



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
27 August 2024

Original: English

**Implementation Review Group
Second resumed fifteenth session
Vienna, 4–8 November 2024
Agenda item 4
State of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
II. Executive summary	2
Montenegro	2



II. Executive summary

Montenegro

1. Introduction: overview of the legal and institutional framework of Montenegro in the context of implementation of the United Nations Convention against Corruption

Serbia and Montenegro signed the United Nations Convention against Corruption on 11 December 2003 and ratified it on 20 December 2005. By succession statement deposited with the Secretary-General on 23 October 2006, Montenegro acceded to the Convention as an independent State.

The implementation by Montenegro of chapters III and IV of the Convention was reviewed in the second year of the first review cycle. The executive summary of that review was issued on 15 February 2013 ([CAC/COSP/IRG/II/2/1/Add.11](#)).

The relevant provisions implementing chapters II and V of the Convention are contained in the Law on the Prevention of Corruption, the Law on the Financing of Political Entities and Election Campaigns, the Law on Civil Servants and State Employees, the Public Procurement Law, the Law on Free Access to Information, the Law on Lobbying, the Criminal Code, the Law on the Prevention of Money-Laundering and Terrorist Financing, the Law on the Seizure and Confiscation of Material Benefits from Criminal Activity and the Law on Mutual Legal Assistance in Criminal Matters.

The key institutions in the areas of corruption prevention and asset recovery include the Agency for the Prevention of Corruption, the Ministry of Finance, the Ministry of Justice, the Customs Administration, the Financial Intelligence Unit and the Commission for the Protection of Rights.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The Action Plan for Chapter 23¹ was developed for the negotiation of the accession by Montenegro to the European Union and is focused on chapter 23 of the European Union acquis, on the judiciary, the fight against corruption and fundamental rights. Following the conclusion of the Strategy for the Fight against Corruption and Organized Crime (2010–2014), the Plan has been serving as the country's principal anti-corruption policy document. The Plan, which was drafted by Working Group 23, comprising members of the legislative, judicial and executive branches, through a public consultation process involving civil society organizations, is accompanied by an operational document that was adopted in 2016 to prevent corruption in the following seven prescribed areas of special risk: public procurement, privatization, urban planning, education, health, local self-government and the police. The Plan includes an array of measures under four sub-areas, including one on the fight against corruption and another on cooperation with non-governmental organizations, corresponding to the interim benchmarks of chapter 23. Indicators on the result and impact have been developed by Working Group 23 and the Council of the Rule of Law through designated coordinators, in order to monitor the implementation of the measures. During the country visit, Montenegro reported that most of the measures established under the Plan and the operational document had either been met or were outdated and thus needed to be updated. As a transitional arrangement, the Dynamic

¹ Revised in July 2020.

Plan was adopted and updated on the basis of a thorough review of the obligations under the interim benchmarks in 2021.²

Montenegro has adopted a series of laws on the fight against corruption, including the Law on the Prevention of Corruption, the Law on the Financing of Political Entities and Election Campaigns and the Law on Lobbying. The Agency for the Prevention of Corruption, as a legally autonomous and independent body, is assigned a variety of preventive functions, including preventing conflicts of interest, imposing restrictions on the exercise of public functions, verifying reports on income and assets by public officials and protecting whistle-blowers (art. 4³ of the Law on the Prevention of Corruption). In addition to its participation in implementing the Action Plan for Chapter 23, the Agency has taken a range of measures to prevent corruption, such as the use of integrity plans to mitigate corruption risks and unethical behaviour in government bodies and opinion polls to raise public awareness, as well as the conduct of anti-corruption campaigns. The Agency has the authority to issue opinions on draft laws or initiate amendments to existing legislation regarding corruption risks (art. 78⁴ of the Law on the Prevention of Corruption), and it adopted a methodology for corruption-proofing in Montenegro. However, it was reported that there was a lack of personnel at the Agency to deal with corruption-proofing.

The Agency for the Prevention of Corruption was established by the Parliament and enjoys legal independence from unlawful influence, as well as autonomy in utilizing its funds (arts. 4, 81,⁵ 94⁶ and 95⁷ of the Law on the Prevention of Corruption). The Agency's budget must not fall below 0.2 per cent of the State's budget (art. 95⁸) and has been increasing. Although the compulsory minimum budget measure was designed to ensure financial forecasting stability and enhance financial independence, the Agency has faced challenges in allocating the assigned budget for new recruitment. The Agency's work is directed by the Council and the Director of the Agency. The five members of the Council are elected by the Parliament, at the proposal of the working body responsible for anti-corruption affairs, for a four-year term with the possibility of a one-term extension (art. 82⁹). The Director of the Agency is elected by the Council, on the basis of a public competition, for a five-year term with the possibility of a one-term extension (art. 91¹⁰). The procedures for the selection of Council members and the Director of the Agency, along with core responsibilities and grounds for dismissal, are set out in chapter V of the Law on the Prevention of Corruption. Specialized training for Agency employees is provided.

Montenegro participates in a number of anti-corruption initiatives, such as the Group of States against Corruption, the European Partners Against Corruption and the Regional Anti-Corruption Initiative. The country has also established cooperation with foreign anti-corruption authorities and maintains partnerships with several international and regional organizations on the prevention of corruption.

² After the country visit, authorities reported on the effort to meet the interim benchmarks contained in negotiation chapter 23, "Judiciary and fundamental rights", and negotiation chapter 24, "Justice, freedom and security", and to obtain a positive report on the fulfilment of interim benchmarks. In that context, it was reported that Montenegro had proposed 12 laws aimed at improving the judiciary, enhancing the fight against organized crime and corruption and regulating the media. Moreover, the Parliament of Montenegro adopted the proposed legal solutions through an expedited procedure. On 11 June 2024, the amendments to the Law on the Prevention of Corruption entered into force.

³ Article 6 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

⁴ Article 82 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

⁵ Article 85 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

⁶ Article 99 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

⁷ Article 100 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

⁸ Article 100 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

⁹ Article 86 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

¹⁰ Article 96 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Law on Civil Servants and State Employees and relevant regulations, such as the Regulation on the Appraisal of Performance, govern procedures for the recruitment, retention and retirement of civil servants and other public employees. Vacant positions in the State authorities are filled by assignment, internal announcement, public announcement and public competition (art. 40). With the exception of the method related to assignment, those methods require open competition based on predetermined criteria and the publication of vacancies, including on the relevant authority's website or through media (arts. 42 and 46). Appeals against a selection decision can be lodged to the Appeals Committee (arts. 136 and 137). Training on integrity and anti-corruption practices is regularly provided to public officials. The Law on Salaries of State Employees governs the remuneration and pay scales of civil servants and State employees. Although the Law on the Prevention of Corruption requires the adoption of integrity plans by public authorities (art. 71),¹¹ the Rules for the Development and Implementation of the Integrity Plan further define the procedure that all authorities should follow in selecting and assessing public positions at risk of corruption. Rules on the mobility of positions are provided under chapter IV of the Law on Civil Servants and State Employees. However, there are no measures governing the selection, training or rotation of public officials for positions especially vulnerable to corruption. The employment of local officials is regulated by the Law on Local Self-Government (chap. VII).

Criteria concerning candidature for and election to public office, such as for the roles of President, Prime Minister and members of the Parliament, are established in the Constitution (arts. 45 and 96). Political funding for election campaigns from public and private sources, including prohibitions and restrictions, is regulated by the Law on the Financing of Political Entities and Election Campaigns and an array of regulations (arts. 4, 6, 15, 21 and 33 of the Law). Violations of the law may constitute misdemeanours, resulting in the application of administrative sanctions and fines (arts. 65, 66 and 69 of the Law). The Agency for the Prevention of Corruption is designated to control and monitor the financing of political entities and election campaigns and has the authority to take administrative measures if irregularities are identified (arts. 60 and 64–70 of the Law). The Law also regulates financial reporting, internal control, auditing and the publication of financial reports to enhance transparency in political financing (arts. 12, 24, 30 and 48–51). However, transparency rules governing the funding of political campaigns for election candidates are not sufficient. In addition, the Law on Lobbying prescribes requirements for conducting lobbying activities and the manner in which to do so; the Law was under revision at the time of the country visit to address matters such as licensing and registration, reporting on contacts and violations of the law.

The prevention of conflicts of interest is addressed in the Law on the Prevention of Corruption, which requires every public official to avoid and declare conflicts of interest (art. 7). Article 7, paragraph 2, defines a conflict of interest as a private interest that affects or may affect the impartiality of a public official in the exercise of public function. The Agency for the Prevention of Corruption must establish the existence of conflicts of interest and implement measures to prevent such conflicts (art. 7). Declarations of private interest are to be submitted to the Agency for its mandatory opinion (art. 8). Administrative procedures and sanctions can be taken in the case of violations (art. 7, paras. 4 and 5, art. 102 and art. 103). However, members of the Parliament, councillors and public officials subject to exemption by a special law or other regulation are not obliged to make a declaration under the Law on the Prevention of Corruption¹² (art. 8, para. 2). Similar rules are also contained in the Law on Civil Servants and State Employees, which prescribes rules on conflicts of interest,

¹¹ Article 90 in the new amendment (Official Gazette of Montenegro, No. 054/24 of 11 June 2024).

¹² Although members of the Parliament are covered, in terms of declaring conflicts of interest, by the provisions of article 10 of the Code of Ethics for Members of the Parliament (Official Gazette of Montenegro, No. 046/19 of 7 August 2019), councillors are not.

the acceptance of gifts and outside employment for civil servants (arts. 75–79). However, limited guidance is available on the implementation of articles of the Law related to conflicts of interest.

Various ethical codes and codes of conduct for different categories of public officials have been adopted to promote integrity, honesty and responsibility. Disciplinary measures can be taken in the case of violations. Some codes also establish specific sanctions. Moreover, there are guidelines for strengthening the ethics and integrity of high-ranking executive officials.¹³

The Law on the Prevention of Corruption provides for the protection of reporting persons (arts. 65 and 72). Specialized hotlines and email addresses for reporting, including anonymously, are in place. Authorized persons have been designated by the public authorities and other entities to receive reports on whistle-blowing (art. 55 of the Law). During the country visit, it was reported that the existing whistle-blower protection measures were not always effectively implemented in practice, owing to a lack of resources.¹⁴

Montenegro has a financial disclosure system for public officials (see the section on article 52, paragraph 5, of the Convention below). The acceptance of gifts in connection with the exercise of public functions is prohibited for public officials, including their spouses and children living in the same household, with exceptions for protocol gifts and low-value gifts. Accepted gifts must be disclosed to the authorities in which the officials exercise public functions (arts. 16–20 of the Law on the Prevention of Corruption). Sanctions are applied in cases of non-compliance.

The independence of the judiciary is established in the Constitution (art. 118). Judges are appointed and dismissed by the Judicial Council, which is an autonomous and independent authority that oversees judges' careers, from appointment to termination (arts. 124–128 of the Constitution). However, the majority of the Council's members are not judges. The organization of courts, judicial administration and the selection and dismissal of judges are governed by the Law on Courts and the Law on the Judicial Council and Judges. In addition to ethical modules and workshops delivered by the Centre for Training in Judiciary and State Prosecution, a code of judicial ethics was adopted in 2014; its implementation is monitored by the Commission for the Code of Ethics for Judges. All courts have adopted integrity plans, and a judiciary information system is utilized for case allocation.

The prosecution service enjoys autonomy (art. 134 of the Constitution). The Supreme State Prosecutor and other State prosecutors are appointed and dismissed from duty by the Parliament (art. 135). The organization of the State Prosecution Office, including the selection and dismissal of prosecutors, is regulated by the Law on the State Prosecution Office. The Code of Ethics for Public Prosecutors was adopted by the Prosecution Council in 2018, and the Committee for the Code of Ethics for Public Prosecutors monitors its implementation. The State Prosecution Office also develops and implements integrity plans in consultation with the Agency for the Prevention of Corruption. Furthermore, all judges and prosecutors are subject to the financial disclosure system.

¹³ In addition, the Government of Montenegro adopted the Rulebook on the Amendment of the Rulebook on the Government of Montenegro, which came into effect on 6 January 2024. These amendments introduce mandatory integrity checks (art. 16a) for the advisors to the Prime Minister, the Chief of the Prime Minister's Cabinet, the Deputy Chief of the Prime Minister's Cabinet and the advisors to the Deputy Prime Minister as part of their hiring process. The procedure requires the Secretary-General of the Government to request the Agency for the Prevention of Corruption to verify whether there are any ongoing or concluded proceedings against these individuals for violations of the provisions of the law regulating the prevention and suppression of corruption.

¹⁴ Authorities reported that as part of the 2024 amendments to the Law on the Prevention of Corruption, changes have been made to the section on the protection of whistle-blowers.

Public procurement and management of public finances (art. 9)

Public procurement is regulated by the Public Procurement Law, which provides clear rules on various types of procurement procedures, including open procedures (art. 51). The Electronic Public Procurement System is utilized to publish tender documentation (arts. 45 and 60). The contracting authority should form a commission for the opening and evaluation of bids (art. 48) based on predetermined selection and award criteria (arts. 141–143). A reasonable time frame is established for the preparation and submission of tenders under different procurement procedures (chap. IV). The contract is generally awarded to the most advantageous bid (arts. 143 and 149). The Law also regulates the selection and training of procurement staff (arts. 47, 49 and 50). Since 2019, the competent authority for public procurement has been the Ministry of Finance, which exercises administrative supervision over the implementation of the Law and regulations adopted pursuant to the Law. The Public Procurement Inspection Unit conducts inspection supervision over the implementation of those regulations, as stipulated in article 209 of the Law. Inspection supervision is regulated by article 210.

The complaint mechanism consists of the Commission for the Protection of Rights, which is a specialized, independent and autonomous authority assigned to review public procurement procedures and protect the rights of participants (arts. 198–208 of the Public Procurement Law). With the exception of simple procurement, where an inspection procedure instead of legal protection is provided for, an aggrieved party in a procurement procedure may appeal to the Commission through the contracting authority (arts. 185 and 192). The Commission must then suspend the procurement process, and its decisions are subject to review by the administrative courts (arts. 187 and 197). Rulings under this mechanism are subject to appeal before the Administrative Court (art. 197).

The Public Procurement Law dedicates a chapter to communication, conflicts of interest and anti-corruption activities. The representatives of the contracting authorities are obliged to submit declarations on conflicts of interest (art. 43). Moreover, there are rules in place to prevent conflicts of interest among members of the Commission for the Protection of Rights (art. 202).

The procedure for the preparation and adoption of the budget is provided in the Law on Budget and Fiscal Responsibility, the implementation of which is supervised by the Ministry of Finance. In carrying out supervision, appointed inspectors have the obligation and authority to control the use of budget funds by different public entities, including control of accounting, financial and other business documents (art. 78 of the Law). Pursuant to the same article, budget inspectors have the authority to initiate misdemeanour proceedings in relation to the observed irregularities. The Law on the Public Internal Financial Control System regulates the system of internal financial control in the public sector, including financial management and control and internal audit. The Ministry of Finance is responsible for the coordination and harmonization of this system. Rules on reporting on revenues and expenditures are laid down in the Law on Public Sector Accounting (see chapter VI, on financial reporting). With regard to current efforts to increase transparency and accountability, Montenegro also reported that a range of amendments to the Law on Public Sector Accounting would come into force in 2027.

The Law on Public Sector Accounting prescribes methods of maintaining books and imposes pecuniary fines in cases of non-compliance (arts. 5, 16 and 46). The falsification of documents is criminalized under the Criminal Code (arts. 412–415).

Public reporting; participation of society (arts. 10 and 13)

The right to access information is enshrined in the Constitution (art. 51) and regulated by the Law on Free Access to Information.¹⁵ Access may be refused on grounds provided under article 14 of the Law, and the reasons for denial of access should be

¹⁵ The Government of Montenegro proposed amendments and additions to the Law on Free Access to Information on 29 December 2023.

provided (art. 30). A complaint regarding access to information can be made to the public authority and also to the Council of the Agency for Personal Data Protection and Free Access to Information, and then to the Administrative Court (arts. 34–38). The specific procedure is established in the Law on Administrative Procedure (arts. 123 and 129).

The Agency for Personal Data Protection and Free Access to Information is responsible for supervising the legality of administrative decisions on requests for access to information and for maintaining the information system for access to information, with public authorities being obliged to submit relevant information and data (arts. 41 and 42 of the Law on Free Access to Information). Public institutions are also required to designate personnel to deal with relevant requests (art. 11 of the Law) and to proactively publish information (art. 12), including in an open format (art. 12a). The Agency for Personal Data Protection and Free Access to Information is further authorized to perform inspection supervision over the application of the law and to initiate infringement proceedings in cases of non-compliance (art. 39). At the time of the country visit, a bill on amendments to the Law on Free Access to Information was under consideration.

The Ministry of Public Administration, Digital Society and Media has created two portals – a government web portal (GOV.ME) and an eGovernment Portal – with a view to simplifying public access to information and government service delivery. The majority of integrity plans containing information on corruption risks are published by several institutions, and the Agency for the Prevention of Corruption also publishes results of assessments of the adoption and implementation of integrity plans.

Public consultation when drafting laws and developing strategies is mandatory according to the Law on Public Administration (art. 52) and the Decree on the Election of Representatives of Non-Governmental Organizations to the Working Bodies of the State Administration Bodies and the Conduct of Public Consultation in the Preparation of Laws and Strategies. In addition, the Strategy for the Improvement of an Enabling Environment for the Action of Non-Governmental Organizations 2018–2020 was adopted to facilitate the participation of civil society in the decision-making process.¹⁶ The Agency for the Prevention of Corruption also signed memorandums of understanding with several civil society organizations for the prevention of corruption.

The Agency for the Prevention of Corruption disseminates information regarding its mandate and anti-corruption efforts, notably through newsletters and social media campaigns. Annual surveys have been conducted on public attitudes towards corruption and familiarity with the Agency, significantly enhancing public awareness and engagement in anti-corruption efforts.

In addition to conducting various integrity and anti-corruption training courses, at the time of the country visit the Agency for the Prevention of Corruption was in the process of preparing a proposal for the introduction of anti-corruption thematic units into the permanent curricula of schools.

There are no dedicated measures to protect the freedom to seek, receive, publish or disseminate information concerning corruption. Anyone may report corruption directly to the Agency for the Prevention of Corruption.

Private sector (art. 12)

Accounting and auditing standards and requirements are regulated in the Law on Accounting (arts. 3, 32 and 38) and the Law on Auditing (arts. 3, 44 and 49). In order to prevent potential conflicts of interest, former public officials are prohibited from employment or from having an interest in legal entities for two years after the termination of their public functions (art. 15 of the Law for the Prevention of

¹⁶ On 8 July 2022, the Government of Montenegro adopted the Strategy for Cooperation of Public Administration Bodies and Non-Governmental Organizations 2022–2026 containing the Action Plan 2022–2023.

Corruption). There is limited information on cooperation between law enforcement and private entities.

The Law on Companies and other relevant laws require the registration of companies in the Central Register of Business Entities. Montenegro has also introduced a registry of beneficial owners of legal entities, known as the Register of Ultimate Beneficial Owners, as a separate department within the services and registration sector of the Tax Administration.

In addition to the Corporate Governance Code, a code of business ethics and a court of honour were established within the Chamber of Economy to make decisions on breaches of good business practices. The Ministry of Economic Development is in charge of preventing the abuse of subsidies awarded pursuant to the Law on State Aid Control.

Business entities must keep proper accounting books and records. Sanctions are provided for violations of accounting and reporting obligations (arts. 38 and 39 of the Law on Accounting). In addition, criminal provisions on producing false balances and counterfeiting official documents may apply (arts. 278 and 414 of the Criminal Code).

Accounting practices for the purpose of committing corruption offences, as defined under article 12, paragraph 3, of the Convention, are not prohibited.

The tax deductibility of expenses that constitute bribes is not explicitly prohibited in the tax regulation.

Measures to prevent money-laundering (art. 14)

The legal framework of Montenegro for preventing and combating money-laundering primarily comprises the Law on the Prevention of Money-Laundering and Terrorist Financing. Supervisory bodies, as defined in article 94¹⁷ of the Law, oversee all reporting entities, including financial institutions and designated non-financial businesses and professions, and are empowered to conduct inspections and impose sanctions.

Articles 5a and 5b of the Law on the Prevention of Money-Laundering and Terrorist Financing delineate the national risk assessment, detailing its purposes and the conditions under which it should be conducted, including the requirement to establish a permanent national coordination body. Reporting entities are mandated to undertake appropriate actions to identify, evaluate and comprehend their money-laundering and terrorist financing risks, and to implement necessary measures to mitigate them, as outlined in articles 6 and 7 of the Law.¹⁸ Montenegro has conducted two national risk assessments: one in 2014, coordinated by the Administration for the Prevention of Money-Laundering and Terrorism Financing, and another in 2020, coordinated by the Financial Intelligence Unit.

Reporting entities cover all categories of financial institutions and a number of designated non-financial businesses and professions, along with money or value transfer services (art. 4 of the Law on the Prevention of Money-Laundering and Terrorist Financing). Although lawyers and notaries do not formally fall within the scope of reporting entities, they are still subject to certain money-laundering prevention obligations under the Law (arts. 49 and 50).¹⁹ However, the lack of regulations and clear guidance delineating the distinct obligations of lawyers and notaries under the Law may result in deficiencies in implementation.

The Law on the Prevention of Money-Laundering and Terrorist Financing outlines comprehensive customer identification procedures.²⁰ It prohibits anonymous accounts (art. 39) and mandates reporting entities to establish and verify the identities of

¹⁷ Article 131 in the new amendment.

¹⁸ In particular, articles 7, 11 and 12 in the new amendment.

¹⁹ In the context of the new amendment to the Law on the Prevention of Money-Laundering and Terrorist Financing, notaries and lawyers are also considered to be reporting entities under article 4.

²⁰ Electronic identification is included in article 23 of the new amendment.

customers, including beneficial owners (art. 8,²¹ para. 1). The legislation offers explicit guidance on when client identification is necessary and underscores the importance of reliable sources for this process, encompassing customer categories such as individuals, legal entities and foreign trusts²² (arts. 14–17).²³ However, non-profit organizations are not covered.

Reporting entities must retain records and safeguard data related to customer identification, account details, wire transfers, business correspondence and reports for a minimum of 10 years from the termination of business relationships or executed transactions (art. 91²⁴). The ability to reconstruct individual transactions in order to detect criminal activities is also a requirement (art. 6, para. 7, art. 78 and art. 91, para. 1). In addition, records held by the Financial Intelligence Unit are maintained for 11 years (art. 93,²⁵ para. 1).

The duty to report suspicious transactions is laid down in article 65²⁶ of the Law on the Prevention of Money-Laundering and Terrorist Financing.

The Department for Financial Intelligence Affairs oversees the implementation of measures against money-laundering and terrorist financing in Montenegro and has the core duty of acting as a national centre for the receipt and analysis of suspicious transaction reports and other information relevant to money-laundering, associated predicate offences and terrorist financing, and for the dissemination of information. The Department is legally mandated to cooperate internationally and exchange information (art. 55, para. 1, art. 56, para. 2(a), and art. 68 of the Law on the Prevention of Money-Laundering and Terrorist Financing).

At the time of the country visit, a coordination committee responsible for national coordination on anti-money-laundering issues was being established. This committee comprises relevant institutions including the police, other security agencies and the prosecution service.

Montenegro has implemented a “self-reporting” declaration system for overseeing the movement of currency across borders and the transportation of negotiable instruments by persons entering or leaving the country with amounts equivalent to or exceeding €10,000. This system is overseen by the Customs Administration (art. 10 of the Law on Foreign Currency and Capital Operations; the Decision on the Amount of Cash that may be Brought into or Leave Montenegro without Being Declared (Official Gazette of Montenegro No. 38/10)). The Financial Intelligence Unit is legally authorized to access data pertaining to declared and undeclared cross-border movements, those surpassing the threshold and those falling below the threshold but arousing suspicion of money-laundering (arts. 74, 82 and 83 of the Law on the Prevention of Money-Laundering and Terrorist Financing).²⁷

The definition of forgery covers false declarations, and failure to declare is subject to a fine ranging from €500 to €2,200 (art. 16 of the Law on Foreign Currency and Capital Operations). However, these sanctions seem to lack sufficient proportionality and do not appear to act as a deterrent. There are no explicit powers granted to customs authorities to take more coercive measures, such as seizure for eventual confiscation, nor are they empowered with the authority to request and obtain additional information regarding the origin of currency or bearer negotiable instruments and their intended use. Furthermore, the system is not implemented for mail and cargo transportation.

²¹ Article 63 in the new amendment.

²² Montenegro does not have a trust regime. Therefore, legal arrangements cannot be established within Montenegro.

²³ Articles 21 to 32 in the new amendment.

²⁴ Article 127 in the new amendment.

²⁵ Article 130 in the new amendment to the Law on the Prevention of Money-Laundering and Terrorist Financing.

²⁶ Article 84 in the new amendment.

²⁷ Article 111 in the new amendment.

According to article 34 of the Law on the Prevention of Money-Laundering and Terrorist Financing, forms for the electronic transfer of funds must include accurate and complete data on the payer, and such data are to be maintained throughout the payment chain. Moreover, payment service providers must refuse to execute funds transfers if the payer data are incomplete and/or request the provision of additional payer data within the shortest possible period (art. 34(3)).²⁸

Montenegro has been a member of the Committee of Experts on the Evaluation of Anti-Money-Laundering Measures and the Financing of Terrorism since 2007 and underwent its fourth cycle of mutual evaluation based on Financial Action Task Force recommendations in 2015.²⁹ The Administration for the Prevention of Money-Laundering and Terrorism Financing became a member of the Egmont Group of Financial Intelligence Units in 2005 and renewed its membership on 4 November 2020, which significantly increased the exchange of data and information with the financial intelligence units of other countries. Montenegro also has observer status with the Eurasian Group on Combating Money-Laundering and Financing of Terrorism, and with a regional group of financial intelligence services, which includes Albania, Bosnia and Herzegovina, Croatia, Serbia and Slovenia.

The Financial Intelligence Unit of Montenegro has signed 36³⁰ bilateral agreements with its counterparts in foreign jurisdictions for cooperation in combating money-laundering. The Ministry of Justice ensures judicial cooperation in that regard by convening regional meetings, in particular with Western Balkan countries.

2.2. Successes and good practices

- The Agency for the Prevention of Corruption has established broad cooperation with civil society by signing memorandums of understanding with several organizations for the prevention of corruption (art. 13, para. 1).

2.3. Challenges in implementation

It is recommended that Montenegro:

- Take measures to adopt, regularly update and monitor the implementation of a comprehensive long-term anti-corruption strategy, with a view to maintaining effective and coordinated anti-corruption policies³¹ (art. 5, para. 1).
- Take measures to ensure that the Agency for the Prevention of Corruption has adequate capacity to fulfil its broad mandates, including by enabling it to use resources pertaining to relevant needs and equipping it with enough personnel to carry out its various functions (art. 5, paras. 2 and 3, and art. 6, para. 2).
- Endeavour to strengthen integrity in the public sector by adopting measures governing the selection and training of persons for positions especially vulnerable to corruption and their rotation, where appropriate (art. 7, para. 1 (b)).
- Consider taking measures to enhance transparency in political campaigns, and finalize the revision of the Law on Lobbying (art. 7, para. 3).³²
- Endeavour to strengthen measures to prevent conflicts of interest by ensuring that public bodies have sufficient guidance to implement the articles related to conflicts of interest of the Law on Civil Servants and State Employees; and extend obligations related to conflicts of interest under the Law on the Prevention

²⁸ Articles 35 to 40 in the new amendment.

²⁹ The fifth round of the mutual evaluation of Montenegro by the Committee of Experts on the Evaluation of Anti-Money-Laundering Measures and the Financing of Terrorism was held in March 2023.

³⁰ Authorities reported on the signature of three additional agreements after the country visit.

³¹ Authorities reported that the Strategy for the Fight against Corruption covering the period 2024–2028 was adopted at the Government session on 4 June 2024.

³² The new Law on Lobbying was adopted on 6 June 2024 (Official Gazette of Montenegro, No. 054/24).

of Corruption to encompass all public officials, specifically including categories currently exempted or regulated by specific instruments, such as members of the Parliament and councillors (art. 7, para. 4).

- Consider strengthening the existing whistle-blower protection measures by ensuring that the Agency for the Prevention of Corruption and other relevant bodies responsible for the protection of whistle-blowers have sufficient resources to effectively implement protective measures (art. 8, para. 4).³³
- Continue efforts to take corrective action to promote transparency and accountability in the management of public finances (art. 9, para. 2).
- Endeavour to increase the composition of judges in the Judicial Council (art. 11, para. 1).
- Take further measures to promote cooperation between law enforcement agencies and relevant private entities in the prevention of corruption (art. 12, para. 2).
- Adopt an explicit provision disallowing the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Continue to develop public education programmes that contribute to the non-tolerance of corruption, such as school and university curricula (art. 13, para. 1 (c)).
- Strengthen measures to protect the freedom to seek, receive, publish and disseminate information concerning corruption (art. 13, para. 1 (d)).
- Enhance its capacity to detect and deter all forms of money-laundering, including by assessing the vulnerability of the non-profit sector to money-laundering, and implement commensurate risk mitigation measures; furthermore for increased legal clarity, issue regulations or clear guidance concerning the obligations of lawyers and notaries under the Law on the Prevention of Money-Laundering and Terrorist Financing (art. 14, para. 1 (a)).
- Continue efforts aimed at enhancing coordination regarding the prevention and combating of money-laundering (art. 14, para. 1 (b)).
- Consider enhancing its cross-border cash declaration regime to cover transfers through mail and cargo; empower its competent authorities to take coercive measures, such as seizure for eventual confiscation of funds suspected of having been laundered, and grant them the authority to request and obtain additional information regarding the origin of currency or bearer negotiable instruments and their intended use; and adopt and implement a more dissuasive and proportionate sanctioning regime (art. 14, para. 2).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

As a general rule, international cooperation in criminal matters in Montenegro is contingent upon the existence of a relevant treaty. In the absence of such a treaty, cooperation regarding the seizure, confiscation and management of proceeds of crime is governed by the pertinent provisions of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity (chap. VIII, arts. 78–83) or on the basis of reciprocity. Alternatively, the Law on Mutual Legal Assistance in Criminal Matters applies to international cooperation matters not governed by the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity.

³³ Authorities reported that in June 2024, a new Law on the Prevention of Corruption, which exclusively entrusted jurisdiction for protecting whistle-blowers to the courts, came into force.

The primacy of ratified treaties over national legislation and their integrity in the internal legal order are enshrined in the Constitution (art. 9), thereby indicating that the relevant provisions of the Convention are directly applicable domestically.

The Ministry of Justice is the central authority for mutual legal assistance and has a special unit for international cooperation in civil and criminal matters. The official languages of the Council of Europe are considered acceptable languages in the provision of mutual legal assistance. In urgent cases, requests for cooperation may be exchanged through the National Central Bureau of the International Criminal Police Organization (INTERPOL) (art. 4 of the Law on Mutual Legal Assistance in Criminal Matters).

There is an asset recovery office within the Department for International Operational Police Cooperation of the Police Administration.

Article 42 of the Law on Mutual Legal Assistance in Criminal Matters provides a State prosecutor with the prerogative to share information with the competent authority of a foreign State if it is deemed that such data could be useful to that State for initiating or conducting an investigation or a court action. Furthermore, article 71 of the Law on the Prevention of Money-Laundering and Terrorist Financing empowers the Financial Intelligence Unit to spontaneously provide to a foreign competent authority, under the condition of reciprocity, data, information and documentation on a person or transaction when there are reasons to suspect the commission of money-laundering or terrorism financing and related predicate offences.

Since 2006, Montenegro has signed 14 bilateral agreements on judicial cooperation, including in criminal matters, covering issues related to legal assistance and the mutual recognition and execution of judicial decisions. Montenegro is also a party to a number of multilateral agreements that cover provisions on preventing and combating money-laundering and facilitating asset recovery through international cooperation.

Montenegro is a member of the INTERPOL/Stolen Asset Recovery (StAR) Initiative Global Focal Point Network on Asset Recovery and the Camden Asset Recovery Inter-Agency Network.

Montenegro is a party to multiple bilateral and multilateral agreements aimed at facilitating cooperation for the purposes of asset recovery.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The Law on the Prevention of Money-Laundering and Terrorist Financing outlines rules concerning customer due diligence, beneficial ownership and enhanced scrutiny in respect of politically exposed persons, their family members and close associates. Close associates, as defined, include individuals who own legal entities jointly with politically exposed persons and individuals who own legal entities or have established business relationships for the benefit of politically exposed persons (arts. 32 and 33). However, there is no list of domestic and foreign politically exposed persons pre-identified by regulatory bodies, nor are there specific identification guidelines for politically exposed persons. Moreover, the provisions cited are applicable only to politically exposed persons who are Montenegrin citizens.

Reporting entities must establish beneficial ownership of legal entities according to comprehensive criteria, and a beneficial ownership register is maintained by the Tax Administration and is accessible to law enforcement authorities and the Financial Intelligence Unit (arts. 21, 21a and 21b). However, there is no obligation for legal persons to update the information regarding beneficial ownership. Furthermore, there are no verification mechanisms to ensure the accuracy of the beneficial ownership information in the register.

To provide additional guidance to reporting entities, Montenegro has adopted the Rulebook on Guidelines for Developing Risk Analysis and Risk Factors for the

Purposes of Prevention of Money-Laundering and Terrorist Financing (Official Gazette of Montenegro, No. 65/18 of 9 October 2018), and the Guidelines for Developing Risk Analysis and Risk Factors for the Purposes of Prevention of Money-Laundering and Terrorist Financing. In April 2019, the Council of the Central Bank of Montenegro adopted the Guidelines for Developing Risk Analysis and Risk Factors for the Purposes of Prevention of Money-Laundering and Terrorist Financing by Reporting Entities under the Supervision of the Central Bank of Montenegro (Official Gazette of Montenegro, No. 22/19).

By virtue of article 63 of the Law on the Prevention of Money-Laundering and Terrorist Financing, the Financial Intelligence Unit may request a reporting entity to conduct ongoing monitoring of a customer's financial business in relation to which there are reasons for suspecting the commission of money-laundering and related predicate offences. Montenegro can report back to foreign counterparts on the results of monitoring pursuant to article 70 of the Law, which empowers the Financial Intelligence Unit to share with a foreign financial intelligence unit upon request data and information about persons or transactions related to reasons for suspecting the commission of money-laundering and related predicate offences or terrorist financing. Authorities confirmed that this provision is used in the daily operations of the Financial Intelligence Unit when exchanging data with foreign financial intelligence units.

General record-keeping requirements are adequately addressed, as explained above in the section on article 14 of the Convention (arts. 78–93a of the Law on the Prevention of Money-Laundering and Terrorist Financing). However, as no updates regarding beneficial ownership information are required, the effectiveness of general record-keeping in relation to such ownership might be limited.

Article 40 of the Law on the Prevention of Money-Laundering and Terrorist Financing expressly prohibits the establishment or continuation of correspondent relationships with shell banks and with other credit institutions known for allowing shell banks to use their accounts.

Under article 23 of the Law on the Prevention of Corruption, Montenegro has established a financial disclosure system applicable to all public officials and select categories of State employees, including those within the Police, Customs and Tax Administrations. This reporting requirement encompasses assets and income, both domestically and internationally, and extends to spouses and children living in the same household. Submission, which can be completed electronically, is mandatory upon such persons assuming and departing from duties; annually; in the event of an increase in assets and income exceeding €5,000; and upon request by the Agency for the Prevention of Corruption (art. 23). The scope of reported data is comprehensive and outlined in article 24. The Agency for the Protection of Corruption retains records for a decade (art. 26), with a portion made publicly accessible (art. 27). Compliance statistics indicate rates ranging from 93 per cent to 99.6 per cent.

The Agency for the Prevention of Corruption verifies financial disclosures in accordance with an annual plan, employing methods that involve cross-referencing reported data with information gathered from other authorities, such as the database of the Tax Administration. In cases where discrepancies suggest an increase in income, public officials are obliged to provide explanations to the Agency for the Prevention of Corruption within 30 days (art. 30 of the Law on the Prevention of Corruption).

Failure to provide the Agency for the Prevention of Corruption with complete or accurate data on income and assets in line with the law subjects the public official to a fine ranging from €500 to €2,000 (art. 103, paras. 22–25, of the Law on the Prevention of Corruption). However, the sanctioning regime does not seem proportionate or dissuasive.

Montenegro may share information on asset disclosure with a foreign country upon request on the basis of article 42 of the Law on Mutual Legal Assistance in Criminal Matters.

Montenegro does not require appropriate public officials having an interest in or signature or other authority over foreign financial accounts to report that relationship to the authorities or to maintain appropriate records related thereto.

In accordance with article 55, paragraph 2, of the Law on the Prevention of Money-Laundering and Terrorist Financing, the Financial Intelligence Unit is tasked with collecting, analysing and disseminating suspicious transaction reports obtained from reporting entities. Operating on a law enforcement model, the Financial Intelligence Unit succeeds the Division for the Prevention of Money-Laundering and Terrorist Financing within the Police Administration. It enjoys operational independence, as outlined in article 55, paragraph 1, of the Law on the Prevention of Money-Laundering and Terrorist Financing and is empowered to establish cooperation agreements with both domestic competent bodies and foreign financial intelligence units (art. 56, para. 2a). Other State authorities are legally obliged to promptly furnish the Financial Intelligence Unit with the information, data and documentation necessary for its central role (art. 60). The Financial Intelligence Unit is granted direct access to the Beneficial Owner Register and to the Customs Administration databases concerning cross-border declarations of money and bearer negotiable instruments.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Montenegro does not have specific legislation granting locus standi to other States to initiate a civil action before its courts to establish title to or ownership of property acquired through the commission of an offence, or to entitle such States to compensation for damages resulting from the commission of an offence.³⁴

Both articles 42 and 48 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity grant the injured party the right to claim damages and seek compensation before the confiscation becomes final. However, such a procedure has never been implemented in a case involving a foreign State. Article 49 protects the rights of bona fide third parties, including legal persons, in confiscation proceedings.

The authorities of Montenegro may enforce a foreign confiscation order under article 78 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity, provided that there is a relevant treaty. In the absence of such a treaty, enforcement may proceed based on reciprocity. Foreign requests for cooperation must include the final judgment ordering confiscation of material benefits and meet the content requirements contained in article 81 of the Law. Implementation procedures are similar to those governing the execution of foreign criminal verdicts, wherein decisions are made by a panel composed of three judges, without the presence of the parties (article 38 of the Law on Mutual Legal Assistance in Criminal Matters). The order issued for the execution of confiscation must state the reasons considered in the pronouncement of the sanction and must reference the proof of the foreign court whose verdict is to be enforced (art. 38 of the Law on Mutual Legal Assistance in Criminal Matters). However, it is not clear from the existing rules whether authorities are able to provide assistance in the absence of a foreign confiscation order.

Courts in Montenegro may order the confiscation of a property of foreign origin by adjudication of an offence of money-laundering pursuant to article 268 of the Criminal Code of Montenegro, as the country considers offences committed outside Montenegro

³⁴ It is not clear whether the generic provisions pertaining to civil claims are applicable in cases involving foreign States.

to also be predicate offences for money-laundering purposes (art. 2, para. 2, of the Law on the Prevention of Money-Laundering and Terrorist Financing).

Non-conviction-based confiscation in the case of circumstances permanently precluding prosecution, including the death of the perpetrator, is possible on the basis of article 10 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity. Authorities confirmed that cooperation concerning such orders can be provided by Montenegro.

Foreign freezing and seizure orders can also be executed pursuant to article 78 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity. However, there are no measures allowing seizure or freezing on the basis of foreign requests, when the corresponding foreign order has not been issued.

Montenegro has not considered taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Montenegro may render legal assistance to a foreign State in identifying, tracing and freezing or seizing proceeds of crime, property, equipment or other instrumentalities on the basis of article 79 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity and article 42 of the Law on Mutual Legal Assistance in Criminal Matters.

The content of requests for international cooperation is regulated by article 81 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity, which indicates comparable requirements to those prescribed in article 55, paragraph 3, of the Convention.

Mutual legal assistance is provided in accordance with the Law on Mutual Legal Assistance in Criminal Matters and pursuant to the relevant international agreements ratified by Montenegro (art. 2 of the Law on Mutual Legal Assistance in Criminal Matters).

Montenegro furnished the relevant laws in the course of the review process.

Montenegro does not subject the provision of mutual legal assistance to the existence of a relevant treaty where conditions of reciprocity are met, and considers the Convention as a legal basis for such cooperation.

Article 82 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity stipulates that if a request from a competent foreign authority for cooperation lacks the prescribed elements, the foreign authority will be asked to provide the missing information within a set time frame. Failure to comply with this request results in the rejection of the foreign authority's request. In addition, according to article 83 of the same law, provisional measures may be lifted if not finalized within two years of issuance of the related order. Six months before such lifting, the court must notify the relevant foreign authority. The legislation of Montenegro does not use the de minimis value of property as a basis for refusing cooperation with other States, and this threshold has not been applied in practice.

According to article 49 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity, a bona fide third party has the right to participate in the confiscation procedure before the decision becomes final. Failure to do so forfeits that party's right to seek claims from the confiscated material benefits.³⁵ *Return and disposal of assets (art. 57)*

Although there are no specific provisions on the disposal and return of confiscated property, article 78 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity stipulates that the division of confiscated material benefits with other countries may be governed by an international treaty. Although

³⁵ According to article 26 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity, decisions on seizure and confiscation are published in the State's official gazette.

the legal framework recognizes the Convention's role as the primary legal basis for providing assistance to foreign States, the absence of specific rules regarding the return of confiscated property in accordance with the Convention, coupled with only one documented case of return, do not provide adequate legal certainty and could result in inconsistent implementation.

As previously mentioned in the section on the implementation of article 55 of the Convention, the legislation of Montenegro concerning the protection of bona fide third parties in matters of seizure and confiscation provides for consideration of the rights of such parties.

The legislation of Montenegro has provisions that aim to address claims for damages and the compensation of victims during a confiscation procedure and, subsequently, through ensuring a right of appeal against the confiscation decision (arts. 42 and 43 of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity).

Montenegro bears the costs of incoming assistance requests and may deduct expenses to offset the costs associated with investigations, including expertise expenses. Responsibility for extraordinary and disproportionate costs is to be determined through mutual agreement with the requesting State (art. 8 of the Law on Mutual Legal Assistance in Criminal Matters).

There is a legal basis for Montenegro to conclude arrangements, on a case-by-case basis, for the final disposal of confiscated property (art. 78, para. 4, of the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity).

3.2. Successes and good practices

- Direct access for the Ministry of Justice to the bank accounts register, which contributes to effective investigations (arts. 14, 51 and 52).
- Acceptance of multiple languages for mutual legal assistance (art. 51).

3.3. Challenges in implementation

It is recommended that Montenegro:

- Consider adopting a list of domestic and international politically exposed persons to whose accounts reporting entities will be expected to apply enhanced scrutiny or publishing specific identification guidelines for politically exposed persons (art. 52, para. 1).³⁶
- Strengthen the beneficial owner regime by establishing a mechanism for keeping up-to-date, timely and accurate records on beneficial owners, including through the verification of submitted information (art. 52, para. 1).
- Consider assessing the effectiveness of the verification regime, including in terms of leveraging all relevant data for reliable and timely cross-checks of asset declarations and strengthening the sanctioning regime to enforce the asset and income declarations (art. 52, para. 5).
- Consider requiring appropriate public officials having an interest in or signature or other authority over foreign financial accounts to report that relationship to the authorities and to maintain appropriate records related thereto (art. 52, para. 6).

³⁶ Authorities reported that the amendment to the Law on the Prevention of Corruption of 11 June 2024 under article 55, paragraph 4, stipulates that the Register of Politically Exposed Persons is to be maintained and managed by the Agency for the Prevention of Corruption. In addition, article 4 of the Law prescribes that the manner of maintaining and the content of the Register of Politically Exposed Persons is determined by the Agency.

- Grant foreign State locus standi to:
 - Initiate civil action in its courts to establish title to or ownership of property and to receive compensation for damages from the commission of an offence (art. 53 (a) and (b));
 - Be recognized as a legitimate owner of property, when having to decide on confiscation (art. 53 (c)).
 - Take such measures as may be necessary to permit domestic authorities to provide mutual legal assistance by obtaining an order of confiscation on the basis of a foreign request and, if such an order is granted, give effect to it (art. 54, para. 1 (b), and art. 55, para. 1 (a)).
 - Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request in the absence of a foreign order (art. 54, para. 2 (b), and art. 55, para. 2).
 - Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (art. 54, para. 2 (c)).
 - Adopt legislative and other measures to implement article 57, paragraphs 1 to 3, of the Convention.
-