange of information which could be useful for police work.

Legal frameworks related to provision of police assistance to a private sector among others, are defined by the Law on Police.

Namely, according to the Law on Police

Article 6

Police shall undertake measures necessary for protection of life and health of people and elimination of immediate danger to people and property, should such measures not be undertaken in due time by other competent authorities.

Police shall provide assistance to state administration bodies, local self-government units, legal and physical persons, in the case of general danger caused by natural disasters and epidemics.

Article 7

Police shall provide assistance to state bodies, local administration and legal persons in the procedure of enforcement of their decisions, if during the procedure a physical resistance is expected or exercised

Conditions and manner for providing assistance as referred to in paragraph 1 of this Article shall be regulated by the administration body, competent for internal affairs (hereinafter referred to as the "Ministry").

Obligation to report a Criminal offence has been regulated by the new Criminal Procedure law. Namely, articles 254, 255 and 256 define the following:

Obligation to report a criminal offence

Article 254

(1) Persons acting in an official capacity and responsible persons in state bodies, local self-government authorities, public companies and institutions shall report criminal offences prosecuted ex officio, of which they have been informed or of which they have learned while performing their office.

(2) The duty referred to in paragraph 1 of this Article shall also be incumbent upon all natural and legal persons who are granted certain public authorizations under law, or are professionally involved in the protection and security provision to persons and property or in the health care of persons, as well as in jobs of minors care and education, if they learn about a criminal offence in connection with their profession.

(3) Persons filing a criminal charge referred to in paragraph 1 of this Article shall indicate evidence to the best of their knowledge and take measures to preserve traces of the criminal offence, the items upon which or by means of which the criminal offence has been committed, items resulting from the commission of a criminal offence as well as other evidence.

Reporting Criminal Offences by Citizens

Article 255

(1) Everyone shall report a criminal offence which is prosecuted ex officio and shall report a criminal offence the commission of which has caused detriment to a minor.

(2) When the court establishes in the course of criminal proceedings that well-founded suspicion exists that a person has failed to perform the duty referred to in paragraph 1 of this Article and that such omission results in a well-founded suspicion as to the commission of the criminal offence of neglecting and abusing a minor, the court shall notify the competent Public Prosecutor thereof.

Filing a Criminal Charge

Article 256

(1) Criminal charge shall be lodged to the competent Public Prosecutor in writing or orally.

(2) If the charge is lodged orally, the person filing it shall be cautioned as to the consequences of false reporting. A record shall be composed on the oral charge and where the charge is lodged over the phone or via other means of electronic communication, an official annotation shall be made thereon.

(3) If the charge was lodged to the court, the police or a Public Prosecutor lacking competence, they shall receive the charge and immediately forward it to the Public Prosecutor having competence.

Failure to report preparation of a criminal offence has been defined by Articles 385 and 386 Of the Criminal Code, that is

Failure to report preparation of a criminal offence

Article 385.

(1) Anyone who has information that preparation is underway for commission of a criminal offence punishable under law by imprisonment of five years or more, but fails to report it when such an offence could have been prevented, and the crime is attempted or committed, shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) For failure to report preparation of a criminal offence punishable by law by a prison sentence of forty years, the perpetrator shall be punished by imprisonment for a term of three months to three years.

(3) For a crime referred to in Paragraph 1 of this Article exempted from punishment shall be persons to whom the perpetrator is: a spouse, a partner in a permanent extra-marital relationship, direct relative by blood, brother or sister, adoptive parent or adoptive child, as well as a spouse of one of the above mentioned persons, or a person living with one of such persons in a permanent extra-marital relationship.

Failure to report a criminal offence and offender

Article 386

(1) Anyone who has information that a person has committed a criminal offence punishable under law by a prison penalty of forty years or who knows that such a criminal offence has been committed but fails to report it before such a criminal offence and perpetrator are detected, shall be punished by imprisonment for a term not exceeding two years.

(2) Punishment referred to in Paragraph 1 of this Article shall also be imposed on an official or responsible person who knowingly fails to report the crime he has been informed about in the performance of his/her official duty, if it is a criminal offence punishable under law by imprisonment of five years or more.

(3) For failure to report a crime or perpetrator referred to in Paragraphs 1 and 2 of this Article exempted from punishment shall be persons to whom the perpetrator is: a spouse or a partner in a permanent extra-marital relationship, direct relative by blood, brother or sister, adoptive parent or adoptive child, as well as a spouse to one of the above mentioned persons or a person living with one of such persons in a permanent extra-marital relationship, as well as a defence counsel, doctor or religious confessor of the perpetrator.

16. Ref. to Qs. 121 &133:

See the answer to the question 13.

- Beyond applying international standards, do you have a strategy in place in fighting money laundering? If so, please describe.

- Is the financial crisis having an impact on money laundering trends? If so, how your Anti-Money Laundering policy is taking these new trends into account?

- In your opinion, what could be done to further improve your action against money laundering?

17. Ref. to Q. 131: Please give a complete account on the number of people working on the fight against the trafficking of human beings in law enforcement agencies.

- OFFICE FOR FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS

The Office for fight against trafficking in human beings, as an organisational form within the state administration system belongs to the Government of Montenegro – The General Secretariat of Government. The Office performs tasks related to the implementation of international regulations, conventions, agreements in the field of fight against trafficking in human beings; launch initiatives for harmonisation of the national legislation with international standards, foster cooperation among domestic and international subjects on development of an effective mechanisms for fight against trafficking in human beings, coordinate activities of the competent authorities of the state administration, international and non-governmental organisations, coordinates meetings of the Working group of the Government of Montenegro for implementation of National Strategy for fight against trafficking in human beings, participate at international conferences, presents to the international organisations effects being achieved in the field of fight against trafficking in human beings, collects statistics on victims and perpetrators of criminal offence of trafficking in human beings and informs national and international public thereof, which makes detailed analysis and gives very significant assessments on the effects that have been achieved in that field.

-Employees of the Office for fight against trafficking in human beings:

- Chief of Office for fight against trafficking in human beings,
- 5 employees.

(6 persons in total)

- SUPREME COURT

With regard to the fact that sentences stipulated for different forms of the criminal offence of trafficking in human beings, referred to in Article 444 of the Criminal Code, court jurisdiction related to this criminal offence has been divided between Basic and High Courts.

Pursuant to Article 16 of the Law on Courts, Basic Courts have jurisdiction for trials of criminal offence referred to in 444 paragraphs 1 and 2 of the Criminal Code, while High Courts have jurisdiction for the remaining forms of the criminal offence - Article 18 of the Law on Courts. In addition to that, High Courts are responsible for trials of the criminal offence referred to in Article 444 of the Criminal Code, regardless of the forms referred to in that Article, in case criminal offence of trafficking in human beings has been committed in an organised manner-article 18 of the Law on Courts.

Pursuant to Article 86 of the Law on Courts by an annual work programme it has been decided which judge works in which unit, and pursuant to Article 89 of the stated law the cases and work load have been allocated to a judge by a random case methods, which depends only on a code and a number of a case.

According to the annual work programme of the Basic Courts in Montenegro, there are **21 judges** currently working in investigative units within Basic Courts, while there are **48 judges** working in the first instance criminal unit.

There are **3 (three) judges working** on investigations in High Courts, 2 (two) of them in Podgorica and 1 (one) in Bijelo Polje), while there are **12 (twelve) judges** (6 (six) judges in each court) working in the first instance criminal unit.

In High Courts, in the specialised units for trials of the organised crime offences, corruption, terrorism and war crimes there have been deployed:

- in investigation – **4 (four) judges** (three in the High Court in Podgorica, and one judge in the High Court in Bijelo Polje)

-in the first instance criminal unit **8 (eight) judges** (five judges in the High Court in Podgorica and 3 (three) judges in the High Court in Bijelo Polje)

- Total number of judges to whom cases related to a criminal offence of trafficking in human beings **may be** assigned is: **96 judges**.

- SUPREME PUBLIC PROSECUTOR'S OFFICE

Under the Agreement on mutual cooperation of the Supreme public prosecutor's office of Montenegro, governmental and non-governmental sector in the fight against trafficking in human beings the following parties shall be involved in its implementation as well as the implementation of the annexes covering the area of criminal prosecution, education and training:

1. Deputy Special Prosecutor (Supreme Public Prosecutor's Office of Montenegro);
2. Deputy High Public prosecutor (High Public Prosecutor's Office in Podgorica);
3. High Public Prosecutor in Bijelo Polje;
4. Basic Public Prosecutor in Podgorica;
5. Basic Public Prosecutor in Bijelo Polje;

6. Basic Public Prosecutor in Kotor;

7. Basic Public Prosecutor in Bar.

Total: 7 prosecutors

POLICE DIRECTORATE

CRIMINAL POLICE DEPARTMENT

- Section for combating organised crime and corruption

1. Head of Section for fight against organised crime and corruption
2. Chief Superintendent of First Class, leader of a group for suppression of organised general crime
3. Chief Superintendent for fight against trafficking in human beings and smuggling.

- Regional Unit Podgorica (Local units Danilovgrad, Cetinje and Kolasin)

4. Head of regional criminal police unit Podgorica;
5. Head of local criminal police unit Danilovgrad
6. Head of local criminal police unit Cetinje
7. Head of local criminal police unit Kolasin

- Regional Unit Niksic (Local units Savnik and Pluzine)

8. Head of regional criminal police unit

- Regional Unit Pljevlja (Local unit Zabljak)

9. Head of regional criminal police unit

- Regional Unit Bijelo Polje (Local unit Mojkovac)

10. Head of regional criminal police unit Bijelo Polje;
11. Head of local criminal police Mojkovac.

- Regional Unit Berane (Local units Rozaje, Andrijevica and Plav)

12. Head of regional criminal police unit Berane,
13. Head of local criminal police Rozaje

- Regional Unit Bar (Local unit Ulcinj)

14. Head of regional criminal police unit Bar;
15. Head of local criminal police Ulcinj.

- Regional Unit Budva

16. Head of regional criminal police unit Budva.

- Regional Unit Herceg Novi (Local units Kotor and Tivat)

17. Head of regional criminal police unit Herceg Novi;
18. Head of local criminal police Kotor;
19. Head of local criminal police Tivat.

BORDER POLICE DEPARTMENT

- Section for Aliens and Suppression of Illegal Migrations

20. Head of Section for Aliens and Suppression of Illegal Migrations;

21. Chief Superintendent of First Class for suppression of illegal migrations <mailto:odsjekkpdg@t-com.me>;

22. Chief Superintendent of First Class for suppression of illegal migrations.

- Regional border police unit Podgorica (Danilovgrad, Cetinje and Kolasin)

23. Head of Regional border police unit Podgorica;

24. Senior Superintendent for Aliens Podgorica;

25. Senior Superintendent for Aliens Podgorica;

26. Senior Superintendent for Aliens Danilovgrad;

27. Senior Superintendent for Aliens Cetinje;

28. Senior Superintendent for Aliens Kolasin.

- Regional border police unit Niksic

29. Head of Regional border police unit Niksic;

30. Senior Superintendent for Aliens Niksic;

31. Senior Superintendent for Aliens Niksic.

- Regional border police units Bar, Budva and Ulcinj

32. Head of Regional border police unit Bar;

33. Senior Superintendent for Aliens Bar;

34. Senior Superintendent for Aliens Bar;

35. Superintendent for Aliens Budva;

36. Senior Superintendent for Aliens Budva;

37. Senior Superintendent for Aliens Ulcinj.

- Regional border police unit Herceg Novi (Kotor and Tivat)

38. Head of Regional border police unit Herceg Novi;

39. Senior Superintendent for Aliens Herceg Novi;

40. Senior Superintendent for Aliens Herceg Novi;

41. Senior Superintendent for Aliens Kotor;

42. Senior Superintendent for Aliens Tivat .

- Regional border police unit Berane(Rozaje and Plav)

43. Head of Regional border police unit Berane;

44. Senior Superintendent for Aliens Berane;

45. *Senior Superintendent for Aliens Rozaje;*

46. *Senior Superintendent for Aliens Plav;*

47. *Senior Superintendent for Aliens Plav.*

- Regional border police unit Bijelo Polje (Mojkovac)

48. Head of Regional border police unit Bijelo Polje;

49. *Senior Superintendent for Aliens Bijelo Polje-Mojkovac.*

- Regional border police unit Pljevlja (Zabljak)

50 Head of Regional border police unit Pljevlja;

51. *Senior Superintendent for Aliens Pljevlja;*

52. *Senior Superintendent for Aliens Zabljak.*

Total: 52 employees of the Police Directorate

NOTE: For the purpose of adequate implementation of the Agreement on cooperation in the fight against trafficking in human beings, signed between governmental and non-governmental sector, beside the above mentioned civil servants, the following employees of Ministry of education and science, Ministry of Labour and Social Welfare, Ministry of Justice, Ministry of Health, Gender Equality Office as well as Ombudsman for human and minority rights, responsible for fight against trafficking in human beings in Montenegro have been appointed as contact persons:

- Ministry of Health (*38 medical workers*)
- Ministry of education and science (*4 officers*)
- Ministry of Labour and Social Welfare (*21 social workers*)
- Ministry of Justice (*2 officers*)
- Ombudsman for human rights and freedoms (*1 officer*)
- Office for Gender equality (*1 officer*)

- Total number of the employees working in the state bodies being responsible for fight against trafficking in human beings in Montenegro is 228.

18. Ref. to Q. 136: Please provide explanations on the reasons of a peak in cases in 2006 and no case in 2009. What is the reason for so many pending investigations in 2006?

A high number of direct foreign investments in Montenegro was recorded in 2006, and therefore a cash flow from abroad to the accounts of natural and legal persons were continuously under the supervision of competent public institutions, first of all of the Administration for prevention of money laundering and financing of terrorism.

Due to the fact that some of the transactions were important from the aspect of the value and the others even from the aspect of the suspicious indicators, they were under the special attention of the competent services, which was proportional to the number of charges filed in relation to the transactions cases, resulted in higher number of criminal proceedings in 2006.

As it is known, all negative consequences of the global economic crisis were especially emphasized during 2009 and they influenced the market of Montenegro, due to what a scope of investments, and at the same time a number of financial transactions in that year were decreased to minimum. The fact is that in 2009 there was a number of reported transactions which were

subject to control by the competent institutions, but the results of the conducted inspections created no ground for initiation of criminal proceedings before a competent court.

Compared to the previously given answer to the question 136 containing data from the files of the competent bodies and stating that two cases were in the investigation phase, and two finalised investigations were awaiting prosecutor's decision, we hereby inform you that in the meantime the indictment was brought against all persons involved in the proceeding for the criminal offence of money laundering pursuant to Article 268 of the Criminal Code in the cases in which investigations were finished, while the two cases which in the previous reporting period were in the investigation phase, have been finished and the prosecutors decision shall be passed in the statutory term.

We consider it necessary to indicate that through the proposed amendments of the Criminal Code of Montenegro, a criminal offence of money laundering referred to in Article 268 has been harmonised with Vienna and Palermo Convention, and for the purpose of its full harmonisation the limitation of the criminal offence of money laundering as a business activity including „banking, financial and other business operations“ has been abolished, the definition of the criminal offence of money laundering includes any form of conversion and transfer, as well as acquisition, keeping and use of money or other property obtained by a criminal activity. It also criminalise concealment and fraudulent representing facts on the nature, origin, place of depositing, movements, disposal of or ownership over money or other property obtained by a criminal offence, which creates a new legal framework which will certainly facilitate proving activities related to this criminal offence, included in new legal criminalisation compared to former legal solution.

19. Ref. to Qs 137: Please describe your cooperation with other EU FIUs. Please provide figures on the number of exchanges of information with other EU FIUs. What is your view on international cooperation with other EU FIUs? How could it be improved? Would you consider joining FIU.NET?

FIU of Montenegro conducts exchange of intelligence data with other financial intelligence units in accordance with international principles of information exchange and in accordance with the principle of reciprocity adopted in all countries applying standards in the fight against money laundering and financing terrorism. As a member of Egmont group FIU of Montenegro conducts exchange of information through a secure network for data transmission on an international level – Egmont Secure Web, which is unified and simplified procedure which enables exchange of confidential intelligence data in a secure and efficient way.

Statistics

In the period from 2004 until the end of 2009 FIU of Montenegro has exchanged 149 peaces information with financial intelligence units from 25 EU countries, out of which 113 peaces of information have been sent to and 36 received from FIU of other countries.

FIU of Montenegro has a successful and correct cooperation with other EU FIUs, resulting in exchange of detailed and comprehensive data, being of help for further proceeding of the particular cases.

When it comes to the international cooperation there are certain limitations in place, mainly caused by the differences in legal systems of different countries, which leads to the situation that FIUs of some countries provide replays with insufficient data.

FIU.NET is a secure decentralised computer network for information exchange between financial intelligence units of the EU countries. Although FIU of Montenegro is not a member of FIU.NET, through Egmont it has the possibility to share information and data with all FIU.NET members,.

Fight against terrorism

20. Ref. to Qs. 138-148:

- Please provide information on legislation or other rules governing this area, and their adhesion to relevant international conventions. How has financing of terrorism been criminalised, which criminal activities are covered by the law and how is financing of terrorism defined?

Legal framework which enables efficient fight in the field of prevention of terrorism, money laundering and financing of terrorism has been in details provided in the answer to the question 141.

Institutional framework, powers and competencies of the authorities for prevention of terrorism, money laundering and financing of terrorism are given in the answers to the questions 135 and 142.

In order to strengthen the capacities for adequate response to all potential challenges of terrorism and its forms, competent public bodies in Montenegro perform a constant assessment of adequacy of the legal framework and in that regard they undertake measures for its harmonisation with European standards. Harmonisation of the criminal legislation is ensured through the implementation of the new Criminal Procedure Code and adoption and proposal of the Law amending the Criminal Code, being in the parliamentary procedure at the moment of providing this answer. Solutions contained in this Legislation shall to a great extent additionally enhance capacities for prevention and suppression of money laundering and financing of terrorism. Procedural legal assumptions and instruments for seizure of revenues, property and material benefit obtained by a criminal activity including also Financial Investigation for the Purpose of Extended Seizure of Property are given in the answer to the additional question 13.

While revising the **Criminal Code**, special attention was paid to its harmonisation with standards in the field of fight against organised crime, corruption and terrorism, through complex amendments to the definitions of these criminal offences. Namely, **Proposal of the Law amending the Criminal Code**, in accordance with the tendency to have it fully harmonised with international standards and within corpus of criminal offences against humanity and other values protected by the international law, the totally new concept of criminal offences of terrorism has been adopted. The basic criminal offence of terrorism (regardless of whether it was intended against Montenegro, a foreign state or an international organisation) has been provided in Article 447, with various forms of the commission thereof. This criminal offence, as well as the new criminal offences of terrorism such as public provocation to commit a terrorist offences (Article 447a of the Criminal Code), recruitment and training for terrorist offences (Article 447b of the Criminal Code), use of lethal devices (Article 447c of the Criminal Code), destruction and damages to a nuclear facility (Article 447d of the Criminal Code), threatening internationally protected persons (Article 448), as well as financing of terrorism (Article 449) are introduced and harmonized with the set of conventions aiming at prevention of terrorist acts, particularly with the Council of Europe Convention from 2005 which was ratified by Montenegro in 2008.

The main criminal offence of terrorism (regardless of whether it was directed against Montenegro, a foreign state or an international organisation) is referred to in Article 447 with various forms of the commission thereof. By amendments, the existed two criminal offences – terrorism referred to in Article 365 and international terrorism referred to in Article 447, are merged into one criminal offence – terrorism, to protect population, the state of Montenegro, a foreign state and international organisations – and their constitutional, political, economic and social structures and to criminalise any act of violence when the purpose of the conduct is to intimidate a population, or to compel a [Government](#) or an [international organization](#) (to do or abstain from doing any act). A new definition of the criminal offence of terrorism has been harmonised with Article 1 of the European Convention

on Suppression of Terrorism and the Framework Decision of the Council of Europe on Fight against Terrorism of 13 June 2002.

In accordance with the Special recommendation II of the Financial Action Task Force (FATF), „financing of terrorism“ has been provided as a separate criminal offence in the valid Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08).

Bearing in mind that terrorism very often has characteristics of the trans-national crime, there is no restrictive measure limiting punishment for financing of terrorism in case an offence was not committed in the same country in which organisation was located or on which territory a terrorist act was committed. Criminalisation of the criminal offence of „Financing of terrorism“ shall significantly be broadened by the adoption of the stated Law amending the Criminal Code. Pursuant to the new definition of the criminal offence of financing of terrorism, this criminal offence is committed by any person who provides or raises funds, securities, other means or property intended to be used in full or in part to commit terrorist offences, referred to in Article 447, 447a, 447b, 447c, 447d and 448 of the Code, or to finance organisations aiming at commission of these criminal offences, or the members thereof. The punishment stipulated shall be one to ten years of imprisonment. The Code also stipulates an obligatory seizure of assets intended for financing of terrorism.

This definition clearly enumerates assets intended for financing of criminal offences of terrorism – money, securities, other assets or property intended to be used in full or in part for financing the commission of terrorist offences: terrorism, public provocation to commit a terrorist offence, recruitment and training for terrorism, use of a lethal device, damages and destruction of a nuclear facility and threatening of internationally protected persons. The legal definition has been extended to a term „other assets or property“ in compliance with the Convention on Suppressing of Terrorism and Palermo Convention. Therefore, an innovated definition of the offence of financing of terrorism includes activities which contribute to financing of terrorism but which are not necessarily fund raising activities and security collection activities – provision of assets or property intended for financing of terrorism. Terms „assets“ and „property“ shall be interpreted in accordance with ratified international Conventions.

Proposal of the Law amending the Criminal Code introduces „Terrorist organisation“ as a new criminal offence – where two or more persons join together for a longer period of time with an intention to commit criminal offences of terrorism, threaten internationally protected persons and finance terrorist activities.

Apart from the measures provided by law and international treaties, the competent institutions act also within the strategic framework for preventing terrorism. In order to foster the fight against crime, particularly organised crime, corruption, terrorism and war crimes, the Strategy for reform of Judiciary 2007-2012, as a priority goal sets the fight against organised crime and corruption in order to strengthen the prevention of the judicial institutions, criminal proceedings and punishment of perpetrators of criminal offences, starting from a role judicial institutions have in this area. Action Plan for implementation of the Strategy for reform of Judiciary provides a set of measures and activities which have been continuously implemented for the purpose of implementation of this part of the Strategy. All these activities are conducted for the purpose of monitoring and harmonisation with EU requirements and standards in the fight against organised crime, corruption, terrorism and war crimes and ratification of relevant international treaties, implementation of international instruments and standards, strengthening human resources in judiciary, strengthening integrity of judges and prosecutors through improvement of working and financial conditions in justice, and ensuring full and efficient protection of the damaged parties and witnesses in criminal proceedings. Beside implementation of the Strategy for reform of Judiciary, competent institutions responsible for law enforcement implement also a Program of the fight against corruption and organised crime, Strategy of the national security of Montenegro, Strategy of defence of Montenegro and Strategy on integrated border management.

Montenegro ratified Conventions of the Council of Europe in the field of the fight against terrorism, such as: European Convention on the Suppression of Terrorism (Official Gazette of Federal Republic of Yugoslavia – International Treaties 10/2001), Council of Europe Convention on the

Prevention of Terrorism (Official Gazette of Montenegro 5/2008), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, dated 1990 - Strasbourg Convention (Official Gazette of Federal Republic of Yugoslavia, International Treaties 7/2002 and 18/2005), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, dated 2005 - Warsaw Convention (Official Gazette of Montenegro 5/2008), The Council of Europe Convention on Cyber-crime with an Additional Protocol (Official Gazette of Montenegro – International Treaties 4/09) as well as European Convention on the Compensation of Victims of Violent Crimes (Official Gazette of Montenegro – International Treaties 6/09).

In the field of international legal assistance Montenegro is a signatory party of the European Convention on Mutual Assistance in Criminal Matters with Additional Protocols (Official Gazette of Federal Republic of Yugoslavia – International Treaties 10/01 and Official Gazette of Montenegro – International Treaties 5/08), European Convention on Extradition with Additional Protocols (Official Gazette of Federal Republic of Yugoslavia – International Treaties 10/2001), Convention on the Transfer of Sentenced Persons with an Additional Protocol (Official Gazette of Federal Republic of Yugoslavia – International Treaties 14/2001) and the European Convention on the International Validity of Criminal Judgments (Official Gazette of Montenegro – International Treaties 6/09). In addition to the international instruments Montenegro applies the Law on international legal assistance in criminal matters (Official Gazette of Montenegro 4/2008).

Montenegro has also joined relevant UN Conventions: UN International Convention for the Suppression of the Financing of Terrorism (Official Gazette of Federal Republic of Yugoslavia-International Treaties 7/2002), United Nations Convention against Trans-national Organized Crime and its Protocols - Palermo Convention (Official Gazette of Federal Republic of Yugoslavia-International Treaties 6/2001), International Convention for the Suppression of Terrorist Bombings (Official Gazette of Federal Republic of Yugoslavia – International Treaties 12/02), Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties and other Agreements 50/70), International Convention against the Taking of Hostages (Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 9/84) and Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 54/76). Montenegro has also signed the International on prevention of Acts of Nuclear Terrorism.

As for the United Nations Security Council Special Resolutions, by the conclusion of the Government of Montenegro dated 23 April, 2009 Ministry of Foreign Affairs, Ministry of Justice, Ministry of Interior Affairs and Public Administration and Administration for Prevention of Money Laundering and Financing Terrorism have been entrusted to assess the way of implementation of the United Nations Security Council Special Resolutions S/RES/1267 (1999), S/RES/1373 (2001) and S/RES/1452 (2002) and propose measures for their implementation to the Government of Montenegro.

Montenegro has also joined Conventions deposited by single countries, such as: Convention for the Suppression of Unlawful Hijacking of Aircraft (Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 33/72), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 33/72) and Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation Official Gazette of the Socialist Federal Republic of Yugoslavia 14/89).

Montenegro is a signatory party of the relevant international Treaties of the International Maritime Organisation: the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Official Gazette of Serbia and Montenegro – International Treaties 2/2004) and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Official Gazette of Serbia and Montenegro – International Treaties 6/2004).

In addition to the multilateral agreements Montenegro has signed numerous bilateral agreements in the field of cooperation in the fight against organised crime, terrorism, trafficking in drugs and other psychotropic substances and other serious criminal offences.

Through strengthening legal and institutional framework, through implementation of international instruments, continuous trainings and strengthening inter-agency and international cooperation Montenegro contributes to the global fight against organised crime and terrorism. This implies permanent strengthening of capacities in all aspects, so that Montenegro could have a proper response to terrorism challenges as a global threat and to be stability factor in the region and the country not suitable for those types of illegal activities.

- Are there specialised bodies dealing with the financing of terrorism and how they are structured? Describe any co-operation with the banking system and other financial actors (casinos etc.).

The Law on Prevention of Money Laundering and Financing of Terrorism, in accordance with international standards, provides competencies of the Administration for Prevention of Money Laundering and Financing Terrorism (hereinafter: Administration).

The Administration is the financial intelligence and analytical unit of the administrative type whose main task is to have preventive role in suppressing of money laundering and financing of terrorism, analyze data collected from obligors and submits information to the Public Prosecutor's Office, Police Directorate and international bodies.

The Administration performs tasks concerned with detection and prevention of money laundering and financing of terrorism related to: collection, analysis and dissemination of data, information and documentation necessary for detection of money laundering and financing of terrorism to the competent authorities; control over transactions and persons where there are reasonable grounds for suspicion of money laundering or terrorism financing; temporary suspension of transactions; international cooperation with other countries and organisations' bodies; supervision over implementation of law within competencies regulated by law; initiation of a first instance misdemeanour proceeding for breaching the provisions of the Law on Prevention of Money Laundering and Financing of Terrorism.

According to its internal organisation and systematization Act, the Administration has the following organisational structure:

- 1) Sector for reception, processing and data analysis, within which there are the following sections: Section for Analytical affairs, Section for Suspicious Transactions and Section for Information Technologies and reception of data
- 2) Sector for control, international and national control, within which there are the following sections: Section for obligors' control and Section for international and national cooperation.

The Law on prevention of money laundering and financing of terrorism stipulates preventive measures and actions to be carried out in banking, financial and other business operations undertaken to detect and prevent money laundering and financing of terrorism, obligors responsible for implementation of measures and actions pursuant to the Law, as well as activities and actions of obligors and the Administration in detecting suspicious transactions concealing the real origin of money or property or rights for which there are reasonable grounds that they have been obtained in an illicit way in the country or abroad. Obligors responsible for implementation of the measures are: legal persons, entrepreneurs and natural persons, as follows: banks and foreign banks' branches and other financial institutions; saving-banks, and saving and loan institutions; organizations performing payment transactions; post offices; companies for managing investment funds and branches of foreign companies for managing investment funds; companies for managing pension funds and branches of foreign companies for managing pension funds; stock brokers and branches of foreign stock brokers;

insurance companies and branches of foreign insurance companies dealing with life insurance; organizers of lottery and special games of chance; exchange offices; pawnshops; audit companies, independent auditor and legal or natural persons providing accounting and tax advice services; institutions for issuing electronic money; humanitarian, nongovernmental and other non-profit organisations; other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of: sale and purchase of claims; factoring; third persons' property management; issuing and performing operations with payment and credit cards; financial leasing; travel organization; real estate trade; motor vehicles trade; vessels and aircrafts trade; safekeeping; issuing warranties and other guarantees; crediting and credit agencies; granting loans and brokerage in loan negotiation affairs; brokerage or representation in life insurance affairs; organizing and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of € 15.000 or more, in one or more interconnected transactions.

Pursuant to Article 35 of the Law on prevention of Money Laundering and Financing of Terrorism, all obligors that have more than three employees shall designate an authorised person responsible for the Law enforcement. An authorised person performs his/her tasks in cooperation with the network of «authorised persons» with all obligors' organisational parts, at the same time being responsible for cooperation with the Administration, that is, for undertaking all measures for detecting and preventing money laundering.

In accordance with the Rulebook for submitting data on transactions executed in cash in the amount of €15.000 or more and on suspicious transaction, the Obligor referred to in Article 4 of the Law on prevention of money laundering and financing of terrorism shall provide the Administration with the data on any transaction executed in cash in the amount of € 15.000 or more and on any suspicious transaction regardless of the amount and the type thereof.

Lawyers, law offices and law firms, notaries, exchange offices and clearing-deposit companies shall provide the Administration with the data on any suspicious transaction regardless of the amount and type thereof.

The administration body competent for custom affairs shall provide data to the competent administration body, on each money, check, bearer securities, precious metals and precious stones transport across the state border, exceeding value or amount of €10.000 or more, as well as in cases of transportation or attempt of money, check, bearer securities, precious metals and precious stones transportation, in value or amount lower than €10.000, if in accordance with person there are reasons for suspicion of money laundering or terrorist financing.

The report contains data on every transaction executed in cash in the amount of €15.000 and more and on suspicious transaction, regardless of the amount and type thereof.

The report on suspicious transaction shall be submitted before the execution of the transaction, i.e. when a customer gives the order to the obligor to execute a transaction.

An obligor executing measures for prevention of money laundering and financing of terrorism shall:

1. carry out customer identification;
2. exercise thorough customer due diligence (hereinafter: customer due diligence);
3. report and provide data, information and documentation to the administration body competent for the affairs of preventing money laundering and terrorist financing (hereinafter: the competent administration body), in compliance with the provisions of this Law.
4. apply measures for preventing and detecting money laundering and terrorist financing in its registered office and organizational units outside the registered office;
5. determine a person authorized for undertaking the measures provided for by this Law and his/her deputy;
6. ensure a regular professional training and education of employees and internal control of meeting the obligations provided for by this Law;

7. compile and regularly keep up-to-date a list of indicators for identifying suspicious transactions, for which there are reasonable grounds for suspicion of money laundering or terrorist financing;
8. ensure keeping and protecting data and keeping of required records.

An obligor shall make risk analysis which determines the risk assessment of groups of customers or of an individual customer, business relationship, transaction or product related to the possibility of misuse for the purpose of money laundering or terrorist financing.

An obligor shall carry out customer identification including:

- 1) establishment of the identity of a customer, or if the identity has been previously established, verification of the identity on the basis of reliable, independent and objective sources;
- 2) gathering data on a customer, or if data have been gathered, verifying the gathered data on the basis of reliable, independent and objective sources.

If the Administration, on the basis of obtained data, information and documentation, estimates that in relation to transaction or a person there are grounds for suspicion of money laundering, financing of terrorism or other criminal offences that are prosecuted ex officio, it shall provide, in written form, information to the competent authorities, Prosecutor's Office and Police, i.e. other competent authorities.

- Please explain the main difficulties that you face in countering the financing of terrorism. Have you had cases in Montenegro or request from abroad in this area?

Statistic data of the Public Prosecutor's Office and the competent courts lead to the conclusion that Montenegro has not been seriously threatened by money laundering. Namely, in the period from 2004 to 2009, 17 cases were prosecuted before the competent court against 77 persons based on the grounded suspicion for committing the criminal offence of money laundering

- In 2004 only one case was prosecuted against two persons. The conviction resulted in final and enforceable judgement, imposing prison sentences and the measure of seizure of material benefit in the amount of \$ 895.000.

- In 2005 three cases were prosecuted against eight persons. The Indictment brought against one person resulted in the final and enforceable judgement of acquittal. Two cases against seven persons were ended in cancellation of the investigation.

- In 2006, 9 cases were prosecuted against 50 persons. Five indictments were brought against 31 persons. As for the one indictment against two persons a judgment of conviction was brought, which was abolished upon appeal. In one case against one person the indictment ended in judgment of acquittal, which is not final and enforceable yet (a procedure upon the appeal lodged by a prosecutor is ongoing). In three cases against 28 persons the proceeding is ongoing. Two cases against 8 persons are in the investigation phase. Two investigations against 11 persons are finished and the prosecutor shall pass the decision within the statutory term of 15 days.

- In 2007 one case was prosecuted against 10 persons. In this case the investigation is finished and the persecutor shall pass the decision within a statutory term of 15 days.

- In 2008 three cases were prosecuted against seven persons. After the investigation two indictments were brought against 5 persons. In one indictment against 4 persons the judgment of acquittal was passed, which is not final and enforceable yet (a procedure upon the appeal lodged by a prosecutor is ongoing). One indictment against one person is unresolved. In this case a seizure of material benefit in the amount of €72.600,00 was proposed. One case against two persons is in the investigation phase.

- In 2009 there were no new cases prosecuted with regard to this criminal offence.

However, in 2009, upon the inducement from 2006 lodged against two persons, upon the abolition of the judgment of conviction in the repeated proceeding, the court passed judgement of conviction

against both persons and imposed prison sentences on them. The indictment imposed seizure of material benefit in the amount of €161.000,00. The judgement is not final and enforceable since the appeal procedure is ongoing.

There were no terrorist financing cases prosecuted in the stated period.

However, money laundering and terrorism financing are very often closely connected with criminal offences of transnational organised crime, and therefore the competent authorities and institutions in Montenegro shall continue activities on prevention of money laundering and financing of terrorism. To that end, the measures will be undertaken to create all necessary preconditions for Administration for Prevention of Money Laundering and Financing Terrorism to provide an important lacking software database (IBASE), which would facilitate national and international cooperation and exchange of data with other Law enforcement bodies. Second priority shall be to increase the level of supervision over reporting entities and establish more strict control over the funds investing in real estates.

In addition to that, the Law on prevention of money laundering and financing of terrorism (Official Gazette of Montenegro 14/07 and 4/08) provides for collection and submission of data and information and documentation on persons or cash transactions and in justified cases, upon the request of a body of the requesting country, may suspend transaction up to 72 hours. Upon letter rogatory for international legal assistance, when money laundering is concerned, competent bodies act with no delay, in compliance with legal provisions and provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS.141) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS.198) acceded by Montenegro.

Letters Rogatory in prosecuted criminal offences of money laundering are most often related to the checks of bank account holders, cash transactions, submission of birth certificates, etc. High Courts obtain requested data from banks and other competent authorities and furnish the answers to the Ministry of Justice which then, without delay forwards them to the competent authorities of a requesting country. In practice, there have been no problems registered so far in regard to real time actions upon letters rogatory in the field of money laundering, although a number of this letters rogatory is quite small. Namely, in its seven-year-mandate, the Administration has had two letters rogatory from foreign financial investigation units for checks on persons who were suspicious of been connected with terrorism.