

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY MONTENEGRO

ARTICLE 14 UNCAC

PREVENTION OF MONEY-LAUNDERING

MONTENEGRO (SIXTH MEETING)

Article 14, paragraph 1, items (a) and (b)

The Administration for the Prevention of Money Laundering and Terrorist Financing of Montenegro was established in 2003, as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. It is designated as an administrative financial investigation unit. Its main task is to collect, process/analyse and disseminate to the competent state authorities data and information on the suspicions of money laundering, terrorist financing or related criminal offences.

The new Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF) entered into force on 4 August 2014.

Article 4 of the LPMLTF defines the reporting entities that are obliged to undertake the measures for detecting and preventing money laundering and terrorist financing.

Reporting entities Article 4

- (1) *Measures for detecting and preventing money laundering and terrorist financing shall be taken before, during and after the conduct of any business of receiving, investing, exchanging, keeping or other form of disposing of money or other property, or any transactions for which there is a suspicion of money laundering or terrorist financing.*
- (2) *Measures from paragraph 1 of this Article shall be undertaken by business organizations, legal persons, entrepreneurs and natural persons conducting activities (hereinafter referred to as: reporting entities), as follows:*
 - 1) *banks and other credit institutions, and foreign banks' branches;*
 - 2) *financial institutions;*
 - 3) *payment service providers;*
 - 4) *post offices;*
 - 5) *companies for managing investment funds and branches of foreign companies for managing investment funds;*
 - 6) *companies for managing pension funds and branches of foreign companies for managing pension funds;*
 - 7) *stock brokers and branches of foreign stock brokers;*
 - 8) *legal persons licenced by Securities and Exchange Commission for carrying out custody and depository activities, excluding banks;*
 - 9) *life insurance companies and branches of foreign life insurance companies;*
 - 10) *insurance intermediation companies and insurance representation companies in the part related to life insurance;*
 - 11) *organizers of lottery and special games of chance;*
 - 12) *exchange offices;*
 - 13) *pawnshops;*
 - 14) *companies issuing electronic money;*
 - 15) *humanitarian, non-governmental, religious and other non-profit organizations;*
 - 16) *sport organizations;*

- 17) other business organizations, legal persons, entrepreneurs and natural persons engaged in an activity or business of:
- sale and purchase of claims;
 - factoring and forfeiting;
 - auditing, independent auditor, accounting and providing tax advice services;
 - providing services of founding legal persons and other business organizations, as well as business and fiduciary services;
 - third persons' property management;
 - issuing and performing operations with payment and credit cards;
 - financial leasing;
 - investment, trade and intermediation in real estate trade;
 - performing construction works;
 - elaborating construction projects;
 - motor vehicles trade;
 - vessels and aircrafts trade;
 - safekeeping;
 - issuing warranties and other guarantees;
 - crediting and credit intermediation;
 - granting loans and intermediation in contracting granting loans;
 - marketing and consulting activities related to business activities and other managing activities;
 - providing catering and tourism services;
 - purchase and trade in secondary raw materials;
 - multi-level sale;
 - organizing and conducting biddings, trading in works of art, precious metals and precious stones and precious metals and precious stones products, as well as other goods, when the payment is made in cash in the amount of at least € 7.500, in one or more linked transactions.
- (3) The Government of Montenegro (hereinafter: the Government) may, by a regulation, define other reporting entities that shall undertake the measures from paragraph 1 of this Article if, considering the nature and manner of carrying out activities or business, there is a risk of money laundering or terrorist financing.
- (4) The Government may define by a regulation reporting entities that are not obliged to undertake the measures and actions prescribed by this Law when performing certain part of business or activity in case they carry out activities on an occasional or very limited basis and that are related to low risk of money laundering and terrorist financing.

The LPMLTF provides for the duties and obligations of the reporting entities, such as conducting the customer due diligence measures (in particular, identifying and verifying a customer's identity; identifying the beneficial owner of a customer and verifying his identity; obtaining data on the purpose and nature of a business relationship or purpose of transaction and other data in accordance with the Law; monitoring regularly the business activities that a customer undertakes with the reporting entity and verifying their compliance with the nature of a business relationship and the usual scope and type of customer's affairs) – Article 8 of the LPMLTF; developing the risk analysis -Article 7; refusal to establish a business relationship and execute a transaction – Article 12 etc. Also, Articles 78-79 and 80-81 provide for type and content of the records that are to be kept by the reporting entities and lawyers and notaries respectively.

A significant step in the anti-corruption efforts of the Administration was made in 2007, when the definition of both domestic and international politically exposed

persons was introduced in the amended Law. This was followed by the obligation for reporting entities to conduct enhanced customer due diligence measures for this kind of clients (the measures are defined in the Article 33 of the existing LPMLTF). The lists of PEPs are published on the website of the Administration - the one containing the domestic PEPs is taken over from the website of the Commission for Prevention of Conflict of Interests, and the other, referring to the foreign PEPs is redirected from the site of the Ministry of Foreign Affairs and European Integration. In addition, according to the Guidelines for developing risk analysis, when entering into business relationships or executing transactions, reporting entities need to determine if the clients are PEPs, which is done by requesting them to fill a form for identifying PEPs (Questionnaire for identifying politically exposed persons). This form is also published on the website of the APMLTF.

Article 60 of the LPMLTF defines that the APMLTF, after estimating that there is a suspicion of money laundering or terrorist financing, can require state authorities or public powers holders to provide data, information and documentation necessary for detecting money laundering or terrorist financing. State authorities and public powers holders shall provide the requested data, information and documentation to the Administration without delay, and not later than eight days after the day of receiving the request, or enable, without compensation, direct electronic access to the requested data and information.

According to the Article 64, when there is a suspicion of money laundering or terrorist financing regarding a certain transaction or person, the Administration may, upon a written and grounded initiative of the Court, State Prosecutor, administrative authority competent for police affairs, National Security Agency, competent tax authority, administration authority competent for the customs affairs (hereinafter: Customs authority), administration authority competent for anticorruption and other competent state authority, as well as a competent authority from a foreign country, initiate the procedure for collecting and analyzing data, information and documentation.

Besides, Article 65 provides for the obligation of the APMLTF to, when it evaluates on the basis of data, information and documentation obtained in accordance with this Law that in relation to certain transaction or certain person there is a suspicion of money laundering or terrorist financing, inform the competent authority in written form accompanied with necessary documentation about the reasons for suspicion.

Moreover, Article 66 states that, when the APMLTF evaluates that in relation to a transaction or person there is a suspicion of committing other criminal acts that are prosecuted ex officio, it shall inform in written the competent authorities without delay.

Also, the APMLTF has signed memoranda on cooperation with all the relevant state authorities (Police Directorate, Customs Administration, Insurance Supervision Agency, Central bank, Tax Administration, Basic Court in Podgorica, State Auditing Institution...) in order to strengthen the coordination and cooperation processes in the field of combating ML/TF.

Articles 68-73 define the terms and conditions for international cooperation, i.e. requesting/ providing information from/to foreign counterparts, spontaneous provision

of data and information, as well as acting upon the initiative/submitted an initiative for a temporary suspension of transaction (for 72 hours).

The APMLTF exchanges data and information with all the members of Egmont Group through the Egmont secure web. In case a suspicion in money laundering, corruption, terrorist financing or other criminal act arises, the Administration, upon the request of a foreign financial intelligence unit, has a power to order the suspension of a transaction for 72 hours. Also, in case the Administration estimates that a transaction is related to some criminal act, it is empowered by the LPMLTF to request a foreign correspondent agency to temporarily suspend the transaction.

So far, the APMLTF has signed Memoranda of Understanding with 32 foreign financial intelligence units.

Article 14, par. 2

The Customs Administration shall submit to the APMLTF information on every cross-border transport of money, checks and bearer securities, precious metals and precious stones, in value or amount of 10.000 € or more, within 3 days following the cross-border transport, pursuant to the Article 74 of LPMLTF.

In accordance with the above Law, Customs Administration is obliged to submit to the APMLTF information on every cross-border transport of money, checks and bearer securities, precious metal and precious stones, in the value or amount lower than 10.000€, if there is a suspicion of money laundering or terrorism financing.

Information on every cross-border transport of money, checks and bearer securities, precious metals and precious stones is submitted using the special form – Reporting form of customs authority, which contains, among other things, information on reason for suspicion of money laundering or terrorism financing, and whether the transport of cash was reported to the customs authorities.

Pursuant to the Article 77 of the LPMLTF, Customs Administration shall inform the APMLTF on annual basis, but not later than the end of January of the current year, for the previous year, on its observations and undertaken measures in relation to suspicious transactions on money laundering or terrorism financing.

Articles 82 and 83 of the LPMLTF prescribe the records, which the Customs Administration is obliged to keep, as well as its contents. The Customs Administration shall keep the records for 11 years after its collection, and such information is being destroyed after the expiry of that deadline.

Customs Administration and APMLTF concluded the Agreement on cooperation, signed on 20/10/2004, for the purpose of implementing the Law on Prevention of Money Laundering and Terrorism Financing, as well as establishing the channels of communication, coordination, cooperation and data exchange, necessary for detecting and preventing money laundering and performing all other obligations stipulated by the law.

Article 14, par. 3

Article 34 of the LPMLTF defines the terms and conditions for executing wire transfers. According to this Article, a reporting entity that is a payment service provider shall

obtain accurate and complete data on a payer and enter them into a form or message accompanying wire transfer, sent or received in any currency that is the subject of the wire transfer. The wire transfer shall be accompanied with these data when passing through the payment chain. Also, a payment service provider, that is an intermediary service provider or payee, shall refuse to execute funds transfer if the data on payer are not complete and/or shall require payer data supplement in the shortest possible period of time.

The content and type of data accompanying electronic funds transfer, the other activities of the payment service provider, as well as the exceptions in collecting data when executing funds transfer that represents insignificant risk for money laundering and terrorist financing are more closely defined in the *Rulebook on content and type of payer's data accompanying electronic funds transfer*.

Article 14, par. 4

The Administration is committed to playing a role in the international fight against money laundering and terrorist financing and to fulfilling the obligations under the various international treaties to which the Government of Montenegro is a signatory. The Administration strictly ensures that the AML/CFT legal framework, its policy and practice are in compliance with the recommendations of the Financial Action Task Force and the Committee of Council of Europe - Moneyval, the EU Directives on money laundering and terrorist financing, Egmont principles, and all other existing AML/CFT international standards.

Also, the APMLTF has great technical assistance provided by the international organizations, such as UNDP and OSCE. Also, a huge support is received from the experts of relevant international institutions through their evaluations of our system, constructive comments, recommendations and suggestions.

Article 14, par. 5

The legal basis for the cooperation, both national and international, is presented above, under *Article 14, paragraph 1, items (a) and (b)*.

The APMLTF regularly attends the relevant workshops, conferences and seminars. During 2014 our representatives participated at various events dedicated to the fight against corruption, ML/TF, organized crime, illegal cross border funds transfer, seizure and confiscation of proceeds of crime, currency fraud, financial investigations techniques etc.

With the view of achieving better regional cooperation /financial and investigative data exchange at the Second Regional Conference of FIU's Heads, held in Podgorica 23-25th April 2008, the representatives of FIUs from Montenegro, Albania, Serbia, Croatia, Slovenia and Bosnia and Herzegovina, signed the Regional Protocol on the Fight Against Money Laundering and Financing of Terrorism.

The Regional Conference is held annually and each time hosted by another country from the region.

Also, the APMLTF is actively involved in the work of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Egmont Group and Euro-Asian Group, and it repeatedly participates in their plenary and working-group meetings.