

Government of Montenegro

Ministry of Economy

Questionnaire

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

– ADDITIONAL QUESTIONS –

30 External relations

Minister:

Branko Vujovic

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

30: External relations

I. COMMON COMMERCIAL POLICY

WTO and other horizontal aspects

D. Services

1. Are you currently negotiating or have you entered into a commitment to negotiate any new services agreements? Please provide details regarding the current status and any intermediate results arising from any such ongoing or proposed negotiations.

Montenegro is not currently negotiating any new services agreements.

2. (Ref to Q. 9): Please identify any commitments you have undertaken or intend to undertake which will need to be brought in line with the commitments undertaken at EU's level (in the WTO). Please provide the summary findings of any work on this issue.

As it has already been stated, Montenegro has made efforts to harmonize its regulations with the WTO regulations, paying special attention to ensure the harmonization of its multilateral commitments arising from GATS with the EU commitments. Each request which Montenegro received from the WTO negotiating partners was previously harmonized with DG Trade.

E. Administrative Capacity

3. (Ref to Q. 10): Please provide staffing numbers in the various departments dealing with commercial policy, and please explain co-ordination mechanisms with the departments responsible for customs administration;

Two departments within the Ministry of Economy deal with the issue of commercial policy. There are 24 officers working in the Department for Sector for Multilateral and Regional Trade Cooperation and Foreign Economic Relations, whereas the cooperation with the Customs Administration is conducted through implementation and monitoring of FTA, licenses and quotas, reporting, harmonization of a control list. The second department is a Department for Internal Market and Competition within which there is a Department for Market Inspection. The staffing number in this department is 62, whereof there are 56 market inspectors. The Law on General Product Safety (Official Gazette of Montenegro 48/08) provides for the cooperation with the Customs Administration in relation to delaying, for three days, releasing the product or a series of product when there exists a reasonable doubt of great risk to consumers' health and safety or if a product or a series of product do not adhere to prescribed documents or if they are not labeled correctly. This cooperation is also provided for by the Decree on the Manner of Exchanging Information on Product which Pose a Risk (Official Gazette of Montenegro 13/2010) when hazardous products are the issue, i.e. the procedure of exchanging information on hazardous products which pose a risk.

Within the Ministry of Agriculture, Forestry and Water Management the issue of commercial policy is dealt with by 3 officers, whereas the cooperation with the Customs Administration concerns the issue of quotas usage.

There are 3 staff members within the Ministry of Finance, in a Department for Customs and Tax System, in a Sector for Customs System and Customs Policy. The area of work is defined by the Rulebook on Internal Organization and Systematization in the Ministry of Finance, and, besides other things, it implies work related to: preparation of laws and other regulations (decrees, rulebooks, instructions, etc) which provide for customs system and customs policy; monitoring development and functioning of economic and legal system in the area which is responsible for customs system functioning; preparation of expert bases for undertaking and implementing measures of economic policy within the field of customs system and customs policy; monitoring and application of customs regulations and provision of unique procedure of implementation of laws and secondary legislations relating to customs procedure; provision of expert assistance to customs authority aimed at establishing its unique behaviour during the implementation of customs procedure; preparation of different opinions and positions concerning regulations related to customs procedure, etc.

There is a special way of cooperation between the Ministry of Finance and Customs Administration concerning planning and creation of basic annual goals of the Government in this field, which is subsequently manifested through mutual work on drafting of regulations related to customs system and customs policy.

There are 4 staff members dealing with commercial policy within the Directorate for Development of Small and Medium Sized Enterprises.

Within MONSTAT, in a Foreign Trade Department, there are 2 statisticians and 2 programmers dealing with processing, preparation and dissemination of foreign trade data. Agreement on Cooperation provides for the cooperation between MONSTAT and Customs Administration. Deadlines, manner and procedures of sending foreign trade data have been defined within this Agreement.

Coordination with the Customs Administration is conducted through working groups or the Commission for Economic Policy and Financial System if drafting of laws is concerned. Customs Administration provides for statistical indicators and via MONSTAT it directly reports the data to relevant public bodies. Also, Customs Administration reports the data to the bodies ad hoc at their direct request.

4. Are there any trade and trade-related trainings foreseen in the short-term and long-term perspective?

Since the beginning of Montenegro's accession to WTO (December 2004), staff working at different trade areas are participating on seminars organized by WTO Secretariat on a regular basis.

Trainings of such type are expected in time to come, as well as after Montenegro's admission into WTO.

Apart from WTO, trainings for employees of the Ministry of Economy are also organized by IDEAS Center from Geneva.

In the process of accession to World Trade Organization, IDEAS Centre is providing expert and technical assistance to Montenegro. Until now, four employees have attended seminars which lasted one or three months.

The cooperation with IDEAS Centre will continue in time to come, as well as after Montenegro's accession into WTO.

EUROPAID project provides expert and technical assistance in finalization of Montenegro's accession procedure into World Trade Organization and in preparation for EU membership negotiations within Chapter 30 (External relations).

The project has begun on 28 September 2009 and will last until 21 June 2010.

Until now, trainings in the area of trade in services, generalized system of preferences and trade protection measures have been organized.

By the end of the project, the training in trade in services will be continued, while seminars on preparation of the report, which Montenegro shall submit subsequent to admission into WTO, will also be organized.

Staff members also attend training organized within CEFTA Agreement. So far, workshops concerning topics relevant for implementation of that Agreement have been organized. Last – year seminars addressed the topics of diagonal cumulation, public procurement, role of trade in improving investment climate, possible ways in development within CEFTA, problems faced by business people in trading within the region, etc. The continuation of the seminars has been planned, since they are significant for further implementation of the Agreement.

Through various seminars, trainings, workshops and meetings organized by EUROSTAT, the staff at MONSTAT have gained knowledge and skills for processing and dissemination of foreign – trade data. Short – term seminars lasting from 5 to 7 days are organized twice a year through programs of IPA – project in cooperation with EUROSTAT, while there are months – long trainings organized by EUROSTAT.

Dual use goods

5. The Council Regulation 428/2009 of 5 May 2009 sets-up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Has Montenegro updated its control list in line with Annex I of Regulation 428/2009? If not, when does Montenegro expect to address the issue?

In the process of implementation of the Law on Foreign Trade of Armaments, Military Equipment and Dual – Use Items (Official Gazette of Montenegro 80/08), Montenegro has adopted a Decision on Establishment of the National Dual-Use Items Control List (Official Gazette of Montenegro 42/09 of 29 June 2009), which is based on the COUNCIL REGULATION (EC) No 1167/2008 of 24 October 2008.

Harmonization of the Decision with Annex I of Regulation 428/2009 will be implemented during the second quarter of 2010.

6. Montenegro's Law on Foreign Trade in Weapons, Military equipment and dual-use items mentions in Article 8 that licenses are required for brokering activities "related to dual-use items which are listed in a special part of the National Dual-use Items Control List. Please provide the following information:

i. What are the items included in this special part of the list?

Law on Foreign Trade of Armaments, Military Equipment and Dual – Use Items has been drafted in cooperation with BAFA organization experts from Germany (Federal Office of Economics and Export Control), and SIPRI from Sweden (Stockholm International Peace Research Institute), also taking into account recommendations from UNDP representatives, comments from EC DG Trade, DG Relax, NATO, as well as regional – countries experience.

Pursuant to the provision of Article 8 of the Law, the control has been extended to brokering activities, which accounts for the harmonization with Article 3 Item 1 of the EU Council Common Position (2003/468/CFSP).

Paragraph 2 of the Law implies that the license is necessary exclusively for so called sensitive dual – use items, listed within the special section of the National Dual – Use Items Control List.

Montenegro has not adopted a special list as a part of a Decision on Establishment of the National Dual – Use Items Control List, but it issues brokering licenses for all items listed within the National Dual – Use Items Control List.

ii. Why has Montenegro not extended brokering controls to all dual-use items, in line with Regulation 428/2009?

See the previous answer.

iii. Does Montenegro intend to extend brokering controls to all dual-use items? If yes, when will this be done?

As it has already been stated, brokering controls is in practice applied to all items stated within the Decision on Establishment of the National Dual – Use Items Control List. These and other amendments to the Law on Foreign Trade of Armaments, Military Equipment and Dual – Use Items shall be introduced in last quarter of 2010.

On export credits

7. With regards to operations of SMECA, would you please specify the legal base for operation in Montenegro and the methodology used to assess risk for exporters?

SMECA was established in 2002, based on the Agreement between the Government of Serbia and the Government of Montenegro, with the support of the World Bank and donations from the Government of Italy, with a view to enabling financing and export support. Aiming at regulating its work, the Law on Fund for Insurance and Financing of Foreign Trade Business (Official Gazette of FRY 03/02) was adopted in the same year.

After 2006, when Montenegro gained independence, SMECA was one of few common institutions functioning in the previous period. However, Serbian public bodies informed us that the Parliament of the Republic of Serbia adopted the Law on Cessation of Validity of the Law on Fund for Insurance and Financing of Foreign Trade Business (Official Gazette of the Republic of Serbia, 36/09). According to this, SMECA ceased to exist during 2009.

Stated base for adoption of such law has been explained in a way that, pursuant to Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the Republic of Serbia became the follower of this union, which means the very Fund, i.e. that the Law adopted in 2002 under which this Fund was established, became a part of the internal legislation of the Republic of Serbia. Stated Law on Cessation of Validity provides that the whole property shall pertain to the Agency for Insurance and Financing of Exports of the Republic of Serbia (AOFI).

Considering that SMECA was established and, besides other things, financed by credit resources of the World Bank, what needs to be completed is the Agreement regulating rights and obligations towards Montenegro, which have arisen from the work of SMECA. There are the ongoing negotiations between Serbian and Montenegrin representatives regarding the issue.

The Agreement provides that the base for division of property was founding capital of SMECA, and that the resources were divided according to the Agreement between the Republic of Serbia and the Republic of Montenegro on regulating the membership in international finance organizations and dividing financial rights and obligations, under which 91, 7059% of the founding capital is due to the Republic of Serbia and 8, 2941% of it is due to the Republic of Montenegro. Also, AOFI would undertake the obligation concerning SMECA office in Podgorica, as well as concerning an employee working there.

For the time being, what is left to do is to define the way how to regulate Montenegro's exporter obligations. According to the records, only one company from Montenegro exists in SMECA portfolio, this being Tehnostil from Nikšić.

It is useful to mention that the Parliament of Montenegro adopted the Law on Montenegro's Investment and Development Fund, in December 2009. One of the main functions of the Fund will be allowing credits and issuing guarantees encouraging export. Namely, by transforming the Development Fund of Montenegro into the shareholding company within the ownership of the state of Montenegro, Investment and Development Fund has been established, which will dispose of the following instruments, which would be effective mechanisms for meeting the objectives of economic policy of the Government of Montenegro: stocks, bonds, shares, credit lines vs. business banks' bonds, guarantees, deposits at business banks. Through previously listed instruments (and other ones if there is a need) Investment Fund S.C. will represent a strong instrument for conducting economic policy of the Government of Montenegro, and, which is the most important, its funds will be of revolving character.

The activities of the Fund are:

1. allowing credits and issuing guarantees which:
 - a) encourage establishment of small and medium sized enterprises;
 - b) provide support to infrastructure projects, projects concerning water supply and waste waters treatment and projects concerning enhancing the environment
 - c) finance the project of local, regional and national importance.
 - d) encourage exports;
 - e) encourage employment
2. activities concerning selling the capital in Fund portfolio
3. other activities which provide support to the economic development, in accordance to this Law. Fund allows the credits directly or indirectly via bank.

The Fund shall lessen the differences in performing credit activities and activities concerning issuing of guarantees, being guided by principles of careful performing of bank activities. The Fund shall submit the reports on credit activities and activities concerning issuing of guarantees to the Central Bank of Montenegro, in accordance with the regulation of the Central Bank of Montenegro.

The Fund initiated its work on 31 March 2010.

8. The government has recent passed a bill on Establishment of the Investment and Development Fund. Would this fund also perform as an Export Credit Agency (ECA), issuing official support to export credits? If yes, what methodology would it use to calculate risk?

At the end of December 2009, the Parliament of Montenegro adopted a Law on Investment and Development Fund of Montenegro (Official Gazette of Montenegro 88/09), attached as Annex. The establishment of the very fund is ongoing – preparation for initiation of activities, after which the bodies of the fund will be constituted. The Law on Fund widely defines the area of activity of the Fund. Among other things, it provides for the support to export projects. Instruments which are at the disposal for the support to export projects are credits and guarantees. Mentioned instruments are to be elaborated within a midterm work plan and a work plan for 2010. During 2010, it is reasonable to expect that export projects obtain a support through business banks – which places the risk of charging the placement onto the bank. In the case of direct allowing of the credit / guarantee, a detailed analysis of the enterprise's solvency shall be conducted, and adequate collateral of credit shall exist.

9. Would the new Investment and Development Fund also perform as the SMEs credit guarantee fund (as from the IPA funded project) or will a specific SMEs credit guarantee fund be established? In this second case, would this last also perform as an ECA?

Establishment of a separate guarantee fund has been considered, however what has been decided is to set up a guarantee function within new Investment and Development Fund, as a part of its activity.

The Law on Investment and Development Fund provides for the activity of the Fund in the following way:

1. allowing credits and issuing guarantees which:

- encourage establishment of small and medium sized enterprises;
- provide support to infrastructure projects, projects concerning water supply and waste waters treatment and projects concerning enhancing the environment
- finance the project of local, regional and national importance.
- encourage exports;
- encourage employment

2. activities concerning selling the capital in Fund portfolio

3. other activities which provide support to the economic development, in accordance to this Law.

Fund allows the credits directly or indirectly via bank.

III. BILATERAL INVESTMENT AGREEMENTS

10. In order to have a complete picture of the differences between your investment regime and investment regimes in the EU, please provide us with any legal act(s) defining your investment policy, including any legislation defining the investment-related aspects of a specific sector;

See Annex (The Strategy of Encouragement of Foreign Direct Investments and the Law on Foreign Investments – Official Gazette of Montenegro 52 / 00, 36 / 07)

11. Do any agreements contain a free transfer clause that provides for the unrestricted transfer of any capital and payment related to an investment? If so, are there any exceptions or safeguard clauses that would limit such a free transfer clause? What is the scope of these exceptions and how are they triggered?

The Agreement on Mutual Protection and Promotion of Investments contains a free transfer clause and in principle it says:

- Without prejudice to the measures adopted by or which are to be adopted by the European Union, each contracting party shall, concerning the investments which the nationals or the companies of the other contracting party perform on its territory, allow free transfer of capital and payment related to an investment in the case of liquidation, income of liquidation, in the case of expropriation...
- one contracting party investors, which gain the license for work on the other contracting party's territory, will be also allowed to transfer its income into its country of origin, as a result of allowed investment.
- transfers referred to in previous paragraphs will be performed in free convertible currency according to the exchange rate valid on the day of transfer, pursuant to exchange regulations valid for different classes of transactions.
- each contracting party shall issue necessary authorizations for performing the transfer without unnecessary delay, and without any other costs except for regular bank costs.

12. Have you carried out an analysis to identify any differences between these agreements and those that the Community may have with the same third countries? If yes, please provide us with the findings of such an analysis. If not, is such an analysis planned? Please provide any relevant details of such plans.

Montenegro has not carried out an analysis in order to identify differences between these agreements and those that the Community may have with the same third countries. For the time being, such an analysis has not been planned.

13. Are you currently negotiating or have you entered into a commitment to negotiate any new bilateral investment agreements? Please provide details regarding the current status and any intermediate results arising from any such ongoing or proposed negotiations.

Countries with which Montenegro is currently negotiating bilateral investment agreements:

- CZECH REPUBLIC (a text of the agreement agreed during 2008)
- MOLDOVA (a text of the agreement agreed during 2009)
- SAN MARINO (initiated by San Marino in December 2008, we are waiting for a reply to the changes that we had sent)
- NORWAY (initiated by Montenegro at the end of 2008, we have not yet received a reply from Norway)
- CROATIA (initiated by Croatia on 11 September 2008, we are waiting for reply to amendments that we had sent)
- FRANCE (a text was agreed in May 2008, France has withdrawn from signing the Agreement, the reason stated was that certain institution on the EU level would negotiate these kind of agreements on behalf of all member states)
- MALTA (a text of the agreement agreed, signing of the agreement arranged for 7 April 2010)
- ROMANIA (in October 2008 Montenegro sent a draft version of the agreement, we have not yet obtained a feedback)
- BULGARIA (a text of the agreement agreed, however Bulgaria is waiting a reply from EC whether agreement may be signed with certain amendments)
- MACEDONIA (a text of the agreement in principle agreed, however Macedonia needs more time to consider in detail whether provisions of the agreement impose some additional costs to Macedonia)
- TURKEY (initiated by Turkey in December 2009, ongoing negotiations)
- IRAN (initiated by Iran in July 2009, ongoing negotiations)

ALGERIA (initiated by Algeria in November 2009, ongoing negotiations)

IV. DEVELOPMENT POLICY AND HUMANITARIAN AID

14. (Ref to Q. 24): Please provide additional information about the scope and aims of the economic cooperation agreements negotiated with Iran and Cuba?

There are the ongoing negotiations with Iran about the conclusion of the Agreement on Mutual Protection and Promotion of Investments, but not on economic cooperation, as it was previously stated.

The aim of signing an Agreement on Economic Cooperation with Cuba is the expansion of economic and trade cooperation, as well as striving for creation of legal base and favorable conditions for further development of mutual relations. By signing this Agreement parties confirm their readiness for enhancing and developing goods and services exchange between legal persons of the two countries, in accordance with existing laws and regulations which are in force in both countries and based on principles and practice acknowledged in international trade. Also, parties shall support the development of different bases for trade, industrial cooperation, establishment of business associations, and other types of organizations related to the expansion of bilateral trade relations, in accordance with their countries' legislation. They shall also support foundation and work of national trade representatives, representatives and subsidiaries of firms, companies, banks and other organizations of their countries related to mutual trade, on their territories, in accordance with their national legislation.

Countries shall provide mutual assistance to each other in organizing fairs, exhibitions and conferences, and other promotional activities which take place on both countries' territories, and which encourage their mutual trade. With a view to accomplishing the Agreement easier, one provision provides for establishment of a working group which will perform its duties within Montenegrin – Cuban intergovernmental joint commission, for providing recommendations and holding consultations with a view to expanding mutual economic relations.

15. (Ref to Q. 26): Do you measure your budget contributions according to Official Development Assistance methodology? (no answer provided in the sent replies to the Questionnaire)

Within its budget, Montenegro does not plan contributions which will be set aside to assist developing countries. Under exceptional circumstances, mentioned contributions are set aside in accordance with the decisions of the Government of Montenegro, whereupon ODA methodology is applied. Montenegro, as recent beneficiary of such assistance, does not yet possess a defined methodology of managing and setting aside the funds for assisting developing countries. Simultaneously, taking into account the significance of setting the funds for assisting developing countries aside, Montenegro shall, if planned within budget expenditures, in time to come, base its policy concerning procedures of assisting developing countries on standards provided by European Consensus.

16. (Ref to Q. 29): Please provide clarification on your attitude towards the acceptance of the European Consensus on Development.

Montenegro supports common goals, values and principles of development cooperation stated within the European Consensus on Development, such as eradicating hunger, creating conditions for achievement of universal primary education, promoting gender equality and empowering women, combating HIV/AIDS and other diseases, ensuring environmental sustainability, etc.

Through implementation of its foreign policy and through contacts with partners Montenegro promotes these common values.

The Government of Montenegro is aware of the obligations undertaken by EU member states with the purpose of increasing expenditures from their BNT for development goals – countries which joined the EU after 2002 shall do their best to provide 0,33% of their BNT for development aid by 2015, other EU states shall achieve 0,7% of their BNT by 2015. Although not yet a member of the EU, and although still being a country receiving development aid, Montenegro will work on creating conditions to, parallel to the accession process, become a state which provides development aid in accordance with the goals, values and principles contained within the EU documents.

Therefore, by the end of 2011, Montenegro will start considering the opportunities of forming a body which will deal with development cooperation and humanitarian aid, and which should, by the end of 2012, start drafting relevant laws (the Law on Development Policy of Montenegro, the Law on Humanitarian Aid) which will define the issue of development and humanitarian aid, harmonizing in that way legislation with EU regulations.

It is important to emphasize that Montenegro is a member of Transparency International's Donations.

17. (Ref to Q. 30):

- Please provide translated Report on implementation of the Development Millennium Goals adopted on 7 July 2005.

See Annex (The Report on Implementation of Millennium Development Goals adopted in 2005)

- Please provide translated Government decision of 14 May 2009 on drafting the Mid-term Progress report on Implementation of Millennium Development Goals and information on the state of play of this report.

Translation of Government conclusions of 14 Mat 2009 on drafting the Midterm Progress Report for Implementation of MDG, as well as translated Report on Implementation of Millennium Development Goals adopted in July 2005, are attached as Annexes for the answer.

Information on the procedure phase, Millennium Development Goals:

In the session held on 14 May 2009, the Government of Montenegro adopted a decision on drafting the Midterm Progress Report for Implementation of Millennium Development Goals by the end of 2010 the latest. According to the decision, the Ministry for Foreign Affairs was obliged to form inter - ministerial working group for drafting the Report. The inter - ministerial group was formed on 30 September 2009, whereas the first workshop for preparing the Report was held at the beginning of November 2009 with all the members of the working group. All the members of the UN system operating in Montenegro have been included (UNHCR, UNICEF, UNDP, IOM, WHO), as well as NGO and representatives and representatives from institutions (for women rights, for HIV/AIDS issues, health, environment). Five thematic working groups have been established for eight Millennium Development Goals, and competent coordinators have been allocated for each working group, engaged with preparation of a draft report for specific goals. Meeting of all five working groups were held in December 2009. In January and February 2009, coordinators submitted zero drafts for all goals, after consultations and harmonization with working groups' members. Holding the meetings with all members of thematic working groups is planned in March 2010, with a view to giving suggestions and comments on zero draft report for all goals.

The planned procedures of drafting a report and the work of the Group are implemented with the support of UNDP Regional Office in Bratislava.

18. (Ref to Q. 32): Please provide clarification on the distinction you made between the alignment with EU development policy and the principles of humanitarian aid.

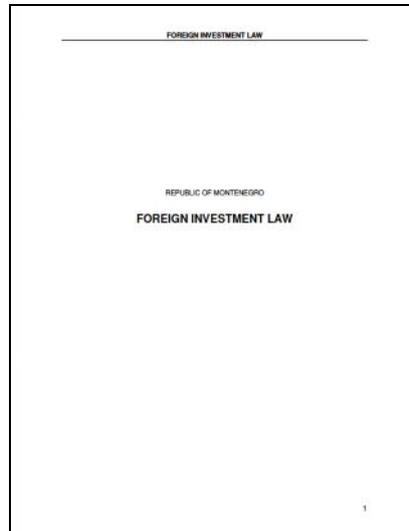
Montenegro supports both the principles of the EU development policy and humanitarian aid policy. Also, there is the awareness of connection between one country's level of development and its readiness to respond to disasters and accidents.

Bearing in mind that the level of the Montenegrin budget caused Montenegro to be the beneficiary of the development aid so far, and having regard to the principles of humanity and solidarity, ad hoc financial support was mostly given in the cases of natural disasters and those caused by human activity (Albania, China, Ukraine, Haiti), i.e. only humanitarian aid was used as a means of support to developing countries.

Besides the stated, and taking into consideration the obligation of states to create global development partnership, Montenegro committed specific resources for fund of the UN High Commissioner for Human Rights and the UN High Commissioner for Refugees. The intention is to provide in this way that the given contributions serve for accomplishing goals and principles contained within European Consensus for Development, especially having regard to the fact that Montenegro is not capable of monitoring and evaluation of the manner these contributions are used, if bilateral accomplished contribution is in question.

Annex

1. Foreign Investment Law



Please double click to open the whole document

2. Foreign Direct Investment Incentives Strategy Of Montenegro



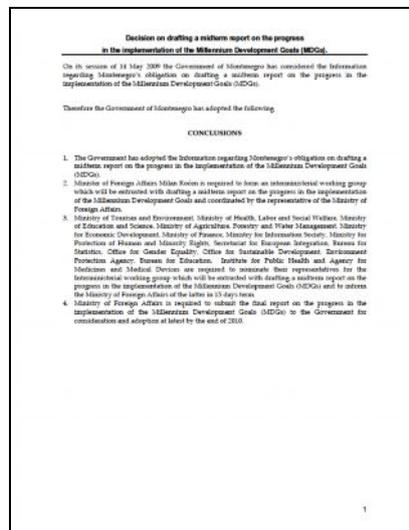
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3. A report on the progress towards the achievement of the Millennium development goals in Montenegro



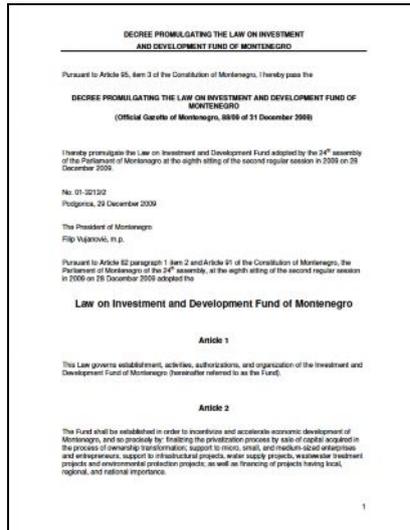
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4. Decision on drafting a midterm report on the progress in the implementation of the Millennium Development Goals (MDGs)



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5. Decree Promulgating The Law On Investment And Development Fund Of Montenegro



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