

**Government of Montenegro**

**Ministry of Finance**

## **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

### **32 Financial Control**

**Minister: Igor Luksic**

**Podgorica, December 2009**



**TABLE OF CONTENTS**

CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP.. 5

Chapter 32: Financial Control..... 6

    I. Public internal financial control and external audit ..... 7

    II. Protection of the EU financial interests ..... 34

        A. Management and Control of (future) EU Funds ..... 34

        B. Protection of the Euro against counterfeiting "First Pillar" aspects ..... 44



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

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## **Chapter 32: Financial Control**

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## ***I. Public internal financial control and external audit***

### **Public Internal Financial Control**

#### **General**

**1 Which ministry (and which organisation within the ministry) has the responsibility to develop, harmonise, co-ordinate and check the following elements of PIFC in your country? On the basis of which law? Please provide a translated copy):**

**a) Financial management and control systems (managerial accountability, accounting, ex-ante financial control, ex-post financial control, inspection);**

**b) Internal audit (comprising financial, systems-based, performance and IT-audits).**

The responsibility for the development, alignment, coordination and checking of internal financial control elements in the public sector (financial management and control and internal audit) in Montenegro is in the competence of the Ministry of Finance, i.e. its Department for Central Harmonization of Financial Management and Control and Internal Audit in the Public Sector. The Ministry of Finance exercises this competence pursuant to the Law on Public Internal Financial Control, adopted by the Parliament of Montenegro at its session held on 26 November 2008 ([Annex 260](#)).

The Department for Central Harmonization of Financial Management and Control and Internal Audit in the Public Sector has two divisions in its organisation: the Division for Harmonization of Financial Management and Control and the Division for Harmonization of Internal Audit.

The Division for Harmonization of Financial Management and Control is responsible for regulation, development and harmonization of public financial management and control, and the Division for Harmonization of Internal Audit is responsible for regulation, development and harmonization of internal audit in the public sector.

**2 Has this Ministry or organisation written a Policy Paper or Strategy Paper, describing the present situation of PIFC in your country and analysing the adequacy of these systems? Does this paper contain recommendations for the future development of PIFC? Has this paper been endorsed by the Ministry of Finance and by the Government? Has the paper become a general policy carried by the Government? Please provide a copy in one of the official EU languages.**

In November 2007, the Ministry of Finance prepared a strategic document entitled "Development Strategy of Public Internal Financial Control in Montenegro", which was adopted by the Government of Montenegro in December 2007, thus becoming the general government policy in this area.

This strategy describes the key elements of the current situation and the strategy for the establishment and development of a comprehensive and efficient internal financial control in the

public sector in Montenegro. The strategy is comprehensive and it covers both national funds and the funds received from the EU.

This strategic document describes the basic elements of public internal financial control concept (PIFC concept), provides an analysis of the present state in public internal financial control in Montenegro (institutional and legislative framework) and the future development of PIFC system in Montenegro. The Plan of Activities which includes the timeframe for the harmonization of the existing public internal financial control with the requirements from Chapter 32 - Financial Control makes an integral part of this document. ([Annex 265](#)).

The Strategy is aimed towards ensuring harmonization with international standards for internal control and internal audit, as well as with the best EU practice, ensuring economic, effective and efficient gathering and use of public resources in accordance with Government policies and objectives, as well as ensuring accountability and fiscal transparency.

**3 Does PIFC in your country cover the control and audit of income (customs and tax authorities), expenditure (commitments, tender and contracting procedures, disbursements and recovery of unduly paid amounts), assets and liabilities? Does PIFC cover all parts of the national (and lower authorities') budgets and if not, which parts are excluded and covered by other institutions?**

The Law on Public Internal Financial Control regulates the system of financial management and control and internal audit in the public sector, which should encompass all of entity's assets, including funds received from the EU. Provisions of this Law apply to users of the state budget and municipal budgets, to state funds, independent regulatory bodies, joint stock companies and other legal entities in which the state or municipalities have a controlling stake.

The implementation of this Law will lead to greater transparency and efficiency in the management and control of public revenues, expenditures, assets and liabilities.

In Montenegro, the control and audit of revenues, expenditures, assets and liabilities is performed by a number of institutions, each within the scope of its competences, and those are: Tax Administration, Customs Administration, Public Property Administration, Public Procurement Directorate, Commission for Control of Public Procurement Procedure and State Audit Institution.

**Tax Administration**

The Law on Tax Administration (Official Gazette of Montenegro 65/01, 80/04, and 29/05) regulates the relations between taxpayers and the Tax Administration which implements the legislation pertaining to taxes and other public payments, unless otherwise stipulated by special laws on individual types of taxes and other public payments, and constitutes the common tax legislation basis.

Article 5 therein defines the Tax Administration as a public administration body in charge of the matters concerning the determination, supervision and collection of taxes and other public payments.

The matters concerning tax determination and collection stipulated by the decisions of local governments are performed by their tax bodies, as envisaged by Article 5 of this Law. The Tax administration also performs activities of record keeping, determination, supervision, and collection with the aim of collecting taxes which belong to local governments in their entirety, other public payments and other payments prescribed by the Law.

The Tax Administration may be entrusted with the performance of these affairs on the basis of a mutual agreement, as envisaged by Article 5, paragraph 3 of the Law.

The Tax Administration also performs activities which refer to supervision, calculation, collection with the purpose of collecting taxes and contributions, and submittance of misdemeanour charges

and conducting first instance misdemeanour proceeding for the violation of regulations on payment of taxes and contributions.

The Tax Administration collects and processes information on determined and collected taxes and contributions and proposes changes to the tax policy and regulations, as well as other regulations with the aim of promoting tax legislation and more efficient collection of taxes and contributions.

The scope of work of the Tax Administration is further defined by Article 6 of the above mentioned Law under which the Tax Administration performs administrative and other professional activities which also refer to the following:

- receiving tax returns, recording tax liabilities in tax bookkeeping, collection and tax refund;
- determining timeliness, legality and regularity of submitted tax returns; determining tax base and tax liability; conducting tax audit; implementing tax collection procedure; bringing charges for initiating misdemeanour, economic crime or criminal proceedings; conducting misdemeanour proceedings in the first instance for violation of tax regulations; deciding on the rights of tax payers; keeping the registration of tax payers and tax registry; imposing penalties for tax violation; temporary seizure of documentation, equipment and means of labour; temporary prohibition to conduct activities and to dispose of funds held on the accounts; preparing tax-related reports; initiating the adoption or amendment of regulations; giving opinions on the implementation of regulations in individual tax cases; international legal assistance in tax matters; examination of tax systems and cooperation with tax authorities from other states, monitoring the implementation of international agreements concerning taxes; issuing documents with the data held in official records of the Tax Administration; development and use of tax information system, granting authorizations, certificates, etc.
- issuing authorizations or labels for marking, monitoring the production, trade and use of excise products, in accordance with a special law regulating the individual types of taxes.

The concept of inspection supervision implemented by the Tax Administration under the law regulating the tax procedure is defined by Article 73 of the Law on Tax Administration. Pursuant to this law, inspection supervision is a part of tax and legal relation in which a tax authority implements the procedure to verify and determine facts important for taxation of taxpayers and other persons.

Under the provisions of Article 78, paragraph 2 of the Law on Tax Administration, inspection supervision is performed by tax inspectors.

The above indicates that the Department for Supervising the Implementation of Tax Regulations, Inspection and Administrative Procedure and regional tax inspection offices or tax inspectors carry out both on-site and off-site tax inspection.

The Rulebook on Internal Organization and Job Descriptions for the Tax Administration defines the organizational structure according to which the activities from the scope of work of the Tax Administration are performed in 8 regional offices with 8 tax inspection offices. Within the Department for Supervising the Implementation of Tax Regulations, Inspection and Administrative Procedure there is also a Division for Inspection Supervision which performs internal supervision and control, administrative and other professional matters which refer to the following:

- internal supervision for the regular, timely and lawful work of civil servants and state employees in regional tax inspection offices.
- conduct inspection supervision in certain cases based on the right to supervise
- take measures for detection, reporting and processing of determined illegalities

The Division has three groups within its organisational structure: the Group for Planning Inspection Control and Risk Assessment, the Group for Operational Planning and Control, and the Group for the Organization and Methodology of Inspection Control.

The tasks of the Group for Operational Planning and Control include internal supervision and refer particularly to the control of the work of inspectors who perform the activities of inspection supervision of tax payers and undertaking measures for the elimination and processing of determined irregularities in the activities of an inspector. The reports of determined illegalities are submitted and measures to eliminate irregularities are proposed and instructions for further actions are given. In addition, the work of tax inspectors is coordinated and technical assistance in performing the supervision of tax payers is given, as well as the interpretation of all tax related regulation.

The Internal Control Division is established as a special organizational unit in the Tax Administration, conducting the activities referring to control such as: observance of the Code of Conduct for employees, implementing operating procedures and instructions; implementing effectiveness of the program and procedures, implementing laws and other regulations and the set policy, implementing positions and conclusions of competent bodies in the area of taxes; taking samples from the functional supervisory Department especially regarding the determination and collection of taxes, determined penalties as well as the control in other areas within the scope of the tax body where higher risk exists; supervising the implementation of measures ordered by courts and other bodies; control of internal work and affairs which are common for all organizational units (archiving of documents, treasury and material and financial affairs) and other affairs.

#### *Refund of revenues paid incorrectly or in excess*

Irregularly paid tax can be a wrongly paid tax, and such a situation can only arise by entering a wrong TIN (tax identification number of a legal or natural person) or a wrong number of the incoming payment account. In such cases, the Tax Administration institutes a procedure to transfer the funds from the wrong incoming payments account to the right one. In the procedure, facts are determined concerning the taxpayer not being obliged to pay the tax liability to the account to which the wrong payment has been made and the resolution is made on the transfer of funds from the account in which the payment was realized to the right account.

#### **Customs Administration**

The performance of activities related to the supervision and control of revenues which are collected by the customs service is laid down in the provisions of the Customs Law (Official Gazette of the Republic of Montenegro 7/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06 and Official Gazette of Montenegro 21/08), the Decree for the Implementation of the Customs Law (Official Gazette of the Republic of Montenegro 15/03, 81/06 and Official Gazette of Montenegro 38/08) and the Rulebook on Internal Organization and Job Descriptions of the Customs Administration.

The Rulebook on Internal Organization and Job Descriptions of the Customs Administration established the following organizational units:

*The Division for Customs Audit* performs monitoring and supervision over the implementation of substantive regulations on the procedures from the competence of customs houses in relation to customs procedures; performs regular and periodical customs audits of customs houses organizational units performing customs affairs; keeps records of the controls performed; organizes and performs cross-controls; establishes and maintains the data base within the customs audit system; cooperates with tax and inspection bodies and police authorities, as well as with other bodies and organizations within its scope of work; performs the control of diligence and unified implementation of regulations by customs houses in affairs concerning clearance of goods, customs supervision, temporary import, inward and outward processing, customs administrative and misdemeanour proceeding, treatment of customs goods and collection of customs debt; promotes efficient and cost-effective administrative control and risk management in customs houses; emphasizes unwanted consequences which arise from failure to implement customs and other regulations in the competence of customs houses; participates in providing advice in relation to new systems and procedures, as well as with managerial control of risk management and management method; prepares reports on results of performed customs audits and gives

recommendations for the improvement of system procedures and management processes, monitors the fulfilment of obligations which arise from performed controls and recommendations; monitors and analyzes reports received from local customs auditors which refer to customs houses; provides professional assistance to customs houses with the purpose of providing regular and uniform implementation of regulations; performs document control with the aim of implementing customs and other regulations laid down by law which are in the competences of customs services; keeps records and submits reports from its scope of work; provides recommendations for employee training; participates in education of employees.

*The Division for Post Clearance Audit* undertakes comprehensive measures for encouraging importers or exporters or other participants to follow customs regulations; performs previous control on requests for gaining approval to simplify the procedures; performs post clearance audit of importers, exporters and other participants in customs procedure; formulates policy and methods of work of post clearance audit units; develops an annual plan of controls, cooperates with other units according to the plan of controls; establishes cooperation with economists; establishes cooperation with other control and inspection bodies; follows and analyzes the work of customs houses in performing post clearance audit, etc.

*The Internal Control Unit* acts on behalf and upon the request of the Director; performs control activities with full access to all information and documentation of organizational units; submits the report to the Director; proposes measures concerning its work; prepares and develops analysis and information for the Director, from the scope of work of the Unit; performs affairs with the purpose of protecting the Customs Administration from all possible damages and negative consequences; provides appropriate and efficient use of human and material resources from all areas of activity; ensures that the work of the service is performed in accordance with positive legal regulations; particularly supervises accurate collection of revenues and proper use of funds; supervises and undertakes measures against illegal appropriation of assets; prevents and detects internal frauds and corruption; works on strengthening the integrity of the service; develops annual plans of its own activity; also performs other necessary controls of the work of the customs service.

*The Internal Audit Division* performs the tasks of operational planning, organizing and performing internal audit of all business functions within the competences of the Customs Administration with the aim of improving the operation; assesses financial management and control on the basis of risk management; prepares internal audit reports which are submitted to the Director of the Customs Administration and the responsible person of the organizational unit undergoing audit; performs audits at the request of the Director and the audit on the usage of European Union funds; monitors the implementation of recommendations given in the previous audit reports; develops strategic and operating plans and programmes of work which are the basis for the implementation of internal audit function and its monitoring and implementation; produces periodical and annual reports on internal audit work; cooperates with the Central Harmonization Unit for Financial Management and Control and Internal Audit in the Public Sector of the Ministry of Finance and State Audit Institution, etc.

Within the organizational structure of the Customs Administration there are 4 customs houses, each having a customs audit office. Within their competences, these organizational units conduct the control of fiscal charges collection, the control of the implementation of regulations in customs procedures, and the control of the accuracy of customs procedures in the elements concerning customs debt calculation.

Further segment of control in Customs Administration is performed within the Division for Post Clearance Audit by means of post clearance audit of importers, among other things, through the control of fiscal data, tariff labels, origin, value, and other control aimed towards the protection of revenues. The Internal Control Unit performs control of legal and proper collection of revenues through the control of legality in activities of customs officers.

The control of properly calculated and collected revenues is performed by adopting the solution on subsequent collection or refund of the customs debt through administrative procedure initiated on the basis of the results of the post clearance audit or upon the request of a party. The procedure is conducted under the provisions of the Customs Law, the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03) and the Decree for the Implementation of

the Customs Law (Official Gazette of the Republic of Montenegro 15/03, 81/06 and the Official Gazette of Montenegro 38/08)

The Customs Law (Official Gazette of the Republic of Montenegro 7/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06 and Official Gazette of Montenegro 21/08) and the Decree for the Implementation of the Customs Law (Official Gazette of the Republic of Montenegro 15/03, 81/06 and the Official Gazette of Montenegro 38/08) stipulate the procedure for *the refund of revenues paid incorrectly or in excess*. Under the above regulations and in accordance with the Law on General Administrative Procedure (Official Gazette of Montenegro 60/03), a customs service body decides upon the request for refund by a decision. Refund is made to the gyro account which the submitter has specified in the request on the burden of the budget revenues and depending on the type of receivable which is required to be returned.

### **Public Property Administration**

The Decree on State Administration Organization and Operations establishing the Public Property Administration was adopted by the Government of Montenegro at the session held on 23 July 2009. (Official Gazette of Montenegro 59/09)

The Public Property Administration performs administrative tasks which refer to the following: keeping unified records of state assets in accordance with international accounting standards; keeping the register of state assets; being responsible for the purposeful use of state assets; being responsible for the assets which under the force of law become state assets; investment and ongoing maintenance of state bodies' premises, representative buildings and diplomatic and consular offices of Montenegro abroad; submitting requests and monitoring the activities of registering into cadastre referring to the allotment of property, delimitation, exchange, drafting contracts and monitoring their implementation; performing collection of rent; providing conditions for assets protection; performing other tasks in relation to state assets upon the order of the Government and the Ministry of Finance; coordination of information from their own records with the cadastral information on immovable property; making the list of property of former social and political organizations and ensuring its entry into the cadastre of immovable property; being responsible for the registration of property in the possession of Montenegro into the cadastre of immovable property; keeping records of concluded contracts on acquisition and disposal of immovable and movable property and other goods of higher value owned by the state; submitting reports to the Ministry of Finance within the times envisaged by the law; performing additional tasks necessary for the functioning and operation of state bodies, as well as other affairs which are conferred to its competence.

### **Public Procurement Directorate**

In Montenegro, the area of public procurement is regulated by the Law on Public Procurement (Official Gazette of the Republic of Montenegro 46/06) and secondary legislations, forms and templates. Full answers to questions in the area of public procurement are given in answers to Chapter 5 of the Questionnaire. The competences in the area of public procurement are performed by the Public Procurement Directorate, the Ministry of Finance as the line ministry in charge of public procurement, and by the Commission for the Control of Public Procurement Procedures in the area of the protection of rights. The Ministry of Finance performs supervision over the legality and appropriateness of the work of the Directorate and is in charge of policy-making and legislative activity in this area. The Public Procurement Directorate is an administration body which acts preventively and provides guidance in the area of public procurement, by monitoring public procurement procedures, with the aim of reducing the possibility for corruptive actions in that area, and ensures publicity and transparency of all procedures and overall functioning of the public procurement system. Pursuant to Article 17 of the Public Procurement Law and the scope of work determined by the Decree on State Administration Organization and Operations, the Public Procurement Directorate is authorized to participate in drafting laws, secondary legislation and other regulations on public procurements; determine appropriate standard forms for the implementation of the Law; monitor and analyze the implementation of the public procurement

system from the point of view of the harmonization with the *acquis* and propose measures which ensure the harmonization; give prior consent to the contracting authorities for the choice of procedure in cases envisaged by this Law; provide advisory and consultancy services to contracting authorities in the area of public procurement, upon their request; participate and cooperate in organizing staff training for the performance of public procurement activities; publish calls for tenders and decisions on awarded contracts on the website in cases envisaged by this Law; promote the system of keeping contracting authorities and tenderers informed on public procurements and publish and distribute appropriate technical literature; prepare templates of tender documents and contracts for typical public procurements; initiate and encourage the development of practice of electronic procurements and communication in the area of public procurement; establish international cooperation with institutions and experts in the area of public procurement; inform the State Audit Institution and submit reports to other competent bodies on cases of violations of public procurement procedures of which it becomes aware in the process of performing activities from its own competence; collect information from contracting authorities of public procurements and keep appropriate records; prepare, publish and update the list of covered parties under this Law on its website; prepare unified basis for the establishment of records and official lists of tenderers; monitor public procurement procedures and ensure the public interest in those procedures on the basis of information on concluded and executed public procurement contracts; submit annual reports on public procurements in Montenegro to the Government and perform other tasks in accordance with the Law.

Under Article 93 of the Public Procurement Law, the Commission for the Control of Public Procurement Procedures is authorized to review complaints of tenderers on public procurement procedures and pass relevant decisions; examine the regularity of the implementation of the Law and propose and undertake measures for the correction of determined irregularities to ensure competitive behaviour of tenderers and transparency of public procurement procedures; determine general positions for the unified implementation of the Law and perform other tasks in accordance with the Law. Pursuant to the Public Procurement Law, the Commission for the Control of Public Procurement Procedures is autonomous and independent and has a president and two members. The president and the members are appointed by the Government.

The functions of the Directorate and the Commission are completely separated, which ensures complete independence of the institutions in charge of the Montenegrin public procurement system. Judicial control of the legality of public procurement procedures is ensured through administrative dispute before the Administrative Court of Montenegro.

The procurement of goods and services and award of works under the Public Procurement Law has to be performed by covered parties (contracting authorities – contracting entities) designated by this Law:

- 1) state authorities, state administration bodies, organizations, institutions and other users of the Budget of Montenegro and other public funds;
- 2) local self-government authorities, local administration bodies and organizations and institutions which are users of the budget of the local self-government unit and other public funds;
- 3) organizations for compulsory social insurance, established in accordance with laws regulating these types of insurance;
- 4) enterprises and other legal persons in which Montenegro or a local self-government unit or other covered parties hold more than 50% of shares or stake in their ownership or which have more than half of the members in the management body, and which perform activities in the public interest, not having an industrial or commercial character;
- 5) legal persons which, in awarding public contracts, use the funds provided, as a subsidy or guarantee, by Montenegro or a local self-government unit or other covered party under this Law.

The administrative authority competent for public procurement activities – the Public Procurement Directorate, prepares and publishes the list of covered parties. The list of covered parties is published on the website of the Directorate (981 covered parties) and is updated not later than 31

December every year. The obligation to implement the Law depends on the fulfilment of requirements for the application of public procurement procedures in accordance with the stipulations of the Law, and not whether a certain covered party is on the List or not; hence, in cases when a covered party is not on the list, it also has the obligation to implement public procurement regulations.

Under the Public Procurement Law, in awarding public procurement contracts for goods, works and services, the contracting authority may use the following public procurement procedures

- 1) open public procurement procedure;
- 2) restricted public procurement procedure;
- 3) negotiated public procurement procedure;
- 4) awarding contract via entering into framework agreement;
- 5) direct solicitation of tenders (shopping method);
- 6) direct agreement.

Direct solicitation of tenders and direct agreement are public procurement procedures for small value contracts.

The Law also recognizes special cases of awarding contracts and those are:

- 1) awarding public procurement contract by means of design contest
- 2) awarding a contract for consulting services

The tenderer, as a rule, chooses open or restricted procedure for the award of a public procurement contract.

The mission of the Directorate and the Commission is, therefore, to properly educate and guide all covered parties – contracting authorities to follow the public procurement procedures, provide necessary assistance and monitor the process, indicate the need for correcting deficiencies, submit notifications and reports in cases of irregularities, and to decide on the obligation to remove irregularities in the process of protecting the rights. Thus, public procurement procedures are being monitored ensuring that taxpayers' money is planned and spent in accordance with the law. The control of the legality of public procurement procedures for goods, works and services, in addition to the protection by the administration authority (the Commission), is also ensured in the judicial proceeding (the Administrative Court).

The Law on Concessions and the Law on the Participation of the Private Sector in the Delivery of Public Services are implemented to concession agreements. The procedures of granting concessions are specifically controlled by the competent Concessions Commission of the Government, and judicial protection is also ensured in the administrative dispute before the administrative court. In the scope of special financial controls, other competent bodies, within their set procedures, also check the legality of spending funds for all procurements.

### **State Audit Institution**

The State Audit Institution (SAI), as the supreme audit body in Montenegro, controls the regularity (legality), economy, efficiency and effectiveness of spending budget resources and managing state property.

The State Audit Institution is the highest body to control the budget and state assets management, local government units, funds, the Central Bank of Montenegro and other legal entities where the state holds a stake.

The budget revenues (customs and taxes) are supervised through the audit of the final financial statement of the Budget of Montenegro, and the activities of Tax Administration and Customs Administration are supervised through individual audits, as the budgetary spending units.

Pursuant to Article 6, paragraph 1, item 13 of the Law on Tax Administration and the Rulebook on Tax Bookkeeping, the Tax Administration of Montenegro has the obligation to prepare the tax

annual financial statement and submit it to the Ministry of Finance, and to the SAI in the process of auditing the annual financial statement.

Auditing the tax financial statement, the State Audit Institution of Montenegro compares information on realised revenues (taxes, customs, fees, etc) in the State Treasury with the information of the giver of the "statement of the receiver", i.e. the Tax Administration, Customs Administration and the Ministry of Interior and other bodies which generate budget revenues on different basis (performing their own activities, charging fees, etc.) and gives its findings through reports.

**4 How is PIFC (control and audit) organised in lower authorities and municipalities in as far as they benefit from national budgetary funding? And from their own funding?**

The provisions of the Law on Public Internal Financial Control also refers to municipalities or municipal budget users, which are obliged to establish an internal control system (financial management and control and internal audit) in accordance with the stipulations of this Law.

Municipalities or municipal budget users, which meet the criteria stipulated by the Decree regarding the Establishment of Public Internal Audit (Official Gazette of Montenegro 23/09), adopted pursuant to the Law, are obliged to establish internal audit within 24 months from the day the regulation for the implementation of this Law enters into force.

The Law on Local Government Finance (Official Gazette of the Republic of Montenegro 42/03, 44/03, Official Gazette of Montenegro 05/08 and 51/08) envisages the activities of the local treasury; also instructions were adopted stipulating the manner of executing the local budget, management responsibility, financial control, expenditure control, keeping of cash, financial records and data protection, etc.

The State Audit Institution, in accordance with the Law, has the right and obligation to perform audits of all entities which execute a part of the budget, manage state assets, receive subsidies or grants or guarantees from the state, or do business with the audited entity. Accordingly, SAI audits financial statements of local self-governments, public enterprises and all other local entities financed from public revenues.

The audit of units of lower authorities and municipalities is performed through audit of financial operation and audit of financial statements (financial audit), as stipulated by the provisions of the Law on State Audit Institution and in accordance with the standards of the International Organization of Supreme Audit Institutions (INTOSAI).

Financial statements are a result of financial operations of lower authorities and municipalities which are based on accounting regulations and encompass all aspects of budget execution.

All elements from audits performed are sublimated and presented in an accurate, objective, short and clear manner as a trustworthy opinion of the State Audit Institution.

**5 Could an overview be given of any weak points in the areas mentioned under question 3 above, as perceived by the Ministry or other parties (such as the Supreme Audit Institution, the Treasury or the Parliament), that need further consideration for improvements in the future?**

In the upcoming period it is necessary to develop comprehensive public internal financial control in Montenegro, which is to enable the development of a solid system of financial management and control and internal audit in accordance with the Law on Public Internal Financial Control.

It is necessary to strengthen ex-ante financial and other control at all levels including the control performed by management and finance officers, and clearly define their responsibilities and tasks.

With the aim of developing a more efficient internal control system, public entities are to prepare written procedures in the form of internal acts which will define basic business processes and show business processes flow charts in the entity from the planning to the execution stage with a special emphasis on the control functions.

Having regard of the fact that public internal financial control in Montenegro is performed by several institutions, each within the scope of its competence, better coordination among these institutions is needed regarding the exchange of information and data and coordination with legislative regulations.

In its audit reports, the State Audit Institution (SAI) indicates the shortcomings and irregularities noted in business operations of every audited entity.

SAI's annual report gives a summary of all major shortcomings and discrepancies in the implementation of current laws and secondary legislation in the area of public finance, made on the basis of final audit reports for audited entities. It consists of assessments, important comments, recommendations and measures, which are to be implemented by the audited entities with the aim of eliminating inconsistencies and oversights in their operation. SAI may advise the Parliament and the Government based on audit findings.

By the adoption of SAI's recommendations, the Parliament of Montenegro obliges the competent bodies – budgetary users to eliminate perceived inconsistencies in implementing the public expenditures regulations and, following SAI's suggestion, proposes the adoption of new or the amendments to the existing laws and secondary legislation, which are to be implemented.

**6 Could information be provided on the salary levels of the public control and audit staff, including a comparison with salaries in the private sector? Are there any other income elements not deriving from the national budget, either for control/audit staff or organisations? Is it difficult under the present salary regime to find suitable staff for these functions?**

The Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) sets forth the matters concerning the position of civil servants and state employees with regard to: entering employment, titles, rights and obligations, liability, transfer, appraisal, advancement and establishment of capability, professional development, termination of employment, protection of rights, human resource management, and the supervision over its enforcement.

Given that this Law does not envisage internal auditors titles, but there is a possibility that the titles of state employees entrusted with the tasks implying special powers and obligations may be regulated by law or other regulation when stipulated so by the law, hence the Law on Public Internal Financial Control envisages the titles of internal auditors are to be determined by the Government of Montenegro. In accordance with this Law, the Government has adopted the Decree on Titles of Internal Auditors (Official Gazette of Montenegro 23/09), which establishes their titles, the requirements for acquisition of titles and arrangement of titles into salary grades.

Civil servants and state employees may exercise their right to salary, compensations and other income, in the manner and under the conditions stipulated by the Law on Salaries of Civil Servants and State Employees (Official Gazette of the Republic of Montenegro 27/04, Official Gazette of Montenegro 17/07 and 27/08). Given that the employees performing activities of control/internal audit are state employees, they exercise their right to salary in accordance with the Law on Salaries of Civil Servants and State Employees.

The average net salary of internal auditors in the Internal Audit Department of the Ministry of Finance and internal auditors who are transferred to the Department for Harmonization of Internal Audit of the Central Harmonization Unit for Financial Management and Control, paid for July 2009 was €517.00. The funds for salaries, compensations and other income of state employees, or civil servants are provided from the Budget of Montenegro.

The Law on State Audit Institution stipulates the salaries of SAI employees.

The President of the Senate is entitled to a salary in the amount of the salary received by the President of the Supreme Court, and a member of the Senate the same as a Supreme Court judge, and to other rights to which holders of supreme judicial office are entitled.

Article 45a of the Law on State Audit Institution assigns the title of the state auditor to the salary grade 4 and on that basis that person has the right to a salary according to the coefficient of 8.71 determined for that salary grade, according to the Law stipulating the salaries of civil servants and state employees. Judges of the Misdemeanour Council and deputy heads of service, who occupy management posts, receive salaries according to the coefficient from the salary grade 4.

Although the starting position for the salary of state auditors is set high, in order to further improve the material status of state auditors, the Parliament of Montenegro has authorized the Senate to determine the conditions, manner of earning and the amount of supplement to the salary for SAI employees, in accordance with the Law. On that basis, the Senate has adopted a Rulebook on Supplemental Earning for Auditors according to which state auditors have an increase of the fixed salary base of 10%, managers of divisions 15%, and managers of sectors 30%. State auditors and division managers, in addition to the fixed part of the supplemental earning for auditors, have a possibility of receiving a variable part of 10% and 5% respectively.

The average salary of a state auditor is € 645.21, and of a manager of a sector € 845.80.

The administrative, technical and other general affairs in SAI are performed by civil servants and state employees; accordingly, the amount of their salaries is defined by the Law on Salaries of Civil Servants and State Employees.

Salaries of state auditors, and in particular internal auditors and employees performing control activities in the public sector, are substantially lower than the salaries of private sector employees.

The current level of salaries of public internal auditors will represent one of the limiting factors in recruiting appropriate personnel to perform this function.

## Legislation

**7 Please, provide the following documents in one of the official EU languages, if available:**

Internal financial control in the public sector of Montenegro is regulated by a special law and secondary legislation.

### **a) Framework Law for PIFC**

The Framework PIFC Law is the Law on Public Internal Financial Control (Official Gazette of Montenegro 73/08). ([Annex 260](#)).

### **b) Specific Laws on FMC and IA (implementation laws)**

Secondary legislation adopted pursuant to the Law on Public Internal Financial Control is the following:

- Decree on the Establishment of Internal Audit in the Public Sector (Official Gazette of Montenegro 23/09); ([Annex 263](#))

- Decree on the Titles of Internal Auditors (Official Gazette of Montenegro 23/09); ([Annex 262](#))
- Rulebook on the Internal Audit Method and Procedure (Official Gazette of Montenegro 32/09). ([Annex 266](#)).

### **c) Tertiary regulations, such as manuals for FMC and IA, IA Charter, Codes of Ethics for FMC and IA, Audit trails**

The Department for Central Harmonization of Financial Management and Control and Internal Audit in the Public Sector (Central Harmonization Unit – CHU) is currently drafting the rulebook on the manner and process of establishing and implementing financial management and control in the public sector which is to be adopted by the Ministry of Finance in accordance with the Law on Public Internal Financial Control. In addition, the development of an internal audit manual is in progress, which will include the text of the internal audit charter and the Internal Audit Code of Ethics.

### **Financial management and control (FMC) systems**

#### **8 Will a central Treasury system be developed? To what extent will the control functions of the Treasury have an impact on certain tasks of the traditional checks during ex-ante control or make them redundant? How will the Treasury control functions be integrated into the ex-ante control activities of the Ministry of Finance and in line ministries?**

In Montenegro, the Treasury system was established on 1 January 2002, designed as a centralized model for managing expenditures of the central budget. It is based on the Consolidated Treasury Account through which all budgetary financial transactions are performed, where the majority of budget users are connected into a single financial and information system through which budget execution is done based on planned commitments. Such an established information system provides the users with the information on budget execution on a daily basis and at the same time it provides a host of information necessary for long term decision-making, supervision and reporting on the results attained.

At the beginning of 2005, through the payment system reform and with the transfer of the payment system to commercial banks (until then payment operations were performed through the Bureau for Clearing and Payment) the Central Treasury Account was opened at the Central Bank, where transfer from settlement accounts of all public revenues introduced by the State is performed. The allocation of all revenues from the Central Treasury Account is performed to the relevant account as stipulated by the law. Thus, the Treasury has access to the execution of all public revenues.

Since 2008 the Annual Budget Law plans also the resources for expenditures of state funds which ensures higher transparency in spending used for financing expenditures of the state funds.

The execution of expenditures through the treasury system is currently performed for two state funds, and complete integration of all state funds into the treasury system, according to the Budget Law (Official Gazette of the Republic of Montenegro 40/01 and 44/01 and Official Gazette of Montenegro 71/05 and 53/09) will be performed as of 1 January 2010.

The Treasury Department performs the following activities: manages the accounting system of state receipts, executes the Budget, manages liquidity, manages the public debt of the state and donations, keeps the General Treasury Ledger and prepares the yearend financial statement of the Budget of Montenegro. Budget planning is performed in the Budget Department of the Ministry of Finance but the planned spending on the annual level according to organizational, economic and

functional classification is entered into the SAP system and the system itself controls, and does not allow exceeding the allowed spending either at annual or monthly level.

The SAP system provides information support for all activities of the Treasury except managing public debt for which a special information system is established. SAP provides for better financial management, faster and more efficient processes, up-to-date reporting all with the aim of better business decision-making.

The complete integration of state funds into the Treasury system will ensure management of state revenues and control of state expenditures by the Ministry of Finance and will increase the transparency of spending funds. The supervision of every transaction entered into the system is possible, with their individual characteristics (program, account, maturity, and supplier). Ex-ante supervision is used in determining the level of spending through the authorized monthly plan which determines the amount, schedule and purpose of spending. Ex-ante control procedures of budget execution, or spending the state money are stipulated in the Instructions on Treasury Operations (Official Gazette of Montenegro 80/08 and 2/09). ([Annex 264](#)).

**9 Provide a description of the general set-up, roles and responsibilities of financial services in line ministries and/or budgetary chapters (you should cover the functions of the authorising officer, the accountant, double signature systems for commitments and disbursements, the ex-ante financial controller, the inspection and the ex-post financial controller). Has the concept of audit trails been introduced?**

Treasury is a department of the Ministry of Finance which executes the budget on the basis of prescribed documentation, which is submitted by spending units, and in accordance with the procedures envisaged by the Instructions on Treasury Operation.

Budget execution is performed on the basis of a dynamic spending plan which, upon the proposal of spending units, is approved by the Ministry of Finance.

Spending units are obliged to follow the dynamic spending plan according to the determined purposes, where the SAP itself – the information system does not allow exceeding the allowed spending, or blocks the entry of payment requests above the level of spending determined by the dynamic plan.

Spending units may contract businesses up to the amount of allocated financial resources, and in accordance with the annual procurement plan according to the Law defining this area.

The Instructions prescribe that every spending unit must have authorized persons - Certifying Officer and Approving Officer, and none of the payment requests can be realized without their verification or signature.

By signing the payment request, the Certifying Officer confirms the goods have been procured or the service performed, the supplier has submitted the invoice or other document on the basis of which the deliverer, or performer of the service can be identified, so that payment would be performed to the real executor and in order to prevent double payments, that the calculations are correct, that the expenditure account is accurately entered and that the reservation of funds for the given expenditure has been performed earlier.

By signing the request for payment the Approving Officer confirms that the expenditure has been approved and that the request for payment is correctly verified.

The Law on Public Internal Financial Control stipulates the introduction of the audit trail concept.

**10 Describe the planning and nature of ex-ante control (scope and contents, 100% checks or sampling based on risk assessment, etc.). Are scientific methods used in such sampling, such as the Monetary Unit Sampling technique? Are risk assessment and risk management techniques being developed?**

Under the Budget Law, contracted obligations of spending units must correspond to the financial resources which, for the given period of time, are approved by the Ministry of Finance, and the budget executor (minister, director) is responsible for legal spending of funds approved to the spending unit, so that spending units are in obligation to coordinate contracting of business with the schedule and structure of allowed spending. Financial and information system through which the budget is executed or into which requests for payments are entered and paid, does not allow entering payment requests above the level of approved spending by the dynamic plan. Such approach in executing the budget does not allow any surprises in dynamics and level of spending of state money and represents a stable framework for decision-making in managing cash flows.

The Cash Management model as a management business process has not reached its full functionality in the SAP system so we cannot say scientific methods have been implemented, but great efforts are being devoted to their introduction.

### **Internal Audit (IA) systems**

**11 Has the function of internal audit been introduced in your country's public sector (please refer to the attached Glossary for the exact meaning of the internal audit concept). Describe the functional independence of the internal audit function in the following terms: status inside the auditee, nomination, transfer and demotion, freedom to set annual audit plans and ad hoc planning, freedom to report to the highest level of the hierarchy and in case of conflict to other relevant organisations. Are internal audit units established in line ministries? Do they share tasks with the inspectors or is a strict separation foreseen between the two functions?**

The public internal audit function was introduced in Montenegro by the Law on Public Internal Financial Control (Official Gazette of Montenegro 73/08), which stipulates that internal audit is performed in accordance with the domestic internal audit regulations and International Internal Audit Standards (International Standards of the Institute of Internal Auditors- IIA).

Pursuant to the Law, internal audit is defined as an independent, objective assurance and advisory activity aimed at providing added value and improving the operations of an entity and assisting an entity in achieving its objectives by providing a systematic, disciplined approach to the evaluation and improvement of risk management, controls and management processes.

The Law envisages the functional and organizational independence of the internal audit unit. The internal audit unit must be functionally independent and organizationally separated from other organizational units in an entity. Functional independence is achieved by independent planning, implementation and reporting on performed internal audits.

The head of the internal audit unit and internal auditor may only perform internal auditing activities. The head of internal audit unit is independent in his/her work and cannot be re-assigned or dismissed due to the disclosure of facts or giving recommendations on completed audit reports. Internal auditor is obliged to suspend all activities regarding an audit and inform, without delay, the head of the internal audit unit on the existence of conflict between his personal and business interests, as well as on the activities he/she was engaged in during the year preceding the year of the audit and in relation to the subject of the audit. When indications of fraud are identified, internal auditor must discontinue the audit process and immediately inform the head of the internal audit unit, who shall immediately notify the head of the entity, in writing. The head of the entity shall undertake necessary measures and inform competent state authorities.

The Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) applies to matters relating to the employment (appointment) of internal auditors and their assignment. In addition to general requirements stipulated by this Law, internal auditors must also meet the special requirements envisaged by the Law on Public Internal Financial Control.

The head of the internal audit unit, in accordance with the Law on Public Internal Financial Control, prepares a strategic and annual plan of performing internal audit, on the basis of an objective risk assessment, which is approved by the head of the entity. The head of the internal audit unit approves the plan of individual audits and related programs, which describe in detail the audit procedures.

The head of internal audit unit submits reports on the results of each individual audit to the head of the entity, with all important findings and recommendations enhance the operations of the entity, periodical reports on the implementation of the annual internal audit plan, reports on limitations imposed to the head of the internal audit unit and internal auditors in the course of performing the audit, report on the adequacy of resources for performing the internal audit, as well as the annual report on the work of internal audit and the assessment of adequacy and effectiveness of the financial management and control system.

The Law on Public Internal Financial Control stipulates the obligation of establishing internal audit in public entities in one of the following manners:

- by organizing a special organizational internal audit unit within the entity, which is directly accountable to the head of the entity;
- by organizing a joint internal audit unit on the proposal of two or more entities, with the previous consent of the Ministry of Finance;
- by having the internal audit performed by internal audit unit of another entity, based on the agreement, with the previous consent of the Ministry of Finance;

Under the Decree on the Establishment of Internal Audit in the Public Sector (Official Gazette of Montenegro 23/09) the following entities are obliged to establish a special organizational unit for internal audit: 11 ministries, 4 administrations, 2 directorates, 1 institute, 4 state funds and the capital city, Podgorica. In addition, the entities having more than 200 employees or entities having annual expenditures exceeding the amount of € 5,000,000.00 are obliged to establish an internal audit unit. Other entities have the possibility of establishing internal audit in one of the manners stipulated by the Law. In accordance with this Decree, entities are obliged to determine a special organizational unit for internal audit by the act on internal organization and job descriptions.

Users of the budget of Montenegro and the capital city are obliged to establish internal audit within 12 months and other entities within 24 months from the day the secondary legislation for the implementation of this Law enter into force.

Internal audit units have been established in the Ministry of Finance, Customs Administration and the Fund for Pension and Disability Insurance and they perform internal audit activities.

So far by the acts on Internal Organization and Job Descriptions special internal audit units have been established at the Health Insurance Fund, Ministry of Labour and Social Welfare, Ministry of Health Ministry of Culture, Sports and Media, Ministry of Economy, Ministry for Spatial Planning and Environment and the Real Estate Administration, hence the requirements were met for employment and re-assignment of employees on internal audit activities in these entities. Amendments to the Acts on Internal Organization and Job Descriptions of the Ministry of Education and Science, Ministry of Internal Affairs and Public Administration and the Ministry of Maritime Affairs, Transportation and Telecommunication are currently in progress, with the aim of establishing internal audit.

**12 What kind of audits is performed by the Ministry of Finance and by Internal Audit Units, if established, in line ministries and other spending centres (regularity and legality audits, systems audits, performance and IT audits)?**

The Law on Public Internal Financial Control (Official Gazette of Montenegro 73/08) stipulates that all internal audit units are to implement the following types of audits: system audit, compliance audit, successful operation audit (performance audit), financial audit and information system audit. The existing internal audit units perform compliance audit, that is audit the legality of operations, and the audit of internal control system functioning regarding the implementation of set rules and procedures.

**13 What procedures have been introduced to ensure adequate audit reporting (contradictory procedures with auditees) and for the adequate follow-up of audit findings? Who ensures the feed back of audit findings into the FMC systems?**

Audit reporting procedure is provided by the Law on Public Internal Financial Control. Internal auditor prepares a draft audit report for each of the conducted audits, which is then submitted to the responsible person of the audited entity to give their opinion of the draft report findings.

The responsible person in the audited entity has the right to state the objections to the statements from the draft report which are included in the final report. Objections to the draft report and the proposal of the activity plan for the implementation of accepted recommendations is submitted to the head of the internal audit unit.

After consultations performed with a responsible person of the audited entity and stating its opinion to the draft report, internal auditor prepares the final audit report, which is, along with the proposal of the plan of activities for the implementation of recommendations, submitted to the head of the internal audit unit and the head of the entity.

The head of the entity informs the head of the internal audit unit, in writing, on the adoption of the plan of activities and actions undertaken for the implementation of recommendations.

The head of the internal audit unit monitors the implementation of given recommendations of internal audit, the implementation of internal audit annual plan and prepares and submits the report on the results of each individual audit to the head of the entity, as well as periodical reports on the implementation of internal audit annual plan and annual report on the work of internal audit and the assessment of adequacy and effectiveness of the financial management and control system. Annual report on the work of internal audit is also submitted to the Central Harmonization Unit of the Ministry of Finance.

**Central harmonisation for FMC and IA**

**14 Could a description be given of the tasks that the Ministry of Finance has in relation to providing central guidance on methodology to all ex-ante control and internal audit activities in all line ministries and government spending centres? How does the Ministry ensure that these guidelines are adhered to? Are there compliance and substantive tests performed for this purpose?**

With the aim of strengthening institutional capacities for the development of internal financial control in the public sector, and in accordance with the determined Plan of Activities for the implementation of the Strategy of Public Internal Financial Control in Montenegro, amendments to the Rulebook on Internal Organization and Job Descriptions were performed in 2008, which transformed the existing Internal Audit Department into the Department for Central Harmonization

of Financial Management and Control and Internal Audit in the Public Sector (CHU) with two divisions: Division for Harmonization of Financial Management and Control and Division for Internal Audit Harmonization.

Central Harmonization Unit of the Ministry of Finance has been established with the purpose of performing the following tasks: drafting laws and secondary legislation in the area of financial management and control and internal audit; development of methodology and operational standards for financial management and control and internal audit; preparation, organizing and carrying out the training program towards the examination for certified internal auditors; preparation, organizing and carrying out the training program of responsible persons included in financial management and control and internal audit, coordination of establishing and developing the system of financial management and control and internal audit; monitoring the implementation of laws, secondary legislation and internal acts, and standards for financial management and control and internal audit, the Code of Ethics for internal auditors, instructions and methodologies for financial management and control and internal audit and analyzing the quality of financial management and control and internal audit system of entities, with the aim of monitoring the implementation of recommendations for gathering information for enhancing methodologies and operational standards.

In accordance with the Law on Public Internal Financial Control, the Ministry of Finance or the Central Harmonization Unit will, in the following period, develop methodologies and operational standards for financial management and control and internal audit.

The Ministry of Finance, through the Central Harmonization Unit, will coordinate the establishment and development of internal financial control system in the public sector and analyze the quality of financial management and control and internal audit within entities for the purpose of monitoring the implementation of the Law, secondary legislation, standards and work methodologies for financial management and control and internal audit.

In addition, Central Harmonization Unit of the Ministry of Finance is obliged to prepare the annual consolidated report on the system of internal financial controls based on reports of entities on financial management and control and internal audit, which is submitted to the Government for adoption.

**15 What actions are undertaken to train controllers and auditors? Who is responsible? Is there a Public Finance School for these functions? Are there contacts with the SAI, the IIA chapter for your country and with academic authorities? Is there training for certified public internal auditors? Is staff being trained to become training specialists?**

The Department for Central Harmonization of Financial Management and Control and Internal Audit in the Public Sector (CHU) of the Ministry of Finance is in charge of preparing, organizing and conducting the training program for responsible persons and the persons included in financial management and control and internal audit.

Within the IPA 2009 project “Strengthening Management Control Systems for EU Financial Assistance in Montenegro” which is to be implemented in 2010, organizing and carrying out the training of persons included in financial management and control and internal audit is planned, as well as providing assistance to the CHU staff – the Ministry of Finance with the aim of strengthening administrative capacities of this department. It is expected that a certain number of employees who undergo this training will be qualified as future trainers.

The Law on Public Internal Financial Control stipulates that the Ministry of Finance is to determine the examination program for certified internal auditors. The above IPA 2009 project envisages the preparation of the examination program for certified internal auditors.

In Montenegro there are no public finance schools for controllers and auditors.

Cooperation of the Ministry of Finance with the State Audit Institution was carried out especially through the invitations extended by SAI for participation to auditor training seminars and

conferences organized in cooperation with the German Organization for Technical Cooperation (GTZ), German Federal Court of Auditors and Court of Audit of Slovenia.

**16 Have rules been established to ensure a minimum of knowledge and experience before staff can become financial controllers and internal auditors (examination board or otherwise)?**

The Law on Public Internal Financial Control stipulates the requirements for performing the activities of the head of the internal audit unit and internal auditor. Namely, Article 34 envisages that an internal auditor, in addition to general requirements determined by the Law, must meet the following requirements: hold a university degree; have the minimum of two years of working experience in auditing, financial control or accounting and financial matters and to have passed the examination for obtaining the title of a certified internal auditor.

Article 35 of the Law stipulates that the head of the internal audit unit can be a person who, in addition to the above mentioned requirements, has to have minimum five years of experience, out of which two years in auditing.

The Law also envisages that persons who did not pass the examination for certified internal auditors, but meet the requirements from Article 34 of this Law, may perform internal auditing without taking the examination for certified internal auditors for not longer than two years since the examination programme for certified internal auditors has entered into force, which will be determined by the Ministry of Finance. The examination for certified internal auditors will be taken in front of the Commission which is to be established by the Ministry of Finance.

**17 What expertise is presently transferred to the government in this field under what programmes (consultants, Sigma, others)?**

Since 2007 a consultant of the SIGMA programme has been engaged in the preparation of the Development Strategy of Public Internal Financial Control in Montenegro, the Law on Public Internal Financial Control and the secondary legislation for the implementation of this Law.

Within the CARDS project "First Steps for a Decentralized Implementation System" in July 2009, an internal audit expert was engaged for a short-term for the assistance in creating the appropriate procedures in the area of internal audit and drafting the internal audit guide by updating the existing guide which was developed with the assistance of USAID/Bearing Point in 2004. In addition, a two-days training was held within this project on the subject of "Internal Audit and its Role within the IPA Structure", for the staff of the Central Harmonization Unit for Financial Management and Control and Internal Audit in the Public Sector, Department of Internal Audit of the Ministry of Finance and the representatives of a certain number of ministries (Ministry of Culture, Sports and Media, Ministry of Agriculture, Forestry and Water Management, Ministry of Spatial Planning and Environment, Ministry of Maritime Affairs, Transportation and Telecommunication, Ministry of Labour and Social Welfare and Ministry of Health), which have the obligation to establish a special internal audit unit in accordance with the Decree on the Establishment of Internal Audit in the Public Sector.

In the fourth quarter of 2009 within the TWINNING project "Legal Harmonization" of the Government of Slovenia's Office for the Development of European Communities IPA MN07-IB-JLS-01 component 1.5, the engagement of foreign experts is envisaged in the duration of 45 days as assistance to the Ministry of Finance in the implementation of the PIFC system.

Also, in order to successfully implement the PIFC system in Montenegro within the IPA 2009, the project "Strengthening the Management and Control Systems for EU Financial Assistance in Montenegro" was approved for the period of twenty four months. Within this project, assistance to strengthening administrative capacities of CHU is envisaged, preparation of training programme for

financial management and control and internal audit, organizing training of persons included in financial management and control and internal audit.

**18 Could a description be given of the available staff capacity in the organisation dealing with the development of FMC and IA harmonisation?**

The Rulebook on Internal Organization and Job Descriptions of the Ministry of Finance envisages eight members of staff (including a Deputy Minister) in the Department for Central Harmonization of Financial Management and Control and Internal Audit in the Public Sector. Currently, CHU has six members of staff, and those are the Deputy Minister, two employees in the Department for Harmonization of Financial Management and Control and three employees in the Department for Harmonization of Internal Audit.

**The Supreme Audit Institution (SAI) (External Audit)**

**19 The SAI is requested to provide an extensive description of its tasks, responsibilities, its independence and its relations to the Parliament and the Ministry of Finance (discussions and follow-up of its recommendations). Relevant issues are how the SAI is adapting to EU best practice and international standards of external audit. Describe the remit of the SAI (coverage of all budgetary chapters, non-budgetary national funds, lower authorities etc.). Please provide a copy of the SAI Law in one of the official EU languages.**

The Parliament of the Republic of Montenegro, at the session held on 21 April 2004, adopted the Law on State Audit Institution (Official Gazette of the Republic of Montenegro 28/04), which established the State Audit Institution as a body of institutional, external, independent, professional and objective control of spending the budget funds and state property management in Montenegro. ([Annex 261](#)).

The Parliament of Montenegro appointed the SAI President and members of the Senate in July 2004, which provided the formal and legal conditions for the commencement of SAI work.

SAI bodies are the Senate and collegiate bodies. The Senate governs the State Audit Institution. The Senate has five, and the collegiate bodies have two members of the Senate.

The competence of the Senate is prescribed by Article 38 of the SAI Law. The Senate adopts the annual report, special reports; annual audit plan; adopts the decision if no decision was made in accordance with Article 44, paragraph 3 of the Law; adopts instructions on the work methodology (audit standards); reviews, upon the proposal of the collegiate body, previously adopted decisions and decisions of the collegiate body; adopts SAI Rules of Procedure; adopts the Act on Internal Organization and Job Descriptions; determines SAI's final financial statement; performs other affairs determined by this Law and general acts of SAI.

In addition to the activities prescribed by the Law, the collegiate body adopts the decision on performing an audit on the basis of the annual audit plan, manages the audit, determines the proposal and adopts a detailed audit plan, provides guidelines for the performance of a certain audit, adopts final audit report, ensures the provision of conditions for auditing from its competence and performs other activities determined by the Rules of Procedure.

Senate members are appointed and relieved from duty by the Parliament, at the proposal of its competent working body. The Parliament appoints the President of the Senate from the rank of its members for a period of nine years, and the same person cannot be reappointed. The President of the Senate presides over the Senate, represents and acts on behalf of SAI.

SAI has five sectors. A Senate member is the head of the sector.

Administrative and support activities for the needs of SAI are performed by the service managed by the secretary

In addition to the control function, the State Audit Institution performs advisory and administrative functions as well. In accordance with the Law on State Audit Institution of Montenegro, SAI adopted the following internal acts: Rules of Procedure (Official Gazette of the Republic of Montenegro 50/07), Instructions on Work Methodology (Official Gazette of the Republic of Montenegro 02/05), and the Rulebook on Internal Organization and Job Descriptions. Secondary legislation were developed based on the SAI Law and international INTOSAI and EUROSAI standards.

State Audit Institution is an autonomous and independent body which acts in accordance with the basic principles of the Lima Declaration adopted at the IX Congress of INTOSAI in Lima in 1977, as a fundamental international document on legal organization, position and activities of the public sector audit.

State Audit Institution of Montenegro was accepted to the International Organization of Supreme Audit Institutions (INTOSAI) as its 187<sup>th</sup> full member at the XIX Congress of this international organization, which was held from 4 to 10 November 2007 in Mexico.

After the admission to INTOSAI membership, the State Audit Institution of Montenegro was accepted in EUROSAI, at the VII Congress, which was held in Krakov, Poland from 2 to 5 June 2008, as its 49<sup>th</sup> full member.

Towards appropriate preparation of the State Audit Institution for European integration processes and cooperation with European Court of Auditors, SAI was accepted to the membership of "Network of Supreme Audit Institutions of EU Candidate Countries and Potential Candidates". The basic mission of this network is to seek solutions for shared problems and progressive development of audit institutions of candidate countries and potential candidates on their way to EU. This network has five more members: the state audit institutions of Croatia, Macedonia, Turkey, Albania and Bosnia and Herzegovina.

In order to strengthen regional cooperation with supreme audit institutions in Southeast Europe, through active participation and inclusion in the process of strengthening the dialogue among the countries in the region and encouraging progress in EU integration, the SAI delegation participated in the work of the first meeting of SAI presidents of South-East European countries (SEECP), which was organized by the Court of Auditors of Moldova and held on 19 September 2008 in Kishinev. A joint Declaration was adopted at the meeting, signed also by the State Audit Institution of Montenegro.

*Tasks, responsibilities and an extensive description of the work of the State Audit Institution, alignment with the best EU practice and international external audit standards*

The tasks and responsibilities of the State Audit Institution are determined by the Law on State Audit Institution (Official Gazette of the Republic of Montenegro 28/04, 27/06, 78/06 and Official Gazette of Montenegro 17/07). This law determines the rights, obligations and method of work of the State Audit Institution.

The audit objective is to obtain a report and significant facts related to regularity (lawfulness), effectiveness and efficiency of operation of the audited entity with the aim of improving its activities. The State Audit Institution monitors the regularity, economy, effectiveness and efficiency of operations of the audited entity, spending of budget funds and managing of state property.

The task of the audit is achieved primarily through the regularity (lawfulness) audit of the final annual financial statement of the Budget of Montenegro (financial audit) and through effectiveness and efficiency audit of budget management, property and business operations (performance audit).

The examination of regularity (lawfulness) determines whether laws and other regulations concerning public expenditures and public revenues are followed and financial obligations assumed, as well as the implementation of regulations concerning asset management and economic operations. This criterion also includes the inspection of accurate accounting,

bookkeeping and documenting revenues and expenditures and the alignment with valid regulations, principles and international standards of public expenditure audit concerning budget, property and economic operations management.

The examination of effectiveness inspects the extent to which the results accomplished in an area correspond to the desired results, or planned goals and tasks. This criterion also encompasses the control of the appropriate and successful performance of state activities (performance control) as well as the examination whether least funds were invested for accomplishing the set tasks (principle of economy).

The examination of efficiency inspects whether maximum results were accomplished in performing state activities and whether the set goals and tasks were achieved with least budget resources.

The principle of economy of state operations is in relation with the general request for economical management of public finances. This principle is more than the request for thriftiness. Wrongfully perceived thriftiness or inappropriate financing of state plans leads to their failure. The definition of economy is: "achieving goals with least investment of funds."

Audited entities are the Government, as well as the bodies and organizations which manage the budget and state property and local government units, state funds, the Central Bank of Montenegro and other legal entities in which the state holds a stake. Public expenditures imply all current and capital expenses which are financed from the state Budget or appropriate funds. SAI performs the audit of entities which execute a part of the budget, manage state property, or receive subsidies or grants or guarantees from the State, or do business with the audited entity. SAI performs the audit of acts and activities of audited entities, which have or may have financial effects on: 1) revenues and expenditures; 2) state assets; 3) borrowings, issuance of guarantees and super-guarantees; 4) rational use of funds allocated to audited entities.

SAI decides autonomously on entities to be subject of audit, the subject matter, scope and type of audit and time and manner of performing the audit. Audit is performed with the purpose of providing essential information concerning budget management, property and economic activities, the legality of actions of the audited entity, the improvement of its ability for successful performance of tasks and the prevention of wrongful actions.

SAI has five sectors. The competence of sectors, which includes also the audited entities from its scope of work, is determined by the act on internal organization and job descriptions of activities and tasks in SAI. Each Senate member manages one sector, where he/she bears the responsibility for legal and timely fulfilment of tasks. In sectors, which have a number of divisions, heads are appointed and managers are appointed in divisions.

The Senate adopts the annual audit plan, based on the proposal of the department heads, i.e. the Senate members. The Senate adopts the annual audit plan for the current year, not later than by 10 January. The annual audit plan constitutes a business secret of SAI until all of the audited entities, envisaged by the plan, are informed on the commencement of auditing.

Annual audit plan, for each individual audit, contains: the name of the audited entity, type, subject matter and the assumed duration of the audit, competent department and the collegiate body composition.

An integral part of the annual audit plan is the "*statutory audit*", i.e. Annual Financial Statement of the Budget of Montenegro, which is performed each year.

SAI performs the following types of audits: general audit, selective audit, cross-section audit, preliminary audit, subsequent (control) audit and performance audit (3 E).

General audit constitutes a comprehensive insight into the financial management of the audited entity.

Selective audit examines a certain period of time or a limited subject matter of the audit.

Cross-section audit examines a representative selection of appropriate control entities or types of expenditures, with the aim of obtaining audit findings in a certain area of public administration, or budget expenditure.

Preliminary audit (audit review) is the audit that is used by SAI in order to gain insight in certain areas, procedures or activities. This audit is not aimed at making final conclusions on certain administrative activities and transaction, but it is used for the preparation of future audits.

Control (subsequent) audit has the purpose of determining to what extent the audited entities have complied with previous audit results.

Audit is performed in the manner and under the procedures envisaged in INTOSAI audit standards. INTOSAI standards provide for the general principles of state audit, general standards, standards of the scope of work and standards for state auditors reporting and thus they give a general framework of methodological approach. The acceptance of INTOSAI auditing standards represents and obligation for all INTOSAI members with a view of their consistent implementation.<sup>1</sup>

Field audit is performed by certified state auditors. A person who, in addition to general requirements determined by law, also meets the following requirements may be chosen as an auditor: holds a university degree, has minimum five years of experience in auditing and has passed the examination for state auditors. The state auditor exam is taken on the basis of the Rulebook on the Method for Taking the State Auditor Examination (Official Gazette of the Republic of Montenegro 23/07) and the Rulebook on the State Auditor Examination Programme (Official Gazette of the Republic of Montenegro 44/06)

In audits SAI may engage an external expert if the audit requires special professional knowledge.

In order for the requirements for high professional knowledge and skills as well as high level of performing the audit work to be met, different manners of assistance are necessary, ranging from continuous education and training to developing different guides, technical guidelines for the work and implementation of adopted standards. To that purpose, the State Audit Institution organized a series of professional seminars, trainings and workshops independently and in cooperation with the German Organization for Technical Cooperation (GTZ). Professionals from the Federal Court of Auditors of Germany and Court of Auditors of Slovenia have educated the staff of the State Audit Institution regarding the description of audit procedures, technical guidelines for individual types of audit, always supported by examples from their practice.

### *Main audit process*

SAI performs the examination of regularity (lawfulness), effectiveness and efficiency of operations of the audited public entity under the Law on State Audit Institution, international auditing standards<sup>2</sup> (INTOSAI and other standards), the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03), Rules of Procedure of the State Audit Institution, as well as under the Instructions on the Work Methodology of the State Audit Institution. This Instruction determines the rules and procedures of work of the State Audit Institution while performing audit in entities subject to audit under Article 4 of the Law on State Audit Institution.

In accordance with the adopted annual audit plan, collegiate bodies adopt individual decisions on performing the audit from their competences. The decision, in addition to the information from the annual plan contains the date of audit commencement, competent division in the sector, names of auditors and the deadline within which the head is to develop a proposal of detailed audit plan. The head of the collegiate body informs the audited entity in writing of the commencement of auditing not later than 15 days prior to the beginning of the field work of the auditor. The notification must

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<sup>1</sup> The State Audit Institution is active internationally, and is well informed of the INTOSAI and EUROSAL norms:

- SAI is a member of INTOSAI since 2007 and a member of EUROSAL since 2008. The commitments arising from these memberships require constant efforts and involvement in the activities of these organizations and their working groups. The State Audit Institution has participated in a number of conferences since it became their member. The representatives of the State Audit Institution also participate in other conferences and seminars devoted to the development of state audit.

- The State Audit Institution develops bilateral relations with other state audit institutions in the form of joint seminars, exchange of experiences, documents and other information related to auditing activities.

- The State Audit Institution is a member of the network of the *liaison officer*, established within the countries of Central and Eastern Europe, Cyprus, Malta, Turkey and European Court of Auditors, and it actively participates in their work and the work of their working groups.

<sup>2</sup> According to good international cooperation, the State Audit Institution performs its activities under the international standards.

contain a legal basis for performing the audit, subject matter, type, date of the beginning and the duration of the audit.

The head, in accordance with the decision on auditing, prepares a detailed plan for performing the proposed audit.

Detailed audit plan, in addition to elements contained in the decision on auditing, contains the following: assumed duration of audit (time plan); the schedule of work assignments of auditors; elaboration of goals, nature and the extent of audit; audit methods (e.g. file analysis, records, database, working papers, conversations, sampling, etc.); other entities in which the evidence will be collected for the purpose of the audit; information and data significant for successful auditing; need to engage an external professional and other matters significant for successful auditing.

Before commencing the field work, the head of the collegiate body signs an authorization to the state auditor for performing the proposed audit.

Actions of the field auditor, audit procedures, implementation of audit standards, methods and other matters significant for the activities of the auditor are regulated by special methodological instructions, guidelines and recommendations adopted by the Senate.

After the activities of the field auditor have been carried out, the collegiate body pronounces the termination of field work and orders the manager of sector to prepare the audit report.

The manager of sector, on the basis of certified records of the auditor prepares the audit report. The collegiate body reviews the report and submits it to the managing body of the audited entity with the request to submit objections and suggestions in the period not exceeding 15 days.

After the audited entity states the opinion on submitted report, collegiate body reviews the objections, estimates the statements and brings conclusions on matters of dispute by the audited entity.

Final audit report is adopted by the collegiate body and submitted to the Senate and the audited entity. The auditing procedure ends by a decision, made by the collegiate body when the audited subject submits a notification on the implementation of recommendations and adopting the objections from the final audit report.

Audited entity has the right to express its opinion on the audit report within the timeframe set by SAI. SAI informs the Parliament and the Government, as a rule, when the audited entity states its opinion on the audit result.

The final financial statement of SAI is adopted for audits performed by 10 October of the current year. SAI's final financial statement is comprised of two parts:

- audit report of the final annual financial statement of the Budget of Montenegro and
- estimates, important objections and measures from final audit reports of the audited subjects.

With the audit of the final annual financial statement of the Budget of Montenegro, the audit of budget account is also performed which verifies whether regulations on budget were implemented.

Individual final annual audit statements are aimed towards examining the substantiation of revenues and expenditures with appropriate documents (accounting documents). Individual final annual audit statements of audited entities is based on the control of regulations which refer to the procedures of issuing and forming the documentation, bookkeeping and harmonization between the General Ledger kept in the Treasury and individual bookkeeping of spending units. This type of audit is usually limited to samples.

On the basis of important facts and circumstances which were pointed out in the SAI annual report, the Parliament decides on measures proposed and the period of time for their implementation.

Under Article 20 of the Law, SAI informs the Parliament and the Government on especially important and significant matters by means of special reports, at the proposal of the collegiate body.

SAI informs the public of its work. The public information is provided by publishing the annual SAI report in the Official Gazette of Montenegro and presenting the SAI report through its website and other printed and electronic media. The public information concerning SAI's work and activities can also be performed by press releases, press conferences, giving interviews and in other manners.

### *Independence*

State Audit Institution of Montenegro was established by the SAI Law in 2004.

The Parliament of Montenegro adopted the Constitution of Montenegro in October 2006.

Article 144 of the Constitution of Montenegro defines the State Audit Institution as an autonomous and supreme body of state audit. State Audit Institution performs the audit of lawfulness and performance in managing state assets and liabilities, budgets and all financial matters of entities with public sources of finance or arising from the use of state assets. State Audit Institution submits the annual report to the Parliament, and the Senate governs the State Audit Institution.

The Law on State Audit Institution provides the institutional framework for functioning of national external state audit in accordance with international standards. The Law ensures the organizational and functional independence of the supreme audit body of Montenegro.

The Law on State Audit Institution (Article 2) precisely defines that SAI is an "autonomous and independent state body". Independence of the Senate, as a collegial governing body of SAI and of state auditors as carriers of audits, is established, thus observing the INTOSAI standards (item 60) in the part where it is recommended that "appropriate independence requires that the SAI can in no manner be under the influence of the Parliament and other authorities in programming, planning and conducting the audit".

Independence and autonomy of the Senate members is made equal by the law with the independence enjoyed by the judges (Constitutional Court) in their work, with further parallelism drawn in the Law by saying that: no person is allowed to influence the Senate member in performing his/her duties determined by the Law (Article 2, paragraph 2); SAI autonomously decides on audited entities, subject matter, scope and type of audit, time and method of auditing (Article 9); audited entity is obliged, upon SAI's request, to submit promptly all documents including the documents of confidential nature or documents which constitute a business secret (Article 10); SAI has the legal right (obligation) to bring criminal charges if it determines during audit that there are grounds of suspicion of a criminal offence being committed (Article 23); SAI autonomously decides upon requests for submission of information or making documents available (Article 24); the permanence of the office of Senate member is envisaged and the conditions for termination of office or dismissal from duty are precisely stipulated so that the possibility of political influence is excluded (Article 34); SAI adopts autonomously all acts concerning SAI organization and work (Article 38) etc.

At the same time, very strict limitations are imposed for the members of Senate which ensure their impartiality and avoid any form of conflict of interests; hence, a Senate member may not: perform the office of an MP or any other public office; be professionally engaged in any other activity; be a member of any body of a political party, and under the Constitution (Article 54) not even a member of a political organization; be a member of a managing body of a business organization or any other legal entity; participate in the operation and decision making nor can perform activities in cases where he/she or his/her family members were directly involved in decision making about the matter therein.

The Law on State Audit Institution has therefore completely incorporated the necessary elements of independence.

### *Cooperation of the State Audit Institution with the Parliament of Montenegro and the Ministry of Finance*

SAI cooperates with the Parliament of Montenegro, especially with the Board for Economy, Finance and Budget. Over the previous period a series of joint projects were implemented with this

Board and the German Organization for Technical Cooperation (GTZ) concerning the exercise of SAI function as enshrined in the Constitution, improvement of audit by strengthening the Parliament's oversight function concerning the of spending state money, implementation of international public auditing standards and education of MPs and auditors.

State Audit Institution is obliged under the Law to report to the Parliament and the Government of Montenegro by submitting the annual report; by submitting special reports and giving advice on the basis of audit findings.

The President of Montenegro, the Speaker of the Parliament and the Prime Minister are informed of all circumstances of confidential nature which have caused or may cause financial or other damage of a larger extent.

The Parliament may request from SAI to provide additional explanation of certain facts and circumstances from audit reports.

When the collegiate body deems necessary for SAI to inform the Parliament and/or the Government on particularly important and significant matters from its competence, it submits a proposal to the Senate, in writing, for the development of a special report with an explanation. If it assesses the statements to be valid, the Senate makes the decision and entrusts the collegiate body with preparing a draft of a special report and sets the deadline.

In cases when SAI is invited to participate in sessions of the Parliament or its committees, the President of the Senate or a duly authorized member of the Senate will represent this body. When SAI is invited to present a special report, it is presented, as a rule, by the President of the Senate or, upon his/her authorization, the head of the collegiate body which drafted the special report.

In accordance with the Law on State Audit Institution, in the procedure of adopting the final annual financial statement of the state Budget, SAI reports to the Parliament on the audit of the final annual financial statement of the Budget by submitting the Annual Report. The Parliament of Montenegro, on the basis of important facts and circumstances which were indicated in SAI's annual report, decides on measures proposed in the area of financial management of audited entities.

The State Audit Institution maintains good cooperation with the Parliament of Montenegro and the Government and influences significantly the functioning of the entire public finance system. Aiming to promote the cooperation a number of round tables were held on the subject "Cooperation of the State Audit Institution, the Parliament and the Government."

The cooperation of SAI, the Parliament and the Government has a special significance at this time of reforms and economic development of Montenegro, as well as in near future when supervision of implementation of new reform laws and monitoring the accomplishment of expected results will be of special significance. To that effect, SAI will play an important role through the exercise of its advisory function.

The State Audit Institution realizes the cooperation with the Ministry of Finance in two levels: firstly - as an audited entity which as a budget user is subject to regular annual audit and secondly - as an institution whose integral part is the internal financial control (PIFC), and in that manner it contributes to the improvement of the public financial control in the country.

**20 Does the SAI benefit from community funds/programmes to develop future strategies to reform, has it already developed a strategy paper for its future tasks?**

The project of establishing an independent audit institution in Montenegro started in 2002 in cooperation with the German Organization for Technical Cooperation – GTZ. While implementing these ideas into the legal system of Montenegro, it was necessary to turn towards the experiences of institutions in European countries such as the financial control institutions of France and Germany, which have consistently implemented the collegial approach to management, with a strongly emphasized advisory function in relation to the Parliament and the Government, and which are at the same time clearly characterized by principles determined in the Lima Declaration.

Thus, when state audit is concerned, a good quality national solution for Montenegro was achieved which is entirely in compliance with the legal and state principles of democratic countries of Europe.

Montenegro has set out the strategy for the accession to the European Union as one of the fundamental foreign policy goals, which also implies that the State Audit Institution of Montenegro has to harmonise and adjust the method and rules of work with the standards and best practice of the European Union. In the purpose of achieving this goal, the State Audit Institution has initiated several activities.

The first activity refers to the assessment of the State Audit Institution by international institutions, which have, through their reports, recognized the work and accomplished results of this institution.

International organization SIGMA has estimated, during 2007 and 2008, the work of the State Audit Institution and according to that it has created reports. The purpose of that report<sup>3</sup> was also to give recommendations for possible alterations and improvements in the future work of SAI, in addition to the independent assessment of SAI's work, with a view of its harmonisation with international standards and the best practice of the EU to the greatest extent possible.

The reports of this organization particularly emphasized that the improved work of the SAI has provided valuable information to the Parliament in performing the oversight function. The report further states that the SAI should continue to develop its ability to perform audits of public spending in terms of its lawfulness, efficiency and effectiveness.

The National Democratic Institute for International Affairs, as a non-partisan international organization, has carried out its own assessments of the governance system in Montenegro, and thus also assessed the work of the State Audit Institution<sup>4</sup>. The report was made as the final step within the progress assessment of Montenegro for accession to the European Union, and it particularly dealt with the matters of transparency and responsibility in the governance system of Montenegro.

The World Bank has, among other things, also assessed the work of the State Audit Institution in its report - "Montenegro Public Expenditure and Financial Accountability – Report on Impacts of Public Financial Management"<sup>5</sup>.

The State Audit Institution is currently developing its development strategy by 2012, where the basic components of a strategic plan or strengthening of the legal framework of SAI will be defined, as well as the future development of audit methodology, analysis of the audit cycle, development of the assistance process, development of human resources structure and future development of international cooperation.

**21 Could you describe in detail what procedures have been set up for adequate co-operation between the Supreme Audit Institution and the organisation(s) responsible for PIFC, e.g. for avoiding duplication of audit tasks at the same time in the same locality, for informing each other about perceived control/audit weaknesses in government expenditure/income, for the way of reporting audit findings to each other, for training or any other kind of regular co-operation?**

The cooperation with the Ministry of Finance of Montenegro (particularly with the Internal Audit Department) was established since the establishment of the State Audit Institution. The cooperation was developed especially through invitations for participation to a number of seminars and conferences for the training of auditors. These trainings were organized with the cooperation of the German Organization for Technical Cooperation (GTZ), as well as with the German Court of Auditors and Court of Auditors of Slovenia. The contribution of Germany and Slovenia included

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<sup>3</sup> SIGMA, Evaluation Report, External Audit 2007 and 2008

<sup>4</sup> National Democratic Institute for International Affairs, Transparency and Accountability in Montenegrin Governance System, 2009. Podgorica, Montenegro; page 27-29.

<sup>5</sup> The World Bank, Montenegro Public Expenditure and Financial Accountability – Report on Impacts of Public Financial Management.

sending of experts over for a certain period of time for the purpose of professional assistance and specializing in all areas of audit.

In addition, the State Audit Institution has developed very good cooperation with the Internal Audit Department, because submitting their reports on internal audits performed at budget users was provided, so that SAI has the possibility to access all their plans, programmes and reports. Thus, it was attempted to avoid overlapping of activities and tasks, to save funds and increase the performance of all bodies responsible for the control or audit of the public sector.

## **II. Protection of the EU financial interests**

### **A. Management and Control of (future) EU Funds**

**22 The EU acquis requires that national law protects EU funds in the same way as national funds. Does national law provide for specific obligations and procedures with regard to the treatment of cases of suspected fraud and other irregularities affecting national or international funds?**

Montenegrin criminal legislation ensures the protection of financial interests of the European Union and protection of European Union funds through existing criminal offences envisaged by the Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08). Frauds and other acts committed to the detriment of financial interests of the European Community can be listed as important characteristics of criminal acts against property (Fraud referred to in Article 244 and Obtaining and using credits and other benefits without grounds referred to in Article 245), criminal acts against payment operations and economic transactions (Tax and contribution evasion referred to in Article 264 and Smuggling referred to in Article 265), criminal acts against safety of computer data (Computer fraud referred to in Article 352), as well as criminal offences against official duty (Fraud in service referred to in Article 419 and Embezzlement referred to in Article 420, Illegal mediation referred to in Article 422, Passive bribery referred to in Article 423, Active bribery referred to in Article 424 and Abuse of official status referred to in Article 416 of the Criminal Code). These criminal acts are prosecuted *ex officio*.

The procedures of duty and obligation of reporting a fraud or other irregularities are stipulated by the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 7/04 and 47/06) by obliging all state authorities, local government authorities, public companies and institutions to report criminal offences that are prosecuted *ex officio* of which they have been informed or have become aware of in another manner (Article 227). Moreover, Article 228 of the Code stipulates that everyone is to report a criminal offence prosecuted *ex officio*. The report is submitted to the state prosecutor, and if submitted to the court, police or to the state prosecutor lacking jurisdiction, these authorities receive the report and submit it immediately to the competent state prosecutor. Submitter of the crime report is obliged, in addition to the report, to indicate evidence known to him/her and undertake measures to preserve traces of the criminal offence, the items upon which or by means of which the criminal offence was committed as well as other evidence.

Furthermore, all the abovementioned state authorities are obliged to initiate appropriate proceedings (misdemeanour procedure and the like) when during the performance of their duty, they suspect of any other punishable act being committed not constituting a criminal offence but committed to the detriment of state or international financial interests.

The violation of the prescribed obligation of state authorities to report criminal offences which are prosecuted *ex officio* is subject to sanctions. The Criminal Code, Article 386, paragraph 2 stipulates that an official or a responsible person who fails to report, on purpose, the crime for which a sentence of imprisonment of five years or more may be imposed, and of which the person has been informed in the performance of his/her official duty will be punished by imprisonment in the duration of two years. Also, failure to report the preparation of committing a criminal offence for which a sentence of five or more years of imprisonment may be imposed is subject to criminal liability.

The state prosecutor, alone or through other public authorities, is obliged to perform verifications and gather necessary information, when he/she obtains information that a criminal offence has been committed, and in cases of suspecting a fraud.

Police authorities and other state authorities having competence for the detection of criminal offences are obliged to act on every request of the competent state prosecutor. If there are

grounds for suspicion that a criminal offence that is prosecuted *ex officio* has been committed, the police authorities are obliged to take necessary measures aimed at locating the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and objects which may serve as evidence as well as gathering of all information which could be useful for conducting the criminal proceedings successfully (Article 230/257 of the new Criminal Procedure Code).

When the state prosecutor determines that there are grounds to suspect that a certain individual has committed an offence prosecuted *ex officio*, among which are frauds to the detriment of financial interests of state and international funds, he/she is obliged to initiate criminal prosecution.

**23 How are cases of suspected fraud and other irregularities dealt with in practice? Are any statistics kept on detected cases of suspected fraud and other irregularities? If yes, please provide recent statistics.**

The procedure of reporting frauds and other irregularities in cases of suspecting that a criminal offence has been committed is described in the answer to the question no. 22. The reporting procedure is identical for all criminal offences regardless of the type of property (private, public, mixed) or the type of funds that are damaged (state or international funds). The report is submitted to the competent state prosecutor.

After submitting a criminal charge, the state prosecutor may instantly decide to initiate criminal prosecution against a certain person for a criminal offence prosecuted *ex officio* provided that all necessary evidence and information are gathered. To the contrary, the state prosecutor's office may require other public authorities to submit necessary information.

If the state prosecutor dismisses the criminal charge, he/she is obliged to notify the injured party who has the right to initiate criminal prosecution within the period of eight days.

The Public Prosecution Office keeps statistics on all criminal charges filed against certain persons for suspicion of committing a criminal offence. Moreover, statistics are also kept on criminal charges filed against unknown perpetrators as well as the statistics in cases of suspicion that the criminal offence prosecuted *ex officio* has been committed. In situation when the information submitted do not provide enough grounds for the allegation that a criminal offence, prosecuted *ex officio*, has been committed or that the perpetrator of the criminal offence is unknown, the Public Prosecution Office undertakes certain actions only through police authorities or other public authorities with the purpose of determining whether a fraud or other irregularities occurred.

Statistics kept by the Public Prosecution Office contain information related to a certain case from the moment of learning that the criminal offence is committed until the judgment is made final. Information are kept regarding the person filing the report, against whom the report is being filed, for which criminal offence, which actions are undertaken by the Public Prosecution Office, which decisions were made by the court, etc.

Other state authorities (inspections and other supervisory services) keep their records on controls performed and reports filed as well as on requests for the initiation of a misdemeanour procedure.

The following table contains the most recent information on criminal charges filed to the Public Prosecution Office in the period from 1 January - 1 September 2009, for criminal offences committed to the detriment of state property (Budget of Montenegro, public company property, etc.).

Criminal offence	Number of persons reported	Investigations	Indictments	Verdicts
Fraud referred to in Article 244 of the Criminal Code	2	1	1	
Tax and contribution evasion referred to in Article 264 of the Criminal Code	26	4	1	

## 32 Financial Control

Smuggling referred to in Article 265 of the Criminal Code	29	18	17	
Embezzlement referred to in Article 420 of the Criminal Code	9	7	2	
Passive bribery referred to in Article 423 of the Criminal Code	21	10	5	3
Active bribery referred to in Article 424 of the Criminal Code	11	5	5	2
Abuse of official status referred to in Article 416 of the Criminal Code	58	16	2	
Use of credits and other benefits without grounds referred to in Article 245 of the Criminal Code	1			
<b>TOTAL:</b>	<b>157</b>	<b>61</b>	<b>33</b>	<b>5</b>

It should be mentioned that out of 2 persons reported for committing the criminal offence of fraud referred to in Article 244 of the Criminal Code, one person has been reported to have committed the offence to the detriment of European Agency for Reconstruction, and a request for conducting the investigation against that person is filed.

In addition to the persons listed in the table above against whom criminal procedure has been initiated, the total of 85 cases have been formed in the State Prosecution, in the period from 1 January to 1 September 2009, in which information are gathered and verifications performed regarding the existence of suspecting a fraud or other irregularities.

**24 Is your country considering setting up specific institutions or bodies for the investigation and/or treatment of cases of suspected fraud and other irregularities affecting national and/or international funds (separate from the PIFC-systems), or are such institutions or bodies already in place? If so, what is the scope of their competencies? Is their administrative capacity and their operational independence ensured? Have any procedures been defined for the communication, by other national authorities, of cases of suspected fraud and other irregularities to these institutions or bodies? Have any mechanisms been defined for co-operation between these different authorities?**

There are several authorities in Montenegro in charge of detecting and/or solving suspicion of fraud and other irregularities affecting national or international funds, within the scope of their competences.

### **Police Directorate**

In the Police Directorate, within the Criminal Police Department, the Economic Crime Division is specialised in monitoring, detection and processing of criminal offences of fraud.

Pursuant to the Law on Police, the police matters are, among other things, protection of safety of citizens and constitutional rights and freedoms; protection of property; prevention and detection of criminal acts and offences; locating and apprehending perpetrators of criminal acts and offences and bringing them to competent bodies.

The role of the Police Directorate, concerning criminal offences prosecuted *ex officio* is also prescribed by the Criminal Procedure Code and the Decree on State Administration Organization and Operations.

In performing its obligations in accordance with the Law, the police has appropriate administrative capacities, and the work of the police is completely independent.

### **Customs Administration**

The competences of the Customs Administration are defined by the Customs Law (Official Gazette of the Republic of Montenegro 07/02 and Amendments to the Customs Law, Official Gazette of the Republic of Montenegro 38/02, 72/02, 21/03, 29/05, 66/06, 21/08) as well as by the Law on Customs Service (Official Gazette of the Republic of Montenegro 07/02 and Amendments to the

Law on Customs Service, Official Gazette of Montenegro 29/05). All organisational units of the Customs Administration are combating against frauds.

The organisational unit having priority in fight against frauds is the Customs Security Department which consists of Anti-smuggling Division, Customs Investigation Division; Intelligence Division.

Anti-smuggling Division consists of mobile teams located in the north, central and south part of Montenegro and cover the entire area of Montenegro. These teams perform the following controls: control of persons, vehicles and goods in the entire customs area. The bases for controls performed by these teams are intelligence information and targeted monitoring.

Customs Investigation Division investigates customs and other offences as well as criminal offences, identifies goals for investigations, plans and conducts investigations, examines and estimates information and evidence, performs supervision and interrogation of suspected persons, investigates and plans actions regarding the detection of customs and other offences and criminal offences as well as other activities related to investigations. Customs Investigation Division represents a main point for contact with the state prosecutor and this cooperation is carried out on the basis of the Instructions of the Customs Administration D-525/1 from 18 January 2007 – “Obligations and Actions of Customs Officers towards the State Prosecutor When Aware of a Criminal Offence Being Committed”.

The Intelligence Division performs gathering, processing and distribution of intelligence information. This information is gathered from the customs hotline, from other organizational units of the Customs Administration, from foreign customs and security authorities, from other public authorities, from other domestic sources, etc. This division also works on the Risk Analysis System.

### **Tax Administration**

Under the Law on Tax Administration (Official Gazette of the Republic of Montenegro 65/01, 80/04, 29/05), the Tax Administration is authorized to: forward information, including tax secrets discovered during criminal investigations or in the process of gathering other information, to authorities competent for the implementation of the law, when there is reasonable doubt that an offence or a criminal offence has been committed; cooperates with other bodies and organisations in the country and abroad, on matters concerning criminal tax offences and it also files criminal charges and charges for economic offences in accordance with international contracts and agreements.

The Tax Administration has provided a solid information system which provides the information on generated revenues, determined and paid tax liabilities, technical capacities, number of employees and other indicators concerning business operations of every taxpayer. The above mentioned information is suitable not only for the requirements of a tax procedure, but also for procedures conducted by investigative, judicial and other public authorities.

### **Administration for Prevention of Money Laundering and Financing of Terrorism**

Under the Law on Prevention of Money Laundering and Financing of Terrorism (Official Gazette of Montenegro 14/07), if the Administration for Prevention of Money Laundering and Financing Terrorism assesses that there are grounds for suspecting perpetration of criminal offences of money laundering, financing of terrorism or other criminal offences prosecuted *ex officio*, in relation to a transaction or a person, based on gathered information, data and documentation, it is obliged to submit a notification to competent authorities, in writing, in the first place to the police and state prosecution.

The Criminal Procedure Code (Article 227) prescribes that all state authorities, local self-government authorities, public companies and institutions are obliged to report criminal offences that are prosecuted *ex officio*, which they have been informed of or have become aware of in another manner. Submitters of the crime report are obliged to provide evidence known to them and undertake measures to preserve traces of a criminal offence, the objects upon which or by means of which the criminal offence was committed as well as other evidence.

In accordance with the above mentioned, it can be concluded that the cooperation between public authorities and other bodies, when it comes to reporting criminal offences prosecuted *ex officio*, is carried out on the mandatory basis as stipulated by the Criminal Procedure Code.

Towards undertaking appropriate activities for establishing an efficient system for the prevention of irregularities and frauds which can arise by using the EU funds, as well as for providing quality protection of EU financial interests and cooperation with appropriate competent authorities, the Government of Montenegro considered and adopted the Information on Establishing AFCOS System in Montenegro in 2009, and has adopted the following conclusions:

- to establish the AFCOS system in Montenegro, which would consist of the following structures: System for Reporting Irregularities, AFCOS Network and AFCOS Office within the Ministry of Finance;
- to set up the Office for reporting irregularities and frauds (AFCOS Office) within the Ministry of Finance, under the direct responsibility of the Minister of Finance, through amendments to the existing Rulebook on Internal Organization and Job Descriptions of the Ministry of Finance;
- for the Government to determine, by its act, bodies and institutions which make an AFCOS network, appoint representatives of those bodies and institutions and determine the tasks of the AFCOS network.

**25 Financial and judicial follow-up: Have any procedures been defined for the communication of cases of suspected fraud to the prosecution authorities? Have any procedures been defined for the recovery of uncollected resources and unduly spent funds in the case of suspected fraud or other irregularities?**

As it is explained in the answer to the question no. 22 all state authorities, local government authorities, public companies and institutions are obliged to report criminal offences prosecuted *ex officio*. Furthermore, Article 228 of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 7/04 and 47/06) stipulates that everyone is to report the criminal offence prosecuted *ex officio*. To summarize, all state authorities, local government authorities, public companies and institutions are obliged to report that a criminal offence has been committed or that the preparation of a criminal offence is in progress, which are prosecuted *ex officio*. Violating the obligation to report a crime is subject to criminal liability.

The obligation of informing of suspected fraud is prescribed by the Law on State Audit Institution (Official Gazette of the Republic of Montenegro 28/04, 27/06, 78/06 and Official Gazette of Montenegro 17/07) under which the State Audit Institution is obliged to inform, without delay, the audited entity when it considers that grounds for initiating the procedure for damage compensation exist. If any action of the audited entity has caused damage to state property, the State Audit Institution, without delay, informs the state prosecutor. The state prosecutor informs the State Audit Institution in case of the withdrawal of the claim for damage compensation. The State Audit Institution informs the Parliament and the Government on the reasons why the procedure for damage compensation has not been initiated (Article 22). The Rules of Procedure of the State Audit Institution (Official Gazette of the Republic of Montenegro 50/07) stipulate that if the auditor, during audit, obtains information and facts which would suggest that the audited entity should initiate a procedure for damage compensation against third parties, he/she informs the collegiate body without delay. Collegiate body, with respect to the statements of the state auditor, immediately informs, in writing, the managing body of the audited entity and the Senate which, after assessing the statements of the state auditor and in case of their justifiability, immediately informs the state prosecutor.

If during audit, the State Audit Institution determines that there are grounds to suspect that a criminal offence has been committed, it is obliged to file criminal charges, without delay (Article 23 of the Law on State Audit Institution).

The Rules of Procedure of the State Audit Institution prescribe that when an auditor, during audit, or members of the collegiate body and managers of sectors, in the process of reviewing the report, notice that there are grounds to suspect that a criminal offence has been committed by an audited entity or other persons, they are to inform the Senate immediately thereof, enclosing all the information available. The Senate examines the statements and if there is evidence pointing to a reasonable doubt that a criminal offence or an economic offence has been committed, it will, without delay, file a criminal charge to the state prosecutor.

The State Audit Institution and the Administration for Prevention of Money Laundering and Financing of Terrorism have signed an Agreement on Cooperation which regulates in detail the exchange of information, data and findings from the scope of competences of these institutions. The Agreement determines precisely that the State Audit Institution submits the information to the Administration for Prevention of Money Laundering and Financing of Terrorism, if, during the process of auditing, it is identified that there are grounds to suspect that a criminal offence of money laundering and financing of terrorism is involved. This Agreement on Cooperation further enhances the efficiency of work of these institutions in preventing and fighting all forms of possible abuses of the financial system.

When the state prosecutor determines that there is reasonable doubt that a certain person has committed a criminal offence prosecuted *ex officio*, including the frauds to the detriment of financial interests of the state and international funds, he/she is obliged to undertake criminal prosecution.

The material gain acquired by a criminal offence must be confiscated. Article 112 of the Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) prescribes that no person shall be allowed to retain any material gain obtained by a criminal offence. Material gain is seized by a court decision determining the commission of the criminal offence.

Money, valuable items and any other material gain obtained by a criminal offence are seized from the perpetrator. When this seizure is not possible, the perpetrator is obliged to pay a monetary amount corresponding to the value of obtained material gain. Illicit proceeds will also be seized from persons to whom it was transferred without compensation or with compensation which obviously does not correspond to its real value.

Prior to reaching a verdict, the investigating judge, in the process of investigation, or the court panel, in the main hearing, may order a provisional security measure in cases when there is a danger that the material gain will be used for other criminal offences, will be hidden, transferred, destroyed or otherwise disposed. The decision ordering a provisional security measure is submitted to a public authority competent to register the right to property or to a bank. In the course of an investigation, the provisional security measure may last for a period not exceeding six months, after the indictment not exceeding two years, and after reaching the first instance judgement not exceeding the period of one year.

In the newly adopted Criminal Procedure Code (Official Gazette of Montenegro 57/09) special attention is devoted to seizure of income, property and material gain obtained by criminal actions, especially by corruptive criminal offences and organized crime – by conducting parallel integrated financial investigations whose aim is to determine, temporarily seize or confiscate proceeds of crime. Article 90 of the Code envisages the procedure for temporary seizure of property and financial investigation, for the purpose of extended forfeiture. The procedure of permanent confiscation of property whose legal origin is not proved (Articles 486-489) is introduced with the adoption of the new Code. The procedure prescribes that, after the final judgement pronouncing the defendant guilty of the criminal offence for which the Criminal Code prescribes the possibility of extended confiscation of property of the convicted person, his/her legal successor or person to which the property was transferred and who cannot prove its lawful origin, the state prosecutor, not later than within one year, files a request for permanent confiscation of property of the convicted, his/her legal successor or person to which the property was transferred for which he/she does not possess a proof of the lawful origin. The request is submitted, without delay, to the convicted person, his/her legal successor or the person to whom the property was transferred, along with a warning that he/she is obliged to prove the lawful origin of property, as well as that the property will be confiscated if its lawful origin is not proven. If the convicted person, his/her legal successor or

the person to whom the property was transferred by means of valid documents, or in the lack of valid documents, does not prove in any other way the lawful origin of the property, the court shall make a ruling on permanent confiscation of that property. When the convicted person, his/her legal successor or person to which the property was transferred proves the lawful origin of the property or a part thereof by providing valid documents or in another manner, the court makes a ruling on complete or partial rejection of the request for permanent confiscation of property.

Montenegro has ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the Warsaw Convention).

## **26 What are the applicable definitions of "irregularities", "fraud", "corruption" and "money laundering"?**

Having in mind the expansion of financial crime, resulting from the use of modern technologies in all areas of life, the fact that crime is adjusting to economic and technological development of society and that it is increasingly becoming international, criminal legislation devotes special attention to these criminal offences, their processing and sanctioning (see the answer to question no. 25). The Criminal Code of Montenegro defines a high number of criminal offences regarding irregularities, frauds, corruption, money laundering, etc.

Frauds and other actions undertaken to the detriment of financial interests of the European Community may be classified under important characteristics of criminal offences against property referred to in Title XXII (Fraud referred to in Article 244 and Obtaining and using credit and other benefits without grounds referred to in Article 245), criminal offences against payment system and business operations referred to in Title XXIII (Tax and Contribution Evasion referred to in Article 264 and Smuggling referred to in Article 265), criminal offences against the safety of computer data referred to in Title XXVIII (Computer Fraud referred to in Article 352) as well as criminal offences against official duty referred to in Title XXXIV of the Criminal Code of Montenegro, Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08 (Fraud in Service referred to in Article 419, Embezzlement referred to in Article 420, Illegal Mediation referred to in Article 422, Passive Bribery referred to in Article 423, Active Bribery referred to in Article 424, and Abuse of Official Status referred to in Article 416).

The criminal offence of Fraud (Article 244) is committed by a person who intending to obtain unlawful property gain for himself/herself or for someone else brings someone to delusion or keeps him/her in delusion by false presentation or concealing of facts and thereby leads that person to act or not to act to the detriment of their property or other person's property.

The criminal offence of Fraud in Service (Article 419) is committed by an official who, during the performance of his/her service, submits false statements of account or in any other way deceits an authorized person to make an unlawful payment, with the intention of acquiring unlawful material gain for himself/herself or for another person.

The criminal offence of Computer Fraud (Article 352) is committed by a person who enters incorrect data, fails to enter correct data or in any other way conceals or falsely presents data and thereby influences the result of electronic processing, transfer of data and functioning of the computer system, with the intention of acquiring unlawful material gain for himself/herself or for another person and thereby causes property damage to another person or only with the intention of damaging another person.

The criminal offence of obtaining and using credits and other benefits without grounds (Article 245) is committed by a person who obtains credit, subsidy or any other benefit for him/herself or for another person by a false presentation of facts, although he/she does not meet legal requirements; a person who uses credit, subsidy or other benefit granted to them for purposes other than those for which the credit, subsidy or other benefit was granted for, as well as by the responsible person in a company or any other business entity when the credit, subsidy or any other benefit are

acquired for a company or any other business entity or if they are used inappropriately by those entities

The criminal offence of Tax and Contribution Evasion (Article 264) is committed by a person who, with the intention that he/she or another person, completely or partially evades the payment of taxes, contributions or other duties prescribed by the law, provides false information on legally generated revenues, on objects or other facts influencing the determination of these liabilities and who, with the same intention, does not report lawfully generated revenues, or objects and other facts influencing the determination of these liabilities, in case of a mandatory return, or a person who, with the same intention, in any other way conceals information pertaining to determination of the above mentioned liabilities, and the amount of a liability evaded to be paid exceeds the amount of a €1,000.

The criminal offence of Smuggling (Article 265) is committed by a person who engages in transfer of goods over customs line evading customs supervision measures or the person who, evading customs supervision measures, transfers goods over the customs line armed, in a group or with the use of force or threat, as well as the person who engages in selling, distribution or hiding uncleared goods or organizes a network of dealers and middlemen for distributing those goods.

The criminal offence of Embezzlement (Article 420) is committed by a person who appropriates money, securities or other movable things entrusted to him/her, whether in service or a position in a public authority, company, institution or other entity or store, with the intention of acquiring unlawful material gain for himself/herself or for another person.

The criminal offence of Illegal Mediation (Article 422) is committed by a person who accepts an award or any other benefit with the intention of using his/her official or social position or influence to perform or not to perform an official act, the person who using his/her official or social position or influence mediates in performing or failure to perform an official act, or the person who using his/her official or social position or influence mediates in performing an official act which should not be performed or failure to perform an official act which would have to be performed, as well as the person who offers or promises an award or any other benefit to an official person who, by using his/her official or social position or influence mediates in performing an official act which should not be performed or failure to perform an official act which would have to be performed.

The criminal offence of Passive Bribery (Article 423) is performed by an official person, foreign official person as well as the responsible person in a company who requests or accepts a gift or any other benefit or who accepts the promise of a gift or other benefit for him/herself or for another person to perform, in the scope of his/her official authorities, an official act that should not be performed or not to perform an official act which would have to be performed, as well as an official person, foreign official person and a responsible person in a company who requests or accepts a gift or any other benefit or who accepts the promise of a gift or any other benefit for him/herself or for another person to perform, in the scope of his/her official authorities, an official act that would have to be performed or not to perform an official act that should not be performed. These provisions also apply when the bribe is given, offered or promised to a foreign official person.

The criminal offence of Active bribery (Article 424) is committed by a person who gives, offers or promises a gift or any other benefit to an official person to perform, within the scope of his/her authorities, an official act which should not be performed or not to perform an official act that would have to be performed or a person who mediates in such a bribery of an official person, as well as the person who gives, offers or promises a gift or any other benefit to an official person to perform, within the scope of his/her authorities, an official act that would have to be performed or not to perform an official act that should not be performed or a person who mediates in such a bribery of an official person.

The criminal offence of Abuse of Official Status (Article 416) is committed by an official person who obtains for himself/herself or for another person any benefit, causes damage to another person or seriously infringes the rights of another person by using his/her official position or authority, by exceeding the limits of his/her official position or failure to perform his/her official duty.

The criminal offence of Money Laundering (Article 268) is committed by a person who conceals the manner of obtaining money or other property which is known to be obtained by a criminal offence by banking, financial or other business operations.

In Montenegro, the review of the Criminal Code is in progress, which will introduce the legal provisions providing for more explicit protection of financial interest of the European Community especially regarding tax and customs criminal offences against European Community financial interests.

The Law on Criminal Liability of Legal Entities (Official Gazette of the Republic of Montenegro 2/07 and 13/07) stipulates that legal entities may be liable for all criminal acts against property referred to in Title XXII, criminal acts against payment system and business operations referred to in Title XXIII as well as for criminal acts against official duty referred to in Title XXXIV of the Criminal Code of Montenegro. This Law applies both to domestic and international legal entities responsible for a criminal offence committed on the territory of Montenegro, to a foreign legal entity responsible for a criminal offence committed abroad to the detriment of Montenegro, its nationals or a national legal entity, as well as to national legal entities responsible for a criminal offence committed abroad.

## **27 What are the requirements of procedural penal law regarding territorial jurisdiction, offence (is the intention sufficient?), extradition prosecution and confiscation?**

### *Applicability of criminal legislation of Montenegro*

Montenegrin criminal legislation applies to any one who commits a criminal offence on its territory, anyone who commits a criminal offence on board a national ship, regardless of the location of the ship at the time when the criminal offence is committed, and to anyone who commits a criminal offence in a domestic civil aircraft while at flight or in domestic military aircraft, regardless of the location of the aircraft at the time the when criminal offence is committed.

Criminal legislation applies to anyone who commits several criminal offences abroad, from the set of criminal offences against constitutional order and safety of Montenegro (Articles 357 to 369 and Articles 371 to 374 of the Criminal Code, Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) or a criminal offence of Counterfeiting Money (Article 258), if the counterfeiting refers to money which was a legal means of payment in Montenegro at the time the criminal offence was committed.

Montenegrin criminal legislation applies to a Montenegrin national when he/she commits other criminal offence abroad, provided that he/she is apprehended on the territory of Montenegro or extradited to Montenegro.

Montenegrin criminal legislation also applies to a foreigner who commits a criminal offence against Montenegro or its national outside its territory, provided that the foreigner is apprehended on the territory of Montenegro or extradited to Montenegro.

Montenegrin criminal legislation also applies to a foreigner who commits a criminal offence against a foreign country or a foreigner for which prison punishment may be imposed in the duration of five years or more, under the law of the country where the criminal offence was committed, provided that the perpetrator is apprehended on the territory of Montenegro but not extradited to a foreign country.

### *Criminal offence and guilt*

The Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) stipulates that a criminal offence, defined by the Law as such, is a criminal offence which is unlawful and committed with a guilty mind. Criminal Code stipulates that a perpetrator is considered guilty if he/she has committed a criminal offence in mental capacity and with intent. A perpetrator is guilty of a criminal offence committed negligently only when it is prescribed by the Law.

Under the Law on Criminal Liability of Legal Entities (Official Gazette of the Republic of Montenegro 2/07 and 13/07) legal persons may also be responsible for all criminal offences from a special section of the Criminal Code of Montenegro, and also for criminal offences against property, payment operations and business operations and criminal offences against official duty.

### *Extradition*

Montenegro signed a number of bilateral and multilateral agreements for international legal assistance regulating extradition. The most significant of all is the European Convention on Extradition from 13 December 1957 with the Additional Protocol to the European Convention on Extradition from 15 October 1975 and the Second Additional Protocol to the European Convention on Extradition from 17 March 1978 (Official Gazette of FRY – International Agreements 10/2001) which most often occurs in practice as the legal framework for acting under these requests. Submitting the ratification instruments, reservation was placed on Article 6 of the stating that the extradition (Article 6, paragraph 1a) and transit of its nationals will be refused (Article 21, paragraph 2) and that the transit of a person will be granted exclusively under the same conditions applicable in case of extradition (Article 21, paragraph 5 of the Convention).

In case of countries with which we have no international agreement, the extradition procedure is carried out under the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/2008) which stipulates the conditions and procedure of extraditing the accused and sentenced persons. The conditions for extradition upon the letter rogatory of the requesting state are that the person whose extradition is requested is not a national of Montenegro; that the offence for which extradition is requested was not committed in the territory of Montenegro, against Montenegro or its national; that the offence motivating the request for extradition is a criminal offence both under the domestic law and under the law of the country in which it was committed; that the criminal prosecution or enforcement of criminal sanction has not been barred by the lapse of time under the domestic law; that the person claimed has not been already convicted by a domestic court for the same offence or that the person has not been acquitted of the same offence by the domestic court in a final and legally binding manner; that the identity of the person claimed has been established; that the requesting state presented facts and sufficient evidence for a grounded suspicion that the person claimed committed the criminal offence or there is a final and legally binding judicial decision and that it does not concern a minor offence, under the Criminal Code of Montenegro. The extradition is not allowed for a political criminal offence, an offence connected with a political criminal offence or a military criminal offence in terms of the European Convention of Extradition. This prohibition does not apply to criminal offences of genocide, crime against humanity, war crimes and terrorism. If the law of the requesting state prescribes death penalty for the offence for which the extradition is requested, Montenegro may grant the extradition only if that state gives assurance that the death penalty will not be imposed or carried out.

In terms of Article 22 of the European Convention on extradition, when Montenegro is being requested, the Law on International Legal Assistance in Criminal Matters is applied to the procedure of issuance and temporary detention performed under the Convention.

The Constitution of Montenegro (Official Gazette of Montenegro 1/07) prescribes that a national of Montenegro cannot be persecuted or extradited to another state unless in accordance with international obligations of Montenegro.

### *Confiscation - seizure*

The Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) in Article 112 prescribes that no person is allowed to retain any material gain acquired by a criminal offence. Such proceeds are seized under the conditions prescribed by the Code and by a court decision determining the commission of the criminal offence. Money, valuables and any other material gain obtained by a criminal offence are seized from the perpetrator and when this seizure is not possible, the perpetrator is obliged to pay a monetary amount corresponding to the value of obtained material gain. Material gain will be seized from persons to whom it was transferred without compensation or with compensation which

obviously does not correspond to its real value. If material gain is acquired for another person by a criminal offence, that gain will be seized.

In the newly adopted Criminal Procedure Code (Official Gazette of Montenegro 57/09) special attention is devoted to the seizure of income, property and material gain acquired by a criminal offence. Article 90 of the Code envisages the procedure for temporary seizure of property and financial investigation for the purpose of extended seizure of property. New procedure of permanent confiscation of property whose legal origin is not proved (Articles 486-489) is introduced by the adoption of the new Code. The procedure prescribes that, after the final judgement pronouncing the defendant guilty of a criminal offence for which the Criminal Code prescribes the possibility of extended confiscation of property from the convicted person, his/her legal successor or person to which the property was transferred and who cannot prove its lawful origin, the state prosecutor, not later than one year, files a request for permanent confiscation of property of the convicted, his/her legal successor or person to which the property was transferred for which he/she does not possess a proof of the of the lawful origin. The request is submitted, without delay, to the convicted person, his/her legal successor or the person to whom the property was transferred, along with a warning that he/she is obliged to prove the lawful origin of property, as well as that the property will be confiscated if its lawful origin is not proven. If the convicted person, his/her legal successor or the person to whom the property was transferred by means of valid documents, or in the lack of valid documents, does not prove in any other way the lawful origin of the property, the court shall make a ruling on permanent confiscation of that property. When the convicted person, his/her legal successor or person to which the property was transferred proves the lawful origin of the property or a part thereof by providing valid documents or in another manner, the court makes a ruling on complete or partial rejection of the request for permanent confiscation of property.

## **B. Protection of the Euro against counterfeiting "First Pillar" aspects**

### **28 Which definition of counterfeiting of both for notes and coins is provided by national law?**

The criminal offence of counterfeiting is stipulated in the body of criminal acts against payment operations and business operations (Title XXIII) and those are: Counterfeiting Money, Counterfeiting Securities, Counterfeiting and Abuse of Credit Cards and Cards for Non-cash Payment, Counterfeiting Value Bearing Marks, Making, Acquiring and Giving Means for Counterfeiting to Another Person.

In terms of Article 142, paragraph 24 of the Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) money means both metal coins or paper money or money made of some other material that is statutory prescribed to be in circulation in Montenegro or in a foreign country.

The criminal offence of Counterfeiting Money (Article 258) is committed by a person who makes false money with the intention of releasing it into circulation as genuine or the person who alters real money with the same intention, person who acquires false money with the intention of releasing it into circulation as genuine and person who releases false money into circulation. Prescribed sentence for these acts is imprisonment in the duration of two to twelve years. More serious form of the offence exists when false money has been made, altered, released into circulation or acquired by the above mentioned acts, in the amount exceeding fifteen thousand euros, or a corresponding amount in foreign currency for which imprisonment in the duration of five to fifteen years is prescribed by the Law. A special form of the offence exists when the person has received false money as genuine, after learning that the money is false, and releases that money into circulation or when a person is aware that false money has been made or that the false money has been released to circulation, and does not report it. The prescribed sanction is a fine or imprisonment in the duration not exceeding one year. The Code also prescribes mandatory confiscation of the false money.

The criminal offence of Counterfeiting Securities (Article 259) is committed by a person who makes false securities or alters real securities with the intention of using them as real or to giving them to another person for use or a person who uses such securities as real or acquires them with such intention. The sentence prescribed is imprisonment in the duration of one to five years. More serious forms of this criminal offence exist if the total amount of value of securities arising from the above mentioned acts exceed the amount of three thousand euros, for which the perpetrator will be punished by imprisonment in the duration of one to eight years, and if the total amount exceeds thirty thousand euros, the perpetrator will be punished by imprisonment in the duration of two to ten years. A special form of this criminal offence exists when a person, who had received false securities as real, after learning they are false, releases them into circulation. A fine or imprisonment not exceeding one year is prescribed for committing this form of offence. False securities made by these actions are confiscated.

The criminal offence of Counterfeiting and Abuse of Credit Cards and Cards for Non-cash Payment (Article 260) is committed by a person who makes a false payment card or who alters a genuine payment card with the intention of using it as real or the person who acquires a false payment card with the intention of using it or uses it as genuine. Sentence prescribed by the law is imprisonment not exceeding three years. A more serious form of this offence exists when the perpetrator of this criminal offence acquires unlawful material gain by using the card and the prescribed sentence is imprisonment in the duration of six months to five years. When the amount of such unlawful material gain exceeds three thousand euros, the prescribed sentence is imprisonment in the duration of one to eight years, and if the amount of such material gain exceeds the amount of thirty thousand euros, the prescribed sentence is imprisonment of two to ten years. A person who commits an offence by unlawfully using someone else's card will also be punished for this criminal offence.

The criminal offence of Counterfeiting Value Bearing Marks (Article 261) is committed by a person who makes false or alters genuine value bearing marks with the intention of using them as real or to give them to another person for use or a person who uses false marks as real or acquires them with that intention. Prescribed sentence for this offence is imprisonment not exceeding three years. More serious forms of this offence exist when total value of marks exceeds the amount of three thousand euros, for which the perpetrator of the described offence will be punished by imprisonment in the duration of six months to five years, or if the value exceeds thirty thousand euros, the perpetrator will be punished by imprisonment in the duration of one to eight years. Less serious form of the criminal offence exists when the perpetrator, by removing the stamp which annuls the value bearing marks or in any other manner, has the intention of giving the signs appearance of not being used for the purpose of using them again or when the person uses such used marks again or sells as valid. A fine or imprisonment not exceeding one year is the prescribed sentence for committing this offence. False value bearing marks created by such acts are confiscated.

A special criminal offence, under the Criminal Code, is the offence of Making, Acquiring and Giving Means for Counterfeiting to Another Person (Article 262). The Code prescribes that imprisonment in the duration of six months to five years will be imposed on a person who makes, acquires, sells or gives to another person for usage the means for making false money, payment cards or false securities. A less serious form of this offence exists when a person makes, acquires, sells or gives to another person for usage means for making false value bearing marks, for which a fine or imprisonment not exceeding two years is prescribed. The Code also prescribes mandatory confiscation of the above mentioned means.

With the aim of further harmonization of Montenegrin legislation with the *acquis communautaire* and other relevant international instruments and good practice, the review of the existing Criminal Code is in progress. Amendments to the Criminal Code will complete the provisions of certain criminal offences, among which are also criminal offences of counterfeiting, and as additional forms of committing the criminal offence of Counterfeiting Money referred to in Article 258, the import, export and transport of counterfeited money will be introduced. Moreover, the offences of counterfeiting money will be punishable when the notes or metal coins are made by using legal means or materials, by violating rights or conditions under which authorized bodies may issue a currency, without the consent of those bodies. Possession of means for counterfeiting will be

introduced as an additional form of committing the offence of Making, Acquiring and Giving Means for Counterfeiting to Another Person referred to in Article 262 of the Criminal Code, as well as when the non-cash payment means are concerned, while holograms and other components of a currency used for counterfeiting protection will be used as a supplementary object of committing an offence.

**29 Does national legislation provide for the obligation of credit institutions to withdraw from circulation all banknotes and coins which they know or have sufficient reason to believe to be counterfeit and to hand them over to the competent authorities? Have any sanctions been defined in the case this obligation is not complied with?**

The Criminal Code of Montenegro lays down the obligation of withdrawal of counterfeit currency and the currency suspected to be counterfeited. In addition, by adopting the Decision on Supplying Banks with Banknotes and Coins (Official Gazette of the Republic of Montenegro 82/04 and 39/05), the Central Bank of Montenegro has envisaged the obligation of employees dealing with cash in commercial banks (credit institutions) that when noticing a sample of currency suspected to be counterfeited, such sample will be sent to the Central Bank of Montenegro, with all the important characteristics of the currency indicated, for the purposes of expert evaluation (Article 17 of the Decision).

For reasons of efficiency and timely response, the standard practice is that the suspicious currency is taken over, possibly on the spot, by the Police Directorate due to necessary operational actions, and afterwards the Police Directorate submits the money to the Central Bank – the Directorate for Vault Operations for expert evaluation.

The Criminal Code (Article 258) envisages imprisonment sentence up to one year if the above mentioned obligation is not met.

**30 Which authorities have been designated for the centralisation, technical analysis and processing of information on counterfeit bank notes and coins, both Euro and other currencies?**

Existing legislation does not regulate this matter. In practice, there is a Division for Numismatics and Authentication of Currency. Within this Division, centralization, technical expertise and processing of information on counterfeit banknotes, Euro coins and other currencies are performed. Considering that all banks (credit institutions) first submit banknotes and coins with suspicion of forgery to the Police Directorate which, later submits the same to the Central Bank of Montenegro (CBM), some centralisation of data is performed also in the Police Directorate.

The new Law on the Central Bank of Montenegro should envisage these activities to be performed by the CBM, which has a signed Agreement with the ECB.

Within the Police Directorate of Montenegro, since 16 December 2008, a completely new and modern facility was opened and started working - Forensic Centre with its headquarters in Danilovgrad.

In addition to other groups and activities, the Group for examining handwritings, documents and information technologies operates within the Forensic Centre.

The Group performs technical expertise of Euro notes and other currencies, acting upon the request of regional police units and judicial bodies.

The employees working on these activities have undergone necessary specialized training within the Centre itself, and gaining new knowledge and exchange of experiences and information is performed through participation in seminars and lectures, initiated by specialized regional

organizations (OLAF, Interpol), as well as through the cooperation with the Central Bank of Montenegro.

The examination of notes is performed on Projectina Docubox Dragon and Foster+Freeman VSC 4 devices, which have the possibility of applying UV, transparent, white, IR, sideway and Lumi light with the change of filters. Applying Retro light gives the possibility of examining the retro-reflective elements in holograms.

Note: See in detail in Chapter 24, answers to questions 177-186.

**31 Have any procedures been defined for the transmission of examples of counterfeit banknotes and coins, both Euro and other, and related information to the relevant authorities inside or outside your country?**

The European Commission/OLAF and the Central Bank of Montenegro signed the Agreement on Cooperation and Exchange of Information regarding counterfeit Euro coins in May 2008. A part of the signed Agreement envisages sending counterfeits to the European Commission/OLAF/ETSC, when necessary, as well as obligatory exchange of information on counterfeit coins discovered in the territory of Montenegro. The European Central Bank and the Central Bank of Montenegro signed the Agreement on Cooperation in January 2009, which also envisages sending counterfeits to the ECB, when necessary, as well as the regular exchange of information on counterfeits discovered on the territory of Montenegro. Activities of transferring samples of counterfeit Euro banknotes and coins as well as other currencies are defined by the Rules of Procedure of the Department for Financial and Banking Operations.

The NCB INTERPOL in the Police Directorate, within the scope of its activities, exchanges information and coordinates international police operations and cases involving criminal offences related to counterfeiting of money and means of non-cash payment. Counterfeiting of money is recognized as one of the priorities by INTERPOL and EUROPOL. For that purpose, exchange of information through NCB INTERPOL is carried out in two directions.

The exchange of information at the international level – NCB INTERPOL constantly, systematically and comprehensively gathers all information from the organizational units of the Police Directorate in cases concerning criminal offences of counterfeiting currency. To that effect, there is an Instruction which obliges all segments of the Police Directorate to submit such information to the NCB INTERPOL for further procedure. The following information is submitted:

- Information on persons suspected for criminal offence of counterfeiting currency;
- Forensic report on the characteristics of counterfeits (indicative, plate number, paper quality, etc);
- Modus operandi of committing a criminal offence.

These information are compiled by the NCB INTERPOL and sent to the INTERPOL General Secretariat and member states of INTERPOL in an appropriate form (defined by INTERPOL) and via appropriate protected channel of communication (I-24/7), for the purposes of feedback in the case of information overlapping.

The same way is used collecting the information from the Central Bank of Montenegro are gathered, which also has a database of discovered counterfeit currency (including counterfeit currency discovered, but no pre-trial proceeding or criminal proceeding initiated) and such information is also compiled and analysed by the NCB INTERPOL and submitted to the INTERPOL.

Furthermore, the data on recorded counterfeit currency, as well as trends on circulation and use of counterfeit currency in Montenegro are also submitted to EUROPOL in a form of the report.

When necessary and requested by foreign police organisations, under the approval of the competent court and prosecutor leading a case, samples of counterfeit banknotes (or coins) may be submitted to INTERPOL, EUROPOL or any other interested foreign police service for further

analysis. In practice, there have been such cases when confiscated euro banknotes were being submitted to INTERPOL, and confiscated counterfeit dollar banknotes to the representatives of US Secret Service.

The exchange of information at the national level – NCB INTERPOL constantly follows a part of INTERPOL database containing data on counterfeit currency and all data are timely submitted and in continuously submitted to the relevant entities at the national level (Police Directorate – Economic Crime Division, Organized Crime Division and the Central Bank of Montenegro). The data contain information on new trends in counterfeiting currency, new types of identified counterfeit banknotes and coins, areas where counterfeit currency has been discovered, operating data on the origin of such currency (area of origin, potential location of printing house), methods of discovering new types of counterfeits, etc.

As for the procedures for transferring the samples of counterfeit banknotes and coins of Euro and other currencies, and the related information, to the relevant authorities inside the country, the description is given within question 34 of this Chapter.

### **32 Have any procedures been defined for the gathering and indexation of statistical data relating to counterfeit banknotes and coins (both for the Euro and other currencies)?**

The activities of indexation and gathering of statistical data concerning counterfeit banknotes and coins of Euro and other currencies are specified by the Rules of Procedure of the Department for Financial and Banking Operations in the Central Bank of Montenegro. According to the procedures, the suspicious money is received exclusively with the request for expertise containing the information on:

- Submitter of request for the expertise;
- Suspicious money (currency, denomination, serial number, number of pieces, place and time of discovering);
- Legal or natural persons where the suspicious money was discovered i.e. personal information, address, phone number (except in cases when the Police Directorate or judicial authority cannot able to provide information due to justified reasons).

Within the procedures, the following is envisaged concerning records on counterfeit keeping:

- Recording all relevant information concerning processed counterfeits and original money: currency, denomination, amount, type, kind;
- Recording data concerning the submitter of the request and person or company where the counterfeit was discovered;
- Filing counterfeits concerned.

On the basis of counterfeits processed, monthly, quarterly and annual reports are prepared which are submitted to the head of Department, to the Director of the Directorate for Vault Operations and to the management of the Central Bank.

The Forensic Centre, as a unit of the Police Directorate, has its internal database containing registered counterfeits of banknotes of Euro and other currencies, submitted to expertise within the last two years.

The submitter of the request is introduced with the result of expert analysis, in writing, after which the employees of the Criminal Police Department and the NCB Interpol undertake further actions on discovering the location and persons included in possible production and dealing/circulating counterfeit banknotes.

The total of 1,366 banknotes of Euro and other currencies were submitted to the Forensic Centre for expertise in 2008 and in the first six months of 2009.

It is illustrated in the table below.

Time period	No. of submitted banknotes	No. of determined counterfeits
2008.	708	652
1 January – 30 June 2009	658	497
<b>Total</b>	<b>1,366</b>	<b>1,149</b>

The breakdown of determined counterfeit banknotes per currency and denomination in the first six months of 2009 is illustrated in the following table:

Currency and denomination	Forgeries determined
€500	1
€200	9
€100	215
€50	19
€20	110
€10	1
£20	2
US \$100	140

### 33 Which sanctions apply for the entering into circulation and for the use of medals and token similar to Euro coins?

In terms of Article 142, paragraph 24 of the Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08), money means both metal coins or paper money or money made of some other material that is statutory prescribed to be in circulation in Montenegro or in a foreign country.

The criminal offence of Counterfeiting Money (Article 258) is committed by a person who makes false money with the intention of releasing it into circulation as genuine or the person who alters real money with the same intention, person who acquires false money with the intention of releasing it into circulation as genuine and person who releases false money into circulation. Prescribed sentence for these acts is imprisonment in the duration of two to twelve years. More serious form of the offence exists if false money has been made, altered, released into circulation or acquired by the above mentioned acts, in the amount exceeding fifteen thousand Euros, or a corresponding amount in foreign currency for which imprisonment in the duration of five to fifteen years is prescribed by the Law. A special form of the offence exists when the person has received false money as genuine, after learning that the money is false, and releases that money into circulation or when a person is aware that false money has been made or that the false money has been released to circulation, and does not report it. The prescribed sanction is a fine or imprisonment in the duration not exceeding one year. The Code also prescribes mandatory confiscation of the false money.

Under the Law on Criminal Liability of Legal Entities (Official Gazette of the Republic of Montenegro 2/07 and 13/07) legal entities can also be responsible for criminal acts from a special section of the Criminal Code of Montenegro and thus for criminal offences of counterfeiting money and all other criminal offences against property, payment system and business operations and official duty. This Law is applied both to domestic and foreign legal entity responsible for a criminal offence committed in the territory of Montenegro, to a foreign legal entity responsible for a criminal

offence committed abroad to the detriment of Montenegro, its nationals or a domestic legal entity as well as to domestic legal entity responsible for a criminal offence committed abroad. Sanctions which may be imposed to a legal entity are penalty (fine or termination of a legal entity), suspended sentence and security measures (developing and implementing programs of effective, necessary and reasonable measures, seizure of items, public pronouncement of the verdict and prohibition of performing certain commercial or other operations).

#### **34 What are the procedures and bodies established for the fight against counterfeiting?**

The Central Bank of Montenegro, Police Directorate and judicial bodies in Montenegro are included in the fight against counterfeiting currency.

The Central Bank of Montenegro, by means of its decisions and Rules of Procedure of the Department for Financial and Banking Operations has prescribed the complete procedure for handling "suspicious" banknotes and coins, from the moment of noticing this money, to the final part of compiling the Expertise Analysis Report and informing all relevant entities of newly discovered or already registered type of counterfeit.

The Police Directorate pays special attention to discovering and combating the occurrence of counterfeit currency in the Montenegrin territory. Given that Euro is the official mean of payment in Montenegro, the counterfeit banknotes of this currency have been recorded.

In June 2008, the Supreme State Prosecutor sent a memo to the Central Bank of Montenegro and to all commercial banks in the territory of Montenegro, legally binding these entities to report any appearance of counterfeit currency to competent bodies (the Police Directorate and the Prosecution Office), considering that previous analysis have determined that a high number of counterfeit banknotes are discovered at bank counters during the payment of money in the form of daily income by companies and other forms of payment by legal and natural persons. The basis for these mandatory procedures is found in the Criminal Code, Article 258, which defines the criminal offence of counterfeiting money, and Article 386 paragraph 2, referring to paragraph 1, which stipulates that "the failure to report a criminal offence and the perpetrator is defined as a special criminal offence". Under Article 228 of the Criminal Procedure Code, it is stipulated that "everyone shall report a criminal offence subject to prosecution ex officio". These activities of the Supreme State Prosecutor were preceded by several meetings held between the representatives of the Supreme State Prosecution, Police Directorate and the Central Bank of Montenegro, where problems regarding counterfeit currency in the territory of Montenegro, especially the Euro currency, were analyzed. Taking into account the binding memo of the Supreme State Prosecutor, to the Central Bank of Montenegro and all commercial banks, the employees of the Police Directorate- Economic Crime Division have agreed with the managers of branch offices of commercial banks on all the forms of reporting the appearance of counterfeit money to the police.

Thus, police shall obtain timely information on each appearance of counterfeit currency, which is important for undertaking actions within the competences of the police to tracking the appearance of counterfeits (where the counterfeit banknote came from, the location of its release into circulation, the person who brought it to the bank counter, etc). Upon gathering the necessary information, the police undertake actions in relation to locating the perpetrator who has intentionally released the counterfeit banknote into circulation. The police also act preventively, by educating the participants in payment operations, particularly at the bank counters where counterfeit banknotes appear more often through payments (they suggest enhanced inspection, procurement of counterfeit currency detection apparatus, paying attention to denominations most commonly counterfeited, etc.)

In addition to the information on the appearance of counterfeit currency the police receives from banks, reports are also filed by retailers who themselves suspect that a person paid with a counterfeit banknote. Through its regular activities, the police also obtain information on the persons putting into circulation the counterfeit currency, and undertake actions and measures for

finding the counterfeit money in the possession of those persons and provision of evidence on committed criminal offence referred to in Article 258 of the Criminal Code of Montenegro.

The banknotes taken by the police from banks and other sources, and legality of which is being questioned, are submitted to the Forensic Centre for expertise after which they are sent to the Central Bank of Montenegro for performing expertise and developing a database on counterfeit banknotes with all the individual characteristics of the banknote. The result of the Central Bank's expertise is submitted to the Police Directorate, and the banknotes, if counterfeited, remain with the Central Bank to be submitted as evidence if requested by the court in the course of the criminal procedure.

The employees of the Economic Crime Division within the Criminal Police Department hold competences regarding this criminal offence, and in case of organized activity in counterfeiting currency, the Organized Crime Division is involved.

### **35 Has Montenegro participated in the Pericles programme?**

Montenegro is an active participant of the Pericles programme through the Central Bank of Montenegro and the Police Directorate.

The representatives of the Central Bank of Montenegro have participated in the seminar organised under the sponsorship of OLAF, within the Pericles programme "Protection of Euro against Counterfeiting - Investigative, Technical and Judicial Perspective" held on 4–6 June 2003 in Lisbon.

The Central Bank of Montenegro signed the Agreement on Cooperation and Exchange of Information concerning counterfeit Euro coins with OLAF in January 2008. After signing the Agreement, the representatives of the Central Bank of Montenegro participated in the seminar "Protection of Euro: Tactical and Technical training" held from 30 June to 2 July 2008 in Podgorica, under the sponsorship of the Pericles programme.

The representatives of the Central Bank of Montenegro participated in the "Technical and Analytic Training of Counterfeit Euro Coins Experts" at the ETSC in Pessac on 10 – 12 March 2009, also held within the Pericles programme.

Owing to the active participation in combating counterfeit money, the Central Bank of Montenegro was offered a partnership with OLAF in organizing a professional seminar. The seminar under the title of "Strengthening the Protection of Euro in the Financial Sector" was organised with the aim of educating and training the employees in the financial sector (commercial banks) and the Police Directorate, which was successfully held on 16 and 17 July 2009 in Podgorica.

The representatives of the Police Directorate i.e. Economic Crime Division, Organized Crime Division and NCB INTERPOL attend the workshops organized within the project, where they present the findings and available information on counterfeit currency in Montenegro.

Owing to the Pericles programme, in cooperation with OLAF and EURPOL, the Police Directorate was a co-organiser of two seminars held in Montenegro in 2008 and 2009 for the representatives of the police, state prosecution and the Central Bank of Montenegro, as well as for the representatives of private banking and financial sector.

The third seminar is planned, which would complete the training of relevant Montenegrin staff in detection, prevention and fight against counterfeit currency.

**List of Annexes:**

Annex 260 - LAW ON PUBLIC INTERNAL FINANCIAL CONTROL SYSTEM, 7, 18

Annex 261 - LAW ON STATE AUDIT INSTITUTION, 26

Annex 262 - DECREE ON TITLES OF INTERNAL AUDITORS, 18

Annex 263 - DECREE ON ESTABLISHMENT OF PUBLIC INTERNAL AUDIT, 18

Annex 264 - INSTRUCTIONS ON STATE TREASURY OPERATIONS, 19

Annex 265 - STRATEGY OF PUBLIC INTERNAL FINANCIAL CONTROL (PIFC) DEVELOPMENT IN MONTENEGRO, 8

Annex 266 - RULEBOOK ON THE INTERNAL AUDIT METHOD AND PROCEDURE , 18